

IN THE HIGH COURT OF SWAZILAND

NOMSA ZULU (nee DLAMINI)

Applicant

And

MDUDUZI COMFORT ZULU

Respondent

Civil Case No. 1759/2007

Coram: S.B. MAPHALALA - J

For the Applicant: MR B. MAGAGULA

For the Respondent: MR. M. NDLOVU

JUDGMENT

10th August 2007

[1] Before court is an application brought under a Certificate of Urgency for the eviction of a husband by a wife from the matrimonial home where the parties were married in terms of Swazi law and custom. The Applicant who is the wife seeks for an order in the following terms:

1. That the above Honourable court dispense with the normal and usual requirements of the Rules of the above Honourable court relating to service of process and notices and that this matter be heard as a matter of urgency in terms of Rule 6 (25) of the Rules of the above Honourable court and the matter be heard on an *ex parte* basis.
2. That a rule *nisi* do hereby issue calling upon the Respondent to show cause on or before 1st June 2007 why an order in the following terms should not be made final:
3. Interdicting and restraining the Respondent from in anyway interfering with the liberty of the Applicant and/or in any way assaulting and/or abusing the Applicant be it physical or emotionally.
4. Directing the Respondent not to communicate in anyway with the Applicant and that in the event he so does he be committed to jail for contempt.
5. Ejecting the Respondent from the premises known as House No. 21, Ezulwini, Sunset Village.
6. That the rule *nisi* above operate as an interim order pending the return date.
7. Costs.
8. Further and/or alternative relief.

[2] The Founding affidavit of the Applicant is filed in support of the application where she also filed photographs showing various injuries on her caused by the

Respondent who is her husband.

[3] The Respondent has filed an answering affidavit to the founding affidavit mentioned above in paragraph [2]. In the said affidavit various points *in limine* are addressed regarding the issues of urgency and others as shown in paragraphs 3.1, 3.2, 3.3, 3.4, 3.5 thereof.

[4] The cause of discord between the parties is that Applicant claims that Respondent abuse her and accuse her of having extra-marital affairs. That Respondent went through her cell phone messages and thereafter severely assaulted her for allegedly having an affair with a male friend. The Respondent was so violent such that she ran away from the marital home to spend a night at a friend's place. Upon her return to her house she found that the Respondent had burnt all her clothes which amounted to the value of E30, 000-00. She then reported the matter to the Lobamba Police who duly took the matter up with the Respondent. However, Respondent only received a warning and they advised him to sort out his family problems with her.

[5] The discord between the parties continued such that she then decided to approach the Magistrates Court in Mbabane to seek for a peace binding order where he was ordered to vacate the house for a while in order to sort out his problems. Respondent, however, returned to the house alleging that the order had lapsed and as such he had the right to return to his wife. Upon his return, the abuse would continue until she came to the end of her tether when she approached this court on the 23rd May 2007.

[6] Respondent in his Answering affidavit vehemently denies these allegations that he is the cause of all these problems stated by Applicant in her founding papers. The crux of the defence by the Respondent is that the parties are husband and wife and that the marriage validity subsists. The order sought will in fact prevent either party from performing their lawful obligations and duties as husband and wife and will in practical terms be tantamount to divorce whereas these are not divorce proceedings. The court's policy is to preserve and uphold the sanctity of matrimonial union and not to destroy it as sought by the Applicant's prayers. Indeed, this is not a simple matter in that the court ought to preserve and uphold the sanctity of the matrimonial union and not to destroy it.

[7] In argument before me I pointed out the above fact to Counsel with a view of having both families of the two contesting parties to meet to resolve these differences and I was told by Counsel for the Applicant that the respective families have met but have reached a deadlock. It is on the basis of this deadlock that this court has been asked to intervene to sort out this matrimonial impasse. The essence of the problem before court is whether a court can eject a husband from a matrimonial home. It appears to me that any order to that effect will be *contra bonos mores* and will interfere with the sanctity of marriage. Then the question arises as to how does a court protect a spouse who is in dire straits as the present Applicant.

[8] In arguments before me it emerged that there is another place which is considered as a matrimonial home by one of the parties. The Applicant alleges that

the home which is the subject-matter of this case is not the matrimonial home of the parties but has pointed out another place as the matrimonial home of the parties.

[9] The Respondent on the other hand has said there is no such thing as another home for the parties. In view of this therefore it appears to me that a dispute of facts emerges as to which home is the proper matrimonial home of the parties. If it is found that this other home is the matrimonial home of the parties then Applicant would be entitled to be granted the order she seeks in this application forthwith.

[10] In the result, for the afore-going reasons I order that oral evidence be led to establish the true matrimonial home of the parties. Costs to be costs in the course.

S.B. MAPHALALA

JUDGE