

THE HIGH COURT OF SWAZILAND

MBUSO DLAMINI
1st Applicant

GUGU MATIWANE
2nd Applicant

NHLANHLA HLATSHWAYO
3rd Applicant

MAQHAWE DLAMINI
4th Applicant

NOMPENDULO DLAMINI
5th Applicant

AND

UNIVERSITY OF SWAZILAND

Civil Case No. 3977/07

Coram: S.B. MAPHALALA J.

For the Applicants: MR. S. MDLADLA

For the Respondent: MR. M. MAGAGULA

JUDGMENT
5th November, 2007

[1] The five applicants are students at the University of Swaziland cited herein as the respondent and have filed this application under a Certificate of Urgency for a Rule *nisi* calling upon the respondents to show cause at such time as this court may direct, why an order in the following terms should not be made final:

"3.1 Interdicting and restraining the respondent from proceeding with the registration which has been set for the periods 1st November, 2007, to the 16th November, 2007 and from implementing the semesterisation programme.

3.2 That prayer 3.1. herein above operates forthwith with immediate effect pending the finalization of this matter."

[2] The application is founded on the affidavit of the 1st Applicant Mbuso Dlamini who has related therein the history of the matter; that they have a clear right; that the balance of convenience favour that an interdict be granted; that applicants stand to suffer immense prejudice if they are meant to proceed with this programme; that this application is the only remedy which can protect the Applicants and the rest of the students from the irreparable harm which the applicants stand to suffer and that this matter is urgent by virtue of the fact that the first registration date has been set to the 1st November, 2007 to the 16th November, 2007, which means that at the very moment, the respondent is actually now implementing the semesterisation and in doing so, notified the applicants and the rest of the students on Wednesday the 31st October, 2007. This means therefore that the applicants could not have approached the court any sooner and they were clearly under the impression that their grievances would be entertained.

[3] The 1st Applicant has also attached annexures to his Founding Affidavit being Annexure "A" being a memorandum dated 17 September, 2007 from SRC Executive to Secretary of Senate, Annexure "B" being an internal memorandum from the Acting Registrar to all students dated 17th September, 2007, Annexure "C" being a memorandum from the Registrar to the Chief Electoral Officer on the 21st September, 2007, Annexure "D" being a memorandum from Council of the University to the Student Representative Council of the 15th October, 2007 further

annexures are attached being Appendix "G" and "E".

[4] The other applicants have filed confirmatory Affidavits to the Founding Affidavit of the 1st Applicant where averments are made confirming the affidavit of the 1st Applicant.

[5] In view of the fact that the Application has been brought under a certificate of urgency, respondent has not had the time to file opposing papers but has filled a notice of intention to oppose with the Registrar's stamp dated the 2nd instant.

[6] When the matter was called at 8.30am on the 2nd November, 2007 counsel for the respondent raised a point of law *in limine* from the bar that applicants' have not proved urgency as provided for by Rule 6 (25) (a) and (b) of the High Court Rules. The second point *in limine* raised is that the applicant have failed to prove the requirements of an interim interdict being

(i) a clear right, (ii) apprehension of irreparable harm, (iii) balance of convenience and (iv) no other satisfactory remedy. Counsel for the Respondent cited a number of decided cases in support of his arguments and those included the High Court cases of **Susan Myzo Magagula vs The Times of Swaziland and others** and on urgency a **dictum** by **Masuku J** in **Megalith and Others**. Mr Magagula further submitted that they be given an opportunity to file their opposing affidavit so that they would answer to all the issues in the Applicants' Founding Affidavits including the issues covering the interim order. On the other hand counsel for the Applicant argued that the court ought to consider the issue of the interim order on the arguments presented.

[7] I have considered the arguments of the parties regarding the issue of the interim order and I have come to the considered view that the Respondents ought to be given an opportunity to answer the Applicants' case *in limine* and on the merits of the case. I say so because this is a very important case not only to the Applicants before the court but thousands of others who are students at the University and the University itself with its reputation to protect and the interim

order sought by the Applicants has far reaching consequences such that it would be folly for this court to issue such an order without hearing all the pros and cons of the dispute between the parties. For these reasons I would only issue an order regarding urgency and say that the applicants have proved urgency in terms of the provisions of Rule 6 (25) (a) and (b) of the High Court Rules. On the issue of the requirements of an interdict I will leave that issue to be addressed by the parties on Affidavits.

[8] In the result, for the foregoing reasons I rule that the respondent file its answering affidavit and the applicants to file their replying affidavits on or before Wednesday the 7th November, 2007 and the matter be heard on arguments on Thursday 8th November, 2007 at 9:30am.

S.B. MAPHALALA

JUDGE

