

IN THE HIGH COURT OF SWAZILAND

ROYAL SWAZILAND SUGAR CORPORATION LTD

Applicant

And

AMBOARD INVESTMENTS (PTY) LTD

Respondent

Civil Case No. 4487/2007

Coram S.B. MAPHALALA - J

For the Applicant MR. S. DLAMINI

For the Respondent MR. M. MABUZA

JUDGMENT

17th December 2007

[1] The Applicant being Royal Swaziland Sugar Corporation Ltd has filed before this court this *ex parte* application under a Certificate of Urgency for an order in terms of prayers 1 to 7 of the Notice of Motion. The effect of the order is that failing the return of certain movables to the Applicant forthwith, the Sheriff or his Deputy for the Lubombo district be authorized and directed to attach and remove certain movable

properties wherever same may be found and deliver same to the Applicant to hold in safe custody, alternatively to hold the movables under attachment. On prayer 4.2 thereof that the Respondent pays the costs of this application at attorney-client scale.

[2] The Founding affidavit of Mhawu Innocent Maziya who is the Crop Commercial Manager is filed stating all the historical background in this case. The Hire Purchase Agreement between the parties is filed thereto as annexure "A". Various letters of correspondence between the parties are filed in support.

[3] Counsel for the Respondent got to know about the application although it was brought *ex parte* and proceeded to advance from the bar two points *in limine* where I heard the arguments of both Counsel. This judgment is concerned with this aspect of the matter.

[4] The first point is that of urgency that the reasons for urgency do not satisfy the peremptory requirement of Rule 6 (25) (a) and (b) of the High Court Rules. The second point raised is that in the present case there is an irresolvable dispute of fact contrary to the requirement propounded in the leading South African case of *Room Hire Co. (Pty) Ltd vs Jeppe Street Mansions (Pty) Ltd 1949 (3) S.A. 1155 (T)*.

[5] Counsel for the Applicant advanced arguments *au contraire* and said on the arguments about urgency that *in casu* it has been proved in accordance with the Rule 6 (25) (a) and (b) of the High Court Rules. On the arguments concerning irresoluble dispute of fact Counsel for the Respondent contends that this is a very strange argument at this point when the parties have not filed all the requisite affidavits. Therefore this argument is premature at this stage.

[6] I have considered the arguments of the parties and I have come to the considered view that on both points raised by the Respondent the Applicant's arguments are correct. I agree that the requirements of Rule 6 (25) (a) and (b) of the High Court Rules have been complied with. On the second point that of the dispute of fact I have also found that this is a very strange argument brought at this stage of the proceedings.

[7] In the result, for the afore-going reasons I dismiss the two points *in limine* and rule that the rule *nisi* be issued and the attachment therein to be in the hands of the court as suggested by Counsel for the Respondent. I further order that costs to be costs in the main application.

S.B. MAPHALALA

JUDGE