

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1076/07

In the matter between

STANDARD BANK OF SWAZILAND LTD

APPLICANT

And

D.N. GENERAL ENGINEERING

SUPPLIERS WISEMAN DLAMINI

1st RESPONDENT

DANIEL NKAMBULE

2nd RESPONDENT

NOMTHANDAZO NKAMBULE In

3rd RESPONDENT

re:

4th RESPONDENT

STANDARD BANK OF SWAZILAND LTD

and

PLAINTIFF

D.N. GENERAL ENGINEERING

SUPPLIERS WISEMAN DLAMINI

DANIEL NKAMBULE

1st DEFENDANT

NOMTHANDAZO NKAMBULE

2nd DEFENDANT

3rd DEFENDANT

4th DEFENDANT

FOR THE APPLICANT

MR. MDLADLA

FOR THE RESPONDENT

MR. MKHWANAZI

JUDGMENT 12/06/07

- [1] The facts herein are that Mr. Mdladla for the Applicant obtained a rule nisi by consent on the 29/3/07 which remained alive because of several extensions until the 27/4/07 whereby it lapsed because there was no Court session on that day.
- [2] Mr. Mkhwanazi pursued his clients writ during the duration of the lapse.
- [3] Mr. Mdladla on the other hand brought an urgent *ex parte* application on 7/5/07 for the revival of the rule which was indeed revived and extended to the 18/05/07.
- [4] Upon receipt of the court order, Mr. Mkhwanazi set the matter down for the 14/5/07 withstanding the return date of the 18/5/03.
- [5] There are a lot of issues in between the issues which I do not intend to go into.

When the matter came before me I extended the rule sine die pending my ruling.

The problem as far as I can glean from the papers is that Mr. Mdladla has complaints that the bill of costs in High Court Case No. 767/06 was taxed without notice to him and yet it included certain items which should have not have been included and as a result the Respondents would be unduly enriched.

There seems to be substance in this complaint. Mr. Mkhwanazi on the other hand states that he did send a notice in terms of rule 68 as read with the Taxing Masters directive calling upon the Applicants within 4 days upon service upon them of the notice and the accompanying bill of costs to scrutinize the bill and to decide which items would be opposed. There was no response from Mr. Mdladla's offices and so Mr. Mkhwanazi went ahead set the bill down and taxed it. He did not however, send the notice of set down to Mr. Mdladla.

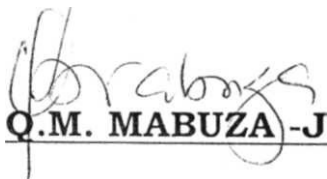
As the matter has been defended from the onset Mr. Mkhwanazi should have sent the notice of set down. I can on the other hand understand Mr. Mkhwanazi's vexation. This matter] has not been well handled by Mr.

vexation. This matter has not been well handled by Mr. Mdladla offices from the outset. The Applicants are not very far from Mr. Mdladla offices for him to take instructions whenever he needs to do so.

[10] I wish to put closure to this matter and do not intend to go into collateral issues.

[11] In the event I order as follows:

- (1) The writ of Execution herein is set aside.
- (2) The bill of costs is to be referred to the Registrar for re-taxing and notice of set down therefor should be served on the Applicants attorneys. A new writ to issue thereafter should applicants not pay in terms of the re-taxed bill.
- (3) I order that each party pay its own costs. The rule nisi is hereby discharged.


Q.M. MABUZA-J