



IN THE HIGH COURT OF SWAZILAND

TIBIYO PROPERTIES (PTY) LTD

Applicant

And

MNTSHALI MICHAEL

Respondent

Civil Case No. 2473/2007

**For the
Applicant**

**For the
Responde**

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**S.B.
MAPHA
LALA - J
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[1] In this matter when the case was called in the uncontested motion of the 20th July 2007, there was no appearance for the Respondent and the Applicant's Counsel applied for the confirmation of a rule which was granted by this court on the 11th July 2007 as *per* Annandale J. The court proceeded to grant a confirmation of that rule on the strength of a return of service which showed that Respondent was served on the 18th July 2007 at 1530hours on his chosen *domicillium citandi at executandi* being Flat No. 7, Mbabane Heights, in the district of Hhohho.

[2] Some minutes after the granting of the said confirmatory order Counsel for the Respondent

sought to recall the matter stating that the court ought to revisit its order in view of the fact that Respondent has a defence to the claim. The question then arose whether the court can revisit its own order it has already made. Was it not a matter where Respondent should either make a proper application for rescission or appeal to a higher court? Counsel for the Respondent maintained in his argument that the court can reopen the case when this has been raised a few minutes after the granting of the said order. Counsel for the Respondent failed to furnish the court with a legal authority to support the Respondent's position.

[3] I have considered the arguments of the parties in this regard and I have come to the conclusion that this court had become *functus officio* the moment the order was confirmed. It appears to me that the only remedies open to the Respondent is to either apply for a rescission of the court's order in terms of the Rules of court or to appeal to a higher court. It would be a mockery of justice for a court to chop and change its own judgments and this will bring the courts into disrepute.



S.B. MAPHALALA

JUDGE

[4] In the result, for the afore-going reasons stated in paragraph [3] I dismiss the application by Respondent to re-open the case. I will not make any order as to costs.