

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO. 2054/05

In the matter between:

NQOBILE DLUDLU

APPLICANT

and

THULA DLAMINI

1ST RESPONDENT

SWAZILAND NATIONAL PROVIDENT FUND 2ND RESPONDENT

In re:

NQOBILE DLUDLU

APPLICANT

and

THULA DLAMINI

1ST RESPONDENT

SWAZILAND NATIONAL PROVIDENT FUND 2ND RESPONDENT

CORAM: Q.M. MABUZA -J

FOR THE APPLICANT: MR. T.M. MLANGENI

FOR THE RESPONDENT: IN PERSON

RULING 20/6/08

[1] This is an application brought against the Respondent for the maintenance of two minor children born between the Applicant and himself. A **rule nisi** initially issued in respect of E345,000.00 and had the effect of freezing this amount which was due to the

Respondent as part of his terminal benefits. I now have to confirm or discharge this rule and if I confirm it, it is now for the lesser amount of E235,000.00.

[2] The children are:

- Mandla Dlamini born 15th December 1994.
- Zolile Dlamini born 27th February 1997. They both attend school at Living Waters School at Manzini as day scholars.

[3] There is an amount of E235,000.00 standing to the credit of the Respondent at his work place. This court has to decide whether all or a portion of this amount has to be placed in the Master's guardian fund for the children's maintenance.

[4] When the matter was argued before me three other minor children to be maintained were revealed to the Court.

[5] The children live with the Respondent and his partner. They are 2 years and 3 years in age. There is one other child born from another woman whose age is not stated but who is also a minor.

[6] It seems to me that Mr. Dlamini's management of his money is not prudent. For example he has constructed a house worth between one million to two million Emalangeni on Swazi nation land. On his own admission the house is still incomplete. It is not

possible to dispose of an ordinary conventional homestead on Swazi nation land let alone such an expensive house.

[7] It is my considered view that it would not be prudent to give him any of this money. In fact Mr. Mlangeni for the Applicant suggested that all of the money should be placed in the guardians fund in respect of all five children. I gave this suggestion some thought but concluded that as both the Respondent and his partner are not gainfully employed the children in their custody would be exposed to hardship.

[8] I tried to calculate the amounts using the Applicant's figures set out in her affidavit. According to my calculations the older child was left with approximately 4 years of schooling and the young child 7 years. This was an assumption that most children complete school by the age of 18 years. This calculation meant that there were 7 years of schooling between the two children. $E45,744.00 \times 11 = E503,184.00$. If I ordered that the whole amount be given to two children with the Applicant only the other three with the Respondent would suffer. Hence my dividing the amount into five equal shares.

[9] I have decided to order that the money be divided to the five minor children in five equal shares. The shares of the children in Applicant's custody be placed in the Master of the High Court's guardian fund. The rule is confirmed to that extent. It is further ordered that the shares of the three minor children who are in

the custody of the Respondent be paid to the Respondent for the children's maintenance. Each party to pay its own costs.

Q.M. MABUZA -J