

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 840/2008

LOUISE PHELADI TSHABALALA N.O.

Applicant

And

MURIEL SIPHIWE MNGOMEZULU
POLYCARP ANGLEBERT TSHABALALA
THE MASTER OF THE HIGH COURT
THE REGISTRAR OF DEEDS

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

Coram
For the Applicant
For the Respondents

S.B. MAPHALALA - J
MR. P. SHILUBANE
MR. N. FAKUDZE

JUDGMENT

14th March 2008

[1] The point for decision in this matter revolves around the service or otherwise of the 1st and 2nd Respondent in this application by the Applicant. Counsel for the Respondents has taken the position that 1st and 2nd Respondents have not be served with the application in this matter. Counsel for the Respondents further argued that service of 1st and 2nd Respondent through their attorney Zonke Magagula is not proper service by any stretch of the imagination. To buttress his arguments he cited what is stated by the learned authors *Herbstein et al, The Civil Practice of the Supreme Court of South Africa, 4th Edition* at page 53 - 54.

[2] On the other hand Counsel for the Applicant took the view that the attorney for the Respondents is before court indicating that Respondents have knowledge of the present application. In any event, it was not necessary to serve the Respondents as they are merely trustees in this suit between the parties.

[3] Rule 4 (i) of the High Court Rules provides that if two or more persons are sued in their capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon at least one of them in any manner set forth in this case.

[4] Rule 4 (3) states that where the person is to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

[5] Furthermore, Rule 4 (ii) provides that where the court is not satisfied as to the effectiveness of service, it may order such further steps to be taken as it seems fit. According to the learned authors *Herbstein supra* at 295 this rule which is similar to a rule in South Africa contains a general saving provision, applying to all forms of service and conferring an unfettered discretion of the court. In exercise of my discretion in this regard I will allow the service as stated in the Founding affidavit of the Applicant. I further order that Respondents file their opposing affidavits as required by the Rules of court. I make no order as to costs.

S.B. MAPHALALA

JUDGE