

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No.2395/2006

PHELELAPHI ESTHER NDZIMANDZE

Applicant

And

SIBUSISO MANGALISO DLAMINI

Respondent

Coram

For the Applicant

For the Respondent

S.B. MAPHALALA - J

MR. L. MALINGA

MR. L. GAMA

JUDGMENT

19th March 2008

[1] For decision before the court are two points of law *in limine* that of urgency and that there are material disputes of facts and therefore the case ought to be dismissed.

[2] In the opposing affidavit of the Respondent it is contended *in limine* that the application should not be heard as the material disputes of fact are apparent in her Founding affidavit.

[3] The issue of urgency was raised from the bar last year and in view of the passage of time where the court had other urgent matters which clamoured for attention I shall proceed to consider the application as if it came in the long form. Therefore, for these reasons I decline to make a ruling either way in this regard.

[4] On the disputes of fact Counsel for the Respondent cited the textbook by *Herbstein and Van Winsen, The Civil Practice in the Superior Courts of South Africa, 3rd Edition 67.*

[5] It is contended for the Respondent that on the papers it is clear that the motor vehicle belonged to the Respondent because of the allegations in his opposing affidavit

that he actually had to source funds elsewhere to be able to pay for the kombi in full.

[6] On the other hand, it is contended for the Applicant that there are no material disputes of fact in this matter. It can be decided on the affidavits filed of record.

[7] I have considered the arguments by Counsel and the facts on affidavits and I have come to the considered view that the arguments by the Respondent are more credible concerning the ownership of the motor vehicle. It appears to me that oral evidence ought to be led to address this point.

[8] In the result, for the afore-going reasons the point of law *in limine* that there are disputes of fact is upheld. I order that the matter proceeds to the leading of oral evidence as stated above. I order that costs be costs on the merits of the case.

S.B. MAPHALALA

JUDGE