IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE	Civil Case No. 2715/2007
MAKHOSAZANE MAKAMA	Applicant
And	
GUGU MANANA	Respondent
Coram	S.B. MAPHALALA – J
For the Applicant	MISS DLAMINI
For the Respondent	MR. MABUZA

JUDGMENT

11th April 2008

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[1] The Applicant has brought an application on Notice of Motion in the long form seeking an order restraining and interdicting the Respondent from harassing, assaulting, threatening her and inciting others to do so. Further in prayer 1.4 thereof uttering any words of insult to the Applicant and in particular phoning or sending her text messages through the short message service. That the order in terms of prayer 1 above operate with immediate and interim effect pending finalization of the matter. In prayer 3 thereof that the Respondent is to show cause on the 10th day of August 2007 at 9.30am or so soon thereafter as the matter may be heard, why a final order should not be granted in terms of prayer 2 above and why she should not pay costs of this application.

[2] The Applicant has set out the pertinent facts in this matter in her Founding Affidavit. The Respondent has filed an answering affidavit opposing the Applicant's claims. In the said affidavit annexure "GM1" being her husband calling card is

attached. The Applicant then filed her replying affidavit to the answering affidavit. A confirmatory affidavit of one Patrick Manana who is co-director and shareholder of the company Mcunsu Investments (Pty) Ltd where Applicant is the Managing Director is also filed thereto.

[3] The matter appeared in the contested roll of the 15th February 2008, where I heard arguments by both Counsel. Counsel filed very useful Heads of Argument for which I am grateful. The issue in argument then revolved around the question as to whether Applicant has no other remedy for the granting of a final interdict. It is contended for the Respondent that this is not so as Applicant has a host of alternative legal remedies and inexpensive ones. Applicant could have laid criminal charges against the Respondent. Applicant could have also sought a peace binding order. It is contended for the Respondent that the two alternative remedies, particularly, the latter would have given Applicant the same, if not better relief.

[4] I must mention for the record that Applicant was granted an interim order by this court as *per* Mabuza J on the 26th July 2007 in terms of prayer 1 to 3 of the Notice of Motion. The rule *nisi* has been extended on a number of occasions until the matter came before court for arguments of whether or not the interim order should be confirmed.

[5] On this point Counsel for the Applicant cited two South African cases that of *Van Der Merwe vs Fourie 1946 T.P.D. 389* and that of *Freestate Gold Areas vs Merriedprint (Orange Free State) Gold Mining Co. Ltd and another 1961 (2) S.A. 505 (W)* at *524 – 5* to the proposition that a final interdict will be granted in the absence of another adequate or satisfactory remedy.

[6] Respondent's Counsel on the other hand also cited legal authorities to her arguments that *in casu* there is in an existing remedy with the same result for the protection of the Applicant. These authorities include what is stated by the legal author *C.B. Prest, Interlocutory Interdicts, Juta and Co., 1993* at page 51, the cases of *Francis vs Roberts 1973 (1) S.A. 507 (RA)* at *512* and that of *Prinsloo vs Luuidaadsulei Estates and Gold Mining Co. Ltd 1933 WLD* at *24*. The court was further referred to the case of *Reserve Bank Rhodesia vs Rhodesia Railway 1966 (3) S.A. 656 (SR)* at *659* and the provisions of the Criminal Procedure and Evidence Act (as amended) Act 65 of 1938 in Section 225.

[7] Having considered the arguments of the parties on this point I am inclined to agree with the Respondent's contention that Applicant has a host of other alternative legal remedies. Applicant could have laid criminal charges against the Respondent. Applicant could also have obtained a peace binding order. It is abundantly clear on the facts of this case that there is an existing remedy with the same result for the protection of the Applicant.

[8] In the result, for the afore-going reasons the rule *nisi* granted on the 26th July, 2007 is discharged with costs to follow the event.

S.B. MAPHALALA

JUDGE