



**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 43012007

SWAZILAND BUILDING SOCIETY  
And

Applicant

GOODWILL ZWELITHINI DLAMINI

Respondent

Coram  
For the Applicant

S.B. MAPHALALA - J  
MR. S. MADZINANE

For the Respondent MR. J. HENWOOD

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**JUDGMENT**

12<sup>th</sup> December 2008

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[1] The Applicant has filed an urgent application before this court that pending finalization of this application the sale of Applicant's immovable property is hereby stayed. The sale

is scheduled for 2.00pm this afternoon.

[2] In prayer 4 thereof discharging the order authorizing the attachment of Applicant's immovable property.

[3] The Founding Affidavit of the Applicant is filed in support thereto where the circumstances of the case are outlined.

[4] In view of the short notice on which the application has been brought the Respondents have not filed Answering Affidavits in the normal way. However, Counsel for the Respondent raised two points *in limine* from the Bar. These points are the subject matter of this judgment.

[5] The first point is that the Applicant has not alleged urgency as required by the Rules of this Court. In this regard the court was referred to the case of *Yonge Nawe Environment Action Group and Nedbank (Swaziland) Limited - High Court Case No. 4165/2007* by Mamba J. In the said judgment the learned Judge considered a plethora of other judgments of this court on the requirements of Rule 6 (25) (a) and (b) of the Rules of this Court.

[6] The second point is that the order of the court giving rise to the sale in execution has not been appealed against and no application has been brought for it to be set aside. Therefore it is unheard of that another Judge of the same court can give another judgment contrary to that given by the other. That courts do not issue orders in vain.

[7] Having considered the papers and the arguments of Counsel concerning these two points *in limine* in the time available to me I have come to the conclusion that the points raised for the Respondent are correct.

[8] On the first point of urgency that paragraphs in the Founding Affidavit fall far too short of the requirements of Rule 6 (25) (a) and (b) and the legal authorities by this court in a long line of decided cases starting with that of *Humphrey H. Henwood vs Maloma Colliery and Another Case No. 1623/93, H.P. Enterprises (Pty) Ltd vs Nedbank*

*(Swaziland) Ltd Case No. 788/99, Megalith Holdings vs RMS Tibiyo (Pty) Ltd and Another Case No. 199/2000, Ben Zwane vs The Deputy Prime Minister and Another Case No. 624/2000, Nhlavana Maseko and two others vs George Mbatha and Another - Appeal Case No. 7/2005 and the judgment of Yonge Nawe (supra).*

[9] When assessing the Applicant's paragraphs on urgency against the above cited *dictum* in these leading cases on urgency I cannot say that the Applicant has proved the requirements of Rule 6 (25) (a) and (b). It appears to me on the facts that the Applicant has had a knee jerk reaction bringing an urgent application at the eleventh hour taking everybody by surprise.

[10] For these reasons I find that the Applicant has dismally failed to prove urgency as required by the peremptory requirements of Section 6 (25) (a) and (b). It may well be that it is Applicant's only source of income but the fact

remains that he should not have waited until now at the eleventh hour.

[11] On the second point I again agree with the Respondent's contention that a valid judgment of this court still stands and there is no evidence that it has been appealed against or an application for rescission has been launched. It would be highly unprocedural and wrong for this court to give a judgment against that judgment let alone being unethical in the circumstances.

[12] For these reasons I have come to the considered view that the two points *in limine* succeed with costs. Therefore the application is dismissed accordingly.

**S.B. MAPHALALA**  
**PRINCIPAL JUDGE**