



**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 3028/2008

SINDI SIMELANE (BORN NDWANDWE)

Applicant

And

SWAZILAND NATIONAL HOUSING BOARD 1<sup>ST</sup> Respondent

MOSES SIMELANE  
Respondent

2<sup>nd</sup>

BHEKITHEMBA DLAMINI N.O.  
Respondent

3<sup>rd</sup>

Coram  
For the Applicant

S.B. MAPHALALA - J  
MR. Z. MAGAGULA

For the Respondent

MR. MTSHALI

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JUDGMENT  
19<sup>th</sup> December 2008

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[1] The Applicant herein is seeking for an order under a Certificate of Urgency against the 3<sup>rd</sup> Respondent for

restoration of the items listed in the inventory prepared by the latter and which is attached to the Applicant's Founding papers.

[2] The items listed in the inventory are in the custody of the 3<sup>rd</sup> Respondent pursuant to a warrant of execution against the movable property of the 2<sup>nd</sup> Respondent which property was on the rented premises. The premises were apparently leased to one Moses Simelane (2<sup>nd</sup> Respondent) who lived with Applicant but later left her.

[3] 1<sup>st</sup> Respondent, owner of the premises caused summons to issue against Moses Simelane for ejectment on the basis that the lease agreement had come to an end.

[4] According to the Applicant there was a tacit agreement between the Applicant and the 1<sup>st</sup> Respondent. What is

worth noting is that the proceedings against Moses Simelane were not for arrears rental or an application to prefect the landlord's hypothec but simply for ejection.

[5] The Founding Affidavit of the Applicant sets out the background of the matter. The 1<sup>st</sup> Respondent has filed an Opposing affidavit where points *in limine* are raised as well as the merits of the matter. The points *in limine* are the following:

#### **AD URGENCY**

4.1 The application is not urgent and the Applicant has failed to establish sufficient grounds of urgency in bringing the present application.

4.2 The Applicant herein was served with an order for ejection on the 17<sup>th</sup> October 2008. A period of two (2) weeks has elapsed before the present application was brought before the above Honourable Court.

4.3 When the matter eventually came before Court for the first time on the 31<sup>st</sup> October 2008, it was subsequently postponed for a week to the 7<sup>th</sup> November 2008 by the Applicant's attorneys at their own instance. Again on the 7<sup>th</sup> November 2008 the Applicant's attorneys postponed the matter to the 14<sup>th</sup> November 2008. Accordingly this is a clear abuse of the court's process since the Applicant has failed to show explicitly the circumstances which render the matter urgent and reasons why she claims that she could not be afforded substantial redress at a hearing in due course.

**5. The Applicant is seeking relief from a person who is not present before the court.**

5.1 I am advised by my attorneys of record that some of the items that the Applicant seek to be restored back to her possession are in the custody of the 3<sup>rd</sup> Respondent pursuant to a Writ of Execution of an order of costs awarded to the 1<sup>st</sup> Respondent by the above Honourable Court, and all the items listed in the inventory attached to Applicant's affidavit are in the custody of the 3<sup>rd</sup> Respondent and not the 1<sup>st</sup> Respondent.

5.2 I am further advised that the 3<sup>rd</sup> Respondent is not aware of the present proceedings yet he is an officer of the above Honourable Court.

5.3 The application is therefore defective since the 3<sup>rd</sup> Respondent has been cited but was not served with the present application.

[6] In arguments before me I heard submissions *in limine* and also heard the merits of the case. On the point *in limine* that of urgency having considered the arguments of the parties I have come to the view that Applicant has advanced urgency in terms of the Rules of Court.

[7] However, on the second point *in limine* that of non joinder of the Deputy Sheriff I am in agreement with the Respondent's Counsel that he should have been joined in these proceedings. The fact that he has not been served with the present application renders it impossible for this court to grant the relief that the Applicant is seeking, more

especially because there is no order directed to the 3<sup>rd</sup> Respondent to “**stay the execution**” until the matter is finalized.

[8] It would also appear to me that the 2<sup>nd</sup> Respondent should have been served with the application. He is the main actor in the present saga and would clarify many issues before us.

[9] Therefore, for the interest of justice I would not dismiss the application on this point *in limine* but would order that these two Respondents be served with the papers in this matter. The matter postponed to the first Friday of next session before me.

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