



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 522/2009

STEPHEN HLOPHE

Applicant

And

THE ECHO (PTY) LTD t/a THE TIMES OF
SWAZILAND, SWAZI NEWS AND TIMES

OF SWAZILAND SUNDAY

1st

Respondent

THE SWAZI OBSERVER

2nd

Respondent

JOUZ MEDIA (PTY) t/a CHANNEL S

3rd

Respondent

Coram
For the Applicant

S.B. MAPHALALA - J
MR. T. MLANGENI

For the 1st Respondent

MR. M. SIBANDZE

For the 2nd Respondent

MR. Z. SHABANGU

JUDGMENT

(Delivered in Chambers)

13th February 2009

[1] On the 12th February 2009, Counsel for the parties in this matter approached me in Chambers where Counsel for the 1st Respondent applied that I recuse myself. The main ground for my recusal is that earlier I had granted an order against 2nd and 3rd Respondent in **absentia**. The essence of the objection is found in paragraph 12 of the 1st Respondent's affidavit that it would be self-contradictory for the same Presiding Officer who has effectively found that the

grounds for relief was established in terms of the 2nd and 3rd Respondents to find that the grounds which are the same, have not been established in respect of the 1st Respondent and that the relief sought in contravention of the Constitution guarantees.

[2] Counsel for the Applicant on the other hand took the position that there would be nothing untowards in the court coming to a different judgment on the later case.

[3] Mr. Shabangu for the 2nd Respondent pointed out a very important feature of the case that it is a constitutional dispute and therefore stands to be decided by a Full Bench of this court in accordance with the general practice of this court on similar matters.

[4] Indeed, it appears to me that this matter ought to be

referred to a Full Bench of this court to be convened as a matter of urgency. Further, that I be excluded from the composition of the Full Bench so constituted.

[5] In the result, for these reasons I order that the case be referred to a Full Bench of this court as matter of urgency. The case to be taken to the learned Chief Justice to appoint the said court and I be excluded thereby. I make no order as to costs.

S.B. MAPHALALA

PRINCIPAL JUDGE