

HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO.2206/07

SWAZILAND BUILDING SOCIETY

APPLICANT

AND

NKULULEKO ALLEN MANGO

1st RESPONDENT

LILLIAN BETHULISILE MANGO

2nd RESPONDENT

CORAM

MAPHALALA PJ

FOR THE APPLICANT

MR. J. JELE

FOR THE RESPONDENTS

MR. L. HOWE

JUDGMENT 3RD JUNE 2009

[1] Before court is an application in the long form for an order in the following terms:

- "1. Ordering the 1st Respondent to execute all documents necessary for the registration of the draft bond, annexed to the Applicant's founding affidavit as annexure "E" ("the draft bond");
2. Authorising and directing the Deputy Sheriff to sign all the necessary documents for the registration of the draft bond, on behalf of the 1st Respondent, in the event of the 1st Respondent failing to comply with the order embodied in paragraph 1, supra, within a period of five (5) days from the date upon which he is requested to do so in writing by the Applicant's conveyancers, Messrs. Robinson Bertram, Ingcongwane Building, Gwamile Street, Mbabane.
3. Ordering;
 - 3.1 the 1st Respondent to pay the costs of this application;
 - 3.2 the 2nd Respondent to pay the costs of this application, jointly and severally with the 1st Respondent (the one paying the other to be absolved), in the event of the 2nd Respondent opposing the relief sought by the Applicant herein.
4. Granting the Applicant such further and/or alternative relief as the above Honourable Court may deem meet in the circumstances".

[2] The Founding Affidavit of the Managing Director of the Applicant, Mr. Joseph Ndlangamandla who relates the material facts in this case has been filed. The Respondents has only filed a Notice of Intention to Oppose with no answering affidavit.

[3] The facts of the matter briefly put are that on a letter dated 20th January, 2005 the 1st Respondent requested the Applicant to waive the surety bond provision ("the request to waive"). This letter is filed as annexure "CI". However, the First Respondent subsequently communicated with the Applicant by letter dated the 29th January, 2005, when the First Respondent recorded that he -

"... would like to withdraw the letter of the 20th January, 2005

(being annexure "C" hereto) that request the waiver of the surety bond condition which forced the society to withdraw the offer."

[4] The offer was withdrawn in the letter dated 27th January 2005 mentioned in opening unnumbered paragraph of the First Respondent's letter. It was fully agreed "...that the Swaziland Building Society takes a surety bond over the Nhlangu property". (the envisaged surety bond) ("The first Respondent's written consent"). The consent letter was signed by the First Respondent personally. The said letter is annexed as "02".

[5] The Applicant contends that it was a tacit term of the First Respondent's written consent that the envisaged surety bond would be in accordance with the Applicant's standard terms for surety bonds. The aftermath of what took place is outlined at paragraph 7 to 8 of the Founding Affidavit. Despite these facts the First Respondent has failed to sign the registration documents.

[6] The First Respondent withdrew the request for a waiver but proceeded not to sign the surety bond document for the Manzini property, in circumstances wherein an agreement between the parties had already been reached and payment effected on behalf of the First and Second Respondents.

[7] Having considered these facts and the submissions of Counsel I have come to the considered view that the First Respondent is obliged to sign the registration documents.

[8] In the result, for the foregoing reasons the application is granted in terms of the Notice of Application. Further, the Respondents to pay wasted costs.

S.B. MAPHALALA

PRINCIPAL JUDGE