



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 495/2009

THEMBI KHANYISILE BHIYA

Applicant

And

THE MASTER OF THE HIGH COURT 1st Respondent

THE ATTORNEY GENERAL 2nd Respondent

Coram
For the Applicant
For the Respondent

S.B. MAPHALALA - J
MR. M. SIMELANE
MR. N. DLAMINI

JUDGMENT

18th February 2009

[1] On the 9th February 2009, the Applicant filed an urgent application before this court for an order that a rule *nisi* issue with immediate effect calling upon the 1st Respondent to

show cause on Friday the 20th day of February 2009, why prayer 1, 2, 3, 4, 5 and 6 should not be made final. In prayer 3 reviewing and setting aside the decision of the 1st Respondent not to issue out maintenance and school fees in the Estate of the Late Nkosinathi Emmanuel Maziya EL 1/2007 in favour of Mlandvo Maziya, Ncamiso Maziya and Majahonkhe Maziya.

[2] In prayer 4 thereof ordering the 1st Respondent to pay out school fees for the above-mentioned children forthwith within 10 days for purposes of appointing a neutral executor dative.

[3] The Respondent opposed the above-cited orders and has filed a Notice to raise points of law which are the subject-matter of this judgment. Firstly, that of non-joinder in that Applicant has failed to join Jabulile Persis Nkwanyane

and the other children of the deceased who have a direct and substantial interest in the matter. Secondly, that Applicant has no *locus standi in judicio* to institute these proceedings, as she is not a lawful wife to the deceased nor has she instituted the proceedings on behalf of her minor children.

[4] The third point *in limine* raised is that of urgency that Applicant has not complied with the High Court Rule 6 (25). In this regard the court was referred to Supreme Court case of *Nhlanhla Maseko and two others vs George Mbatha and Terence Reilly, Court of Appeal No. 7 of 2005*.

[5] Having considered the argument of Counsel on the 12th February 2009, I have come to the considered view that urgency has been canvassed on the papers. The Founding Affidavit at paragraph 23 and 24 spell out why the matter is urgent. On the point about *locus standi* I have come to the

view that the Applicant has *locus standi* to institute these proceedings. Paragraph 5, 6, 7 and 8 canvass adequately this point on *locus standi* and I was not persuaded by the argument of the Respondent.

[6] On the first point that of non-joinder in exercise of my discretion in the matter I have come to the view that Jabulile Persis Nkwanyane and the other children be joined in this application.

[7] In the result, for the afore-going reasons the points of law *in limine* is dismissed and that Jabulile Persis Nkwanyane and the other children mentioned in Birth Certificates marked "A" be joined in this application. That they are given 14 days from the issuance of this order to file their intention to join the dispute. Thereafter the matter to appear before me to be argued on the merits of the case. Costs to be costs on the merit of the case.

S.B. MAPHALALA

PRINCIPAL JUDGE