



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 992/2009

QHAWE MAMBA

1st Applicant

ULTIMATE PRODUCTIONS (PTY) LTD 2nd Applicant

And

CENTRAL BANK OF SWAZILAND

1st Respondent

NEDBANK SWAZILAND LIMITED
Coram

2nd Respondent
S.B. MAPHALALA - J

For the Applicant

MR. S. MDLADLA

For the Respondent

MR. M. MAGAGULA

JUDGMENT
20th March 2009

[1] On the 18th March 2009, I heard arguments of Counsel

in an urgent application brought by the Applicant against the Respondents. The relief sought is in terms of prayers 1 to 8 of the Notice of Motion. The essence of which is setting aside and reviewing the directive by the 1st Respondent barring the Applicants from opening new accounts and transacting with 2nd Respondent. In prayer 4 thereof declaring the said decision to bar Applicants from opening and transacting new accounts to be *ultra vires*, null and void and without force and effect and unconstitutional.

[2] The 2nd Respondent has declined to enter the dispute in a letter dated 16th March 2009 directed to the offices of the Applicant's attorneys. In that letter the 2nd Respondent states **“that we shall not oppose the application made to the High Court and shall be guided by the pronouncement of the High Court on the matter.”**

[3] *Mr. Mdladla* for the Applicants contended that if the 2nd Respondent is ordered to file an affidavit of its version of events this will assist the court in arriving at a just decision in this case.

[4] However, *Mr. Magagula* for the 1st Respondent took the position that his client has no objection in calling the 2nd Respondent to give the court their side of the story but this exercise will be pointless. That even if the version of the 2nd Respondent is brought forth the Applicants will fail to prove its case in accordance with the *dictum* in *Plascon Evans Paints Ltd vs Van Rieberck Paints (Pty) Ltd 1984 (3) S.A. 623 (A)*.

[5] I have considered these arguments by Counsel and I have come to the view that the 2nd Respondent ought to tell

us in an affidavit of how it received the information from the Central Bank not to do business with the Applicants. It is of paramount importance for the court to hear their version of events. Furthermore, this issue is important on the question of costs whether Applicants acted wily nily in bringing this application as contended by the 1st Respondent.

[6] In the result, for the afore-going reasons the 2nd Respondent is ordered to file an affidavit stating its version of events in this case. The said affidavit to be filed with the Registrar of this court within 10 (ten) days from today's date in view of the urgency of the matter. Costs to be reserved for the time being.

S.B. MAPHALALA
PRINCIPAL JUDGE