

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 2604/08

In the matter between:

**NOMSA PRECIOUS MAVUSO**

**APPLICANT**

and

**SWAZILAND DEVELOPMENT AND  
SAVINGS BANK ("SWAZI BANK")**

**1<sup>st</sup> RESPONDENT**

**MENZI DLAMINI**

**2<sup>ND</sup> RESPONDENT**

In re:

**SWAZILAND DEVELOPMENT AND SAVINGS  
BANK ("SWAZI BANK")**

**APPLICANT**

and

**NOMSA PRECIOUS MAVUSO**

**RESPONDENT**

CORAM  
FOR THE APPLICANT FOR THE  
RESPONDENT

Q.M. MABUZA-J MR. M.  
NKOMONDZE MR.  
SIMELANE

**JUDGMENT 6/02/09**

Mabuza]

[1] There are three urgent applications herein the first one was heard on the 18/07/2008. Prayers 1, 2, 2.1, 2.2 and 3 were granted as well as a **rule nisi** returnable on the 25/07/08.

[2] In this first application the Applicant which was the Swazi Bank sought from Miss Nomsa Precious Mavuso **inter alia** the following prayers:

2.1 **Declaring the instalment Sale Agreement between the parties herein cancelled.**

2.2 **Directing the Respondent to forthwith deliver to the Deputy Sheriff the motor vehicle being:-**

<b>Make</b>	<b>ALTERNATIVELY</b>
<b>Model</b>	<b>Kia Picanto 1.1 LX</b>
<b>Colour</b>	<b>2006</b>
<b>Registration number</b>	<b>Black</b>
<b>Chassis number Engine number</b>	<b>SD 245 US</b>
	<b>KNABA24326T324983</b>
	<b>94HG6M822554</b>

**2.3 That the appointed Deputy Sheriff be authorized and directed to take possession of the motor vehicle wherever the same may be found and to keep same in safe custody pending finalisation of the matter.**

**4. The Respondent to deliver/surrender to the Applicant the motor vehicle's registration papers i.e. the Blue Book, failing which, the Central Motor Registry be and is hereby authorised to issue the Applicant with a duplicate Blue Book.**

[3] The rule was confirmed on the 25/7/08. The Respondent, Miss Mavuso was not present on this date. She says that the reason for her absence was that she was not served with

the ***rule nisi***, Notice of Motion and Application. The deputy sheriff denies this. He states that he served her.

[4] The second application was moved by the Swazi Bank for ***inter alia*** the arrest of Miss Mavuso. It was moved and granted on the 1/08/08. The Respondent was never served with this application. She was subsequently arrested.

[5] The third application was moved by the Respondent, Miss Mavuso. It sought inter alia the following orders:

2.3                   **Pending finalisation of these proceedings, staying execution of the warrant of arrest as against the Applicant issued under the hand of the Registrar of this Honourable Court on the 1<sup>st</sup> August 2008;**

2.4                   **Discharging the warrant of arrest issued against the Applicant on the 1<sup>st</sup> August 2008;**

2.5                   **Rescinding and or setting aside the final order granted in favour of the 1<sup>st</sup> Respondent on the 25<sup>th</sup> July 2008 in**

\*

**the main application and ordering the Respondents to restore possession to the Applicant of the vehicle to wit: Kia Picanto 1.1 registered SD 245 US;**

2.6                   **That a Rule nisi hereby issue returnable on a date to be determined by this Court in terms of prayers 1 to 6 and 8;**

2.7                   **That prayer 3 hereto operate with immediate effect.**

[6] By agreement between the parties an order in terms of prayers 3, 6 and 7 and a rule returnable on the 26/9/08 was granted. The rule was extended until I

heard arguments on the 21/11/08. The rule was extended ***sine die*** until judgment was delivered

[7] Having listened to submissions from both parties it is my considered view that the procedure used by the Plaintiff in the first application is wrong. The procedure for termination of the lease agreement between the Lessor and the lessee is set out in clauses 4.1, 5.1 and 6 of the Lease agreement. There are three methods namely by mutual consent, by effluxion of time and on total loss. The Lessor who is the Swazi Bank did not follow any of these procedures. There is no need for me to go into the details of the submissions presented to me.


[8] In the event it is ordered as follows:

(a) The warrant of arrest against Miss Mavuso is discharged.

(b) The final order granted on the 25/7/08 is hereby rescinded and set aside and the rule discharged.

(c) The Swazi Bank is ordered to restore possession of the motor vehicle described as a Kia Picanto 1.1, SD 245 US to Miss Mavuso.

(d) The Swazi Bank is ordered to pay the costs of all three applications on the ordinary scale because it failed to follow its own procedure set out in the lease agreement drawn by it in pursuing Miss Mavuso.

  
**O.M. MABUZA -J**