



**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 2361/2008

NONHLE LANGWANE

Applicant

And

MDUDUZI MAGAGULA

RESPONDENT

Coram

S.B. MAPHALALA - J

For the Applicant

MR. DLAMINI

For the Respondent

MR. MABUZA

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JUDGMENT  
30<sup>th</sup> January 2009

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[1] On the 27<sup>th</sup> January 2009, I heard arguments on points *in limine* where Applicant had filed an urgent application the previous day. The Applicant seeks for an order directing and compelling the Respondents to forthwith return Applicant's property, attached by the 2<sup>nd</sup> Respondent on the 21<sup>st</sup>

January 2009. In prayer 3 thereof that a rule *nisi* do hereby issue calling upon the Respondents to show cause why prayer 1 and 2 should not be made final on a day to be appointed by the court and that prayer 2 operate with immediate effect. In prayer 4 thereof praying for costs of suit.

[2] The Respondent has raised a number of points *in limine* which are the subject-matter of this short ruling. Firstly, that Rule 6 (25) of the High Court Rules as to urgency has not been complied with. Secondly, that Rule 45 (a) of the High Court Rules have not been observed by the Applicant in that 21 days has not elapsed. The third point is that this matter is clouded with disputes of fact, for which an action is the appropriate procedure.

[3] Having considered the arguments of the parties it appears to me that the points *in limine* raised by the

Respondent ought to fail. I find that urgency has been proved in accordance with Rule 6 (25) (a) and (b) of the High Court Rules. I find that paragraph 6.1 and 6.2 of the Founding Affidavit satisfy Rule 6 (25) (a) and (b) in the circumstances of the case.

[4] On the second point that Rule 45 (8) (a) has not been complied. I have come to the considered view that the Applicant as a third party is not bound by this Rule. If an innocent third party is injured by the actions of a Deputy Sheriff he can approach the court as a matter of urgency outside the provision of Rule 45 (8) (a) of the High Court Rules.

It appears to me that this Rule only binds the creditor and debtor in that relationship.

[5] On the last point that of disputes of fact I have come to the view that this is not so there is no disputes of fact which is material to the determination of this matter.

[6] In the result, for the afore-going reasons the points *in*

*limine* are dismissed and costs to be costs on the merits of the matter.

**S.B. MAPHALALA**  
**PRINCIPAL JUDGE**