



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO. 18/09

In the matter between:

**NOMPUMELELO MKHONTA
HOLINESS DLAMINI
THEMBA GAMA**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT**

v

**LEWIS STORES (PTY) LTD
MELUSI QWABE**

**1ST RESPONDENT
2ND RESPONDENT**

CORAM : Q.M. MABUZA -J
FOR THE APPLICANTS : MR. NDLOVU OF MASINA NDLOVU
MZIZI ATTORNEYS
FOR THE RESPONDENTS : MR. D. JELE OF ROBINSON
BERTRAM ATTORNEYS.

JUDGMENT 10/9/10

[1] Serving before me is an application by the Applicants for setting aside of an attachment of certain movable goods listed in schedules attached to the Applicants' papers and a subsequent restoration of the attached

goods to the Applicants as the rightful owners and or possessors.

[2] The 1st Respondent a furniture dealer who is the Plaintiff in the main case issued summons against one Gcina Cyril Mngomezulu the Defendant for payment of the following amounts in respect of goods sold and delivered to him:

Claim A: E14,098.18; Claim B: E6,893.31; Claim C: E8,543.58; Claim D: E10,557.07.

[3] The aforesaid Gcina Gyril Mngomezulu is married to Nomphumelelo Mkhonta the 1st Applicant in the present application in community of property. The marriage was solemnized on the 1st April 2008.

[4] The goods herein were sold and delivered by the 1st Respondent to Gcina Cyril Mngomezulu during the period October 2007 to August 2008; he failed to pay for them.

[5] After due process a writ of execution was subsequently issued in the cause and the 2nd Respondent attached goods; some belong to the 1st Applicant from her previous marriage; others belong to the 2nd and 3rd

Applicants. None of the three Applicants caused an interpleader to be filed. They have instead moved the present application which is opposed by the Respondents.

- [6] The 1ST Applicant Nomphumelelo Mkhonta used to be married to Nhlanhla Dlamini who died on the 26 December 2000. She became Executrix Dative of their joint estate on the 9th November 2005.
- [7] She subsequently married Gcina Cyril Mngomezulu on the 1st April 2008 in community of property. Mr. Mngomezulu and the Applicant did not enter into and register an antenuptual contract.
- [8] She submitted that she has not yet shared a joint common household with her new husband nor have they amassed any joint estate together.
- [9] It is important to note from the outset that no inventory of the goods owned by the deceased and the 1st Applicant was filed. This inventory should be the same as that filed with the Master of the High Court. This information would assist the Court in removing attached goods from the deputy sheriff's inventory as

these would not form goods belonging to the new marriage.

[10] The law states that when a couple marry in community of property, whatever property they each own forms part of the joint estate; whether it is from a previous marriage or was acquired while the couple were single unless these are excluded from the community by an ante-nuptial contract or a will. There is neither a will in respect of the first marriage nor an ante-nuptial contract in respect of the second marriage.

[11] Goods attached belonging to the 2nd and 3rd Applicants are subject to interpleader notice in terms of Rule 58; this being the correct procedure. If the deputy sheriff is not willing to assist; the Applicants are at liberty to report him/her to the sheriff who shall take the required action. See *Dlamini Malungisa v Timothy Msibi* 1987 - 1995 (2) SLR 121 *Bhekizizwe Sibiyi v Thomas Hlatshwayo* and Another High Court case no. 189/2008 (unreported).

[12] In the circumstances the application is dismissed with costs.

Q.M. MABUZA
JUDGE OF THE HIGH COURT OF SWAZILAND