



IN THE HIGH COURT OF SWAZILAND
JUDGMENT

Case No: 4153/09

In the matter between:

MUMCY TFWALA

APPLICANT

and

**S.S. MOTORS (PTY) LTD
MFANUKHONA I. DUBE
DEPUTY SHERRIFF FOR THE
DISTRICT OF LUBOMBO
THE TAXING MASTER**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

In Re:

**S.S. MOTORS
MFANUKHONA I. DUBE**

**1ST APPLICANT
2ND APPLICANT**

and

**SICELO CHRISTOPHER DLAMINI
MUMCY TFWALA
REX**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

Neutral citation:

Mumcy Tfwala v S.S. Motors (Pty) Ltd (4153/09)
[2012] SZHC 12 (10 February 2012)

Coram:

MABUZA J

Delivered:

10 February 2012

[1] The Applicant came by way of urgency seeking *inter alia* the following:

(a) Setting aside the taxed bill of costs dated 15th March 2011 in the main and concluded matter.

(b) Pending finalization of (a) above staying of any writ issued in pursuant to the said bill of costs.

(c) Costs of suit.

[2] The background hereto is that S.S. Motors (Pty) Ltd purchased a motor vehicle from Sicelo Christopher Dlamini for the sum of E20,000.00. The said Dlamini has stated that when he sold the vehicle it belonged to his girlfriend Mumcy Tfwala and he was authorized by her to sell same. The motor vehicle is a Toyota Corolla with registration number SD 348 CF. S.S. Motors (Pty) Ltd subsequently sold the motor vehicle to Mfanukhona Dube for E30,000.00.

[3] While the motor vehicle was in Dube's possession the police confiscated it alleging that Mumcy Tfwala had reported that her

boyfriend has stolen it. On the 31st January 2011 my brother Annandale J, issued an order declaring Dube to be the lawful owner of the motor vehicle. He ordered that Dlamini and Mumcy Tfwala pay the costs jointly and severally, the one paying the other to be absolved.

[4] Pursuant to the above order of costs the attorneys for S.S. Motors (Pty) Ltd and Dube proceeded to tax a bill of costs which when taxed on the 15th March 2011 amounted to E33,749.68. Mr. Ndlovu is the attorney of record of S.S. Motors (Pty) Ltd and Dube. After taxing the bill Mr. Ndlovu sent a copy thereof to the attorneys of record for Dlamini and Tfwala: Mabila Attorneys. The bill of costs was sent under cover of a letter dated 15th March 2011. Receipt by Mabila Attorneys thereof is on the 15th March 2011.

[5] Mr. Ndlovu caused a writ of execution to issue against Miss Tfwala and it is only when she was served therewith that she instructed her attorneys to institute the present action. Mr. Mabila launched the present application on behalf of his clients under a certificate of urgency. The application bears the Registrar's date stamp of 15 June

2011; three months after the receipt of the bill of costs by Miss Masuku of Mabila Attorneys.

[6] The prayers sought by the Applicant Miss Tfwala are as set out in paragraph 1 hereinabove; the core prayer being an order to set aside the taxed bill of costs in the concluded main matter as it was taxed without notice to her or her attorneys.

[7] Rule 68 (6) (a) of the Rules of Court provides as follows:

“The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to time and place of such taxation and notice that he is entitled to be present thereat but such notice shall not be necessary –

(i) if the party against whom costs have been accorded has not appeared at the hearing either in person or his counsel.

(ii) If the person liable to pay costs has consented in writing to taxation in his absence.

(iii) For the taxation of writ and post writ bills.

(b) In all cases where a notice of taxation is necessary, such notice shall be delivered together with a copy of the bill of costs to be taxed not less than four clear days before the date of taxation.”

[8] In *casu* the notice of taxation (Annexure “A”) served on Mabila Attorneys does not conform to the one provided for in Rule 68 (6) (a) in that it does not state the time and place of such notice. The consent certificate was not signed by Miss Tfwala or her attorneys. Furthermore the four day, period provided for in Rule 68 (6) (b) was not complied with in so far as the notice is concerned.

[9] The procedure that Miss Tsabedze the taxing master followed as set out in her confirmation affidavit is with due respect incorrect as it is not provided for in the rules. She would not need to be taken aback by Miss Tfwala’s application if she had followed the correct procedure; as the bill of costs is extra-ordinarily high she should have insisted an adherence to the correct procedure.

[10] I do not believe the contents of Mr. Jele’s affidavit. He may have been intimidated by a much senior and sophisticated Mr. Ndlovu at

the time all the events that Mr. Ndlovu has described and he acquiesced. Now that his principal is angry he is backtracking in order to avoid censure. Miss Tsabedze likewise may have fallen under the persuasive spell of the senior lawyer Mr. Ndlovu and was persuaded by him to do that which she knew to be unprocedural.

[11] Having said the foregoing, it is only fair for me to censure each party with regard to costs of this present application; Miss Tfwala for the delay in bringing these proceedings and Mr. Ndlovu's clients for not following the correct procedure for taxing a bill of costs.

[12] I hereby order as follows:

- (a) The bill of costs complained of is hereby set aside and Mr. Ndlovu is ordered to resubmit same in the correct manner for retaxing before the taxing master other than Miss Tsabedze.

- (b) Each party is to pay its own costs in respect of the present application.

Mabuza J

Judge of the High Court of Swaziland

For the Applicant:	Mr. Mabila
For the Respondents:	Mr. Ndlovu
For the Respondents:	Mrs. Mbatha