



**IN THE HIGH COURT OF SWAZILAND**  
**JUDGMENT**

Case No.2709/09

In the matter between

**M.P.D. MARKETING SUPPLIERS (PTY) LTD**

**APPLICANT**

and

**ROOTS CONSTRUCTION (PTY) LTD**

**1<sup>ST</sup> RESPONDENT**

**SILENCE GAMEDZE N.O.**

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

In Re

**ROOTS CONSTRUCTION (PTY) LTD**

**PLAINTIFF**

And

**M.P.D. GROUP OF COMPANIES**

**DEFENDANT**

**Neutral citation:** M.P.D. Marketing Suppliers (Pty) Ltd v Roots Construction (Pty) Ltd and another (2709/09) [2012 SZHC

**Coram:** OTA J.

**Heard:** 26<sup>th</sup> March 2012

**Delivered:** 30<sup>th</sup> March 2012

**Summary:** Application proceedings for stay of sale in execution and interdict. Points taken *in limine* on Urgency, lack of service on 2<sup>nd</sup> Respondent, Disputes of facts and failure to satisfy the requirements for an interdict. Points *in limine* upheld. Application dismissed with costs.

**OTA J.**

[1] By notice of motion dated the 21<sup>st</sup> day of March 2012, the Applicant prayed the court for the following reliefs:-

1. That this Honourable court dispense with the normal requirements relating to time limits, manner of service of process, form and procedure in applications and deal with this matter as one of urgency in terms of Rule 6 (25) (a) and (b) of the High Court rules.
2. That this Honourable court condones Applicant's non compliance with the rules of court.
3. That a rule nisi be issued, calling upon the Respondents to show cause on a date and time to be determined by this Honourable court why the prayers set out below should not be confirmed and made final.
  - 3.1 That the sale of movable goods attached by the Respondents which belong to the Applicant be stayed.
  - 3.2 That the Respondents be interdicted and restrained from conducting a public auction of the movable goods belonging to the Applicants pending finalization of this matter.

3.3 That the Respondents be interdicted and restrained from attaching and removing from the Applicant's premises any movable goods pursuant to the writ of execution issued against M.P.D. Group of Companies.

3.4 That the First Respondent be ordered to acknowledge and account for all payments received from the Applicant in relation to this matter.

4. That prayers 3.1, 3.2, and 3.3 operate with immediate and interim effect
5. That this Honourable court grants the Applicant costs of this application.
6. That this Honourable court grants any further and / or alternative relief which it may deem fit in the circumstances.

[2] This application is predicated on an 8 paragraph affidavit, sworn to by one Mandla Dlomo, described in that process as the Operations Manager of the Applicant. Attached to this affidavit are annexures MPD 1 to MPD 4 respectively.

[3] The Applicant also filed a replying affidavit of 39 paragraphs, sworn to by the same deponent, to which is exhibited annexure MPD M1.

[4] The 1<sup>st</sup> Respondent which is opposed to this application, filed an answering affidavit of 20 paragraphs, sworn to by 1<sup>st</sup> Respondent's attorney, Mr. Bonginkosi Magagula, to which is attached annexures RC1 to RC7 respectively. The 2<sup>nd</sup> Respondent, neither filed any papers nor did he participate in these proceedings. The Applicant and 1<sup>st</sup> Respondent filed respective heads of argument and tendered oral submissions in support of their positions, via S. Gumedze Applicant's counsel and B. Magagula 1<sup>st</sup> Respondent's counsel.

[5] Now, in its answering affidavit as well as via oral submissions of counsel from the bar, the 1<sup>st</sup> Respondent (hereinafter called Respondent), raised several points of law seeking to extinguish this application *in limine*. Respondent also alleged copious facts on the merits. After a very careful consideration of the entire matrix of papers serving before court, I deem it imperative to consider the point *in limine* taken on urgency, lack of service on 2<sup>nd</sup> Respondent, disputes of fact and failure to satisfy the requisites for an interdict, before delving into the merits of the matter.

[6] I'll now proceed to consider the foregoing points *in limine ad seriatim*.

[7] **URGENCY**

Now, there is no doubt that this court is empowered by rule 6 (25) of its rules to enroll matters on the premises of urgency, where it deems it expedient. That rule of court provides as follows:-

*“6 (25) (a) In urgent applications, the court or Judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure ( which shall as far as practicable be in terms of these Rules) as the court or Judge, as the case may be, seems fit.*

*(b) In every affidavit or petition filed in support of an application under paragraph (a) of this sub-Rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims he could not be afforded substantial redress at a hearing in due course”*

[8] It is apparent from the language of the legislation ante, that the enrollment of cases on the premises of urgency cannot be had just for the asking. It is the judicial accord that an applicant for such a relief must satisfy the provisions

of Rule 6 (25) (b) ante, which is peremptory in nature, by demonstrating in his affidavit or petition, and explicitly:-

1. The circumstance which he avers renders the matter urgent.
2. The reasons why applicant cannot be effected substantial redress at a hearing in future course.
3. The foregoing facts must appear ex facie the papers filed and must not be whimsical but cogent and compelling.

**See Humphrey Henwood v Maloma Colliery and another Civil Case No. 623/94, Megalith Holdings v RMS Tibiyo and another, Civil Case No. 199/2000, Protonics Networking Co-operating v Emcon Africa (Pty) Ltd and another Civil Case No. 852/2000.**

[9] It is the Respondent's position, that the Applicant has failed to meet the foregoing requirements to move the hand of the court to enroll this matter on the premises of urgency.

[10] Now, it is common course that the Applicant commenced this application on the 21<sup>st</sup> of March 2012, to stay the sale in execution scheduled for the 23<sup>rd</sup> of March 2012.

[11] In paragraphs 5 and 7.1 – 7.4 of the founding affidavit, the Applicant alleged the following:-

“

5.1

*On the 20<sup>th</sup> March 2012, I was informed by a former employee of the Applicant that, he saw an advert in the Times of Swaziland, that there was going to sold (sic) by public auction certain movable property of the Applicant that had been attached. Though the person who informed me, did not know exactly what property was going to be sold. I have reason to believe that, it is a Toyota Camry Motor Vehicle that had been attached by the second Respondent.*

5.2

*The former employee advised that the advert that was published in the Times of Swaziland detailed that, the movable goods in question were going to be sold by public auction on the 23<sup>rd</sup> of March 2012.*

5.3

*The Applicant did not expect the Respondent to sell any of its property in light of the dispute that, the Respondent knows exists, in so far as amounts owing are concerned.*

7.1

*It is my humble submission that the matter is urgent by virtue of the fact that the sale that is being sought to be stayed is due to be conducted on the 23<sup>rd</sup> march 2012.*

7.2

*It is my humble submission that the Applicant has no other available remedy with which it could prevent the Respondent from continuing with the sale, other than through an order of this Honourable Court.*

7.3

*It is my humble submission that if this matter is not heard as one of urgency, the Applicant will not be accorded redress in due course in that, the attached goods will have been sold through public auction to third innocent parties.*

7.4

*I am advised and verily believe that the Respondent stands to lose nothing if the sale is stayed as it can attach the relevant property in due course”.*

[12] It is the Respondent’s position that the Applicant failed to satisfy the requisites of Rule 6 (25) (b) via the foregoing allegations. Respondent’s counsel Mr. Magagula argued, that the attachment of the property in issue took place on the 8<sup>th</sup> of October, 2009, as evidenced by Notice of attachment



of the Deputy Sheriff annexure RC3. That the foreseeable consequence of such an attachment was execution. That the Applicant did nothing about the attachment, but chose to go into negotiations with the Respondent. Counsel further contended that the removal of the said vehicle took place on 1<sup>st</sup> February 2012, and that the Applicant was well aware of this as is evidenced by annex MPD 3, (page 19 &20 of the book). Mr. Magagula further contended, that the sale of the said vehicle was first advertised in The times of Swaziland on the 9<sup>th</sup> of March 2012, therefore, there was no reason why the Applicant should have waited until the 21<sup>st</sup> of March 2012 to launch the application instant, seeking to stop the sale scheduled for the 23<sup>rd</sup> of March 2012.

[13] Now, having carefully perused the papers, I am inclined to agree with the Respondent that the Applicant has failed to make out a case why this matter should be enrolled on the premises of urgency, in compliance with Rule 6 (25). As the court stated in **H.P. Enterprises (Pty) Ltd v Nedbank (Swaziland) Ltd, Civil Case No. 788/99, cited in Megalith Holdings v RMS Tibiyo (Supra)**.

*“A litigant seeking to invoke the urgency procedure must make specific allegations of fact which demonstrate the observance of the normal*

*procedures and time limits prescribed by the Rules will result in irreparable loss or irreversible deterioration to his prejudice in the situation giving rise to the litigation. The facts alleged must not be contrived or fanciful but give rise to a reasonable fear that if immediate relief is not afforded irreparable harm will follow”*

[14] In line with the foregoing authority, I hold the view that this is not a case to be enrolled on the premises of urgency. The urgency advanced by the Applicant to my mind, is a self contrived urgency. I say this because it is common course that attachment of the property advertised for sale on the 23<sup>rd</sup> of March 2012, took place on the 8<sup>th</sup> of October 2009. The attachment was done pursuant to the judgment which the Respondent obtained against MPD Group of Companies. The effect of the attachment is that the property remained in custodial legis with the sheriff, until the attachment was lifted or set aside. Following the attachment, and in the absence of an order either lifting or setting same aside, the sheriff had the power to remove the property, as he did on 1<sup>st</sup> February 2012, and sell it in execution of the judgment obtained by the Respondent against MPD Group of Companies, which judgment is still valid and subsisting and has not been set aside.

[15] I hold the view that in these circumstances, the Applicant who now claims that the property belongs to it and not to MPD Group of Companies, ought to have known, that if no steps were taken to arrest the process of execution, either by lifting or setting aside the attachment, that it is certain that the property would be sold in execution of the said judgment. The sale of the property in the circumstances, was clearly foreseeable right from the moment of its attachment on the 8<sup>th</sup> of October 2009. The Applicant went into a sleeping slumber for over two years after the fact of attachment of the property and did nothing to prevent its sale in execution, only for the Applicant to wake up 2 days prior to the advertised event of sale, to cry “*wolf*” creating an impression of urgency.

[16] There is no urgency here, except a self induced urgency. The applicant cannot rely on this kind of situation to enroll this matter on the premises of urgency. It had ample time since the 8<sup>th</sup> October 2009, to address its grievance within the normal course and time limits fixed by the Rules. There would have been urgency if the Applicant had no notice of the attachment and only became aware of the attempt to execute the judgment 2 days to the sale. That is however not the case here.

[17] I hold the view that in the circumstance, the allegation that it became aware of the impending sale on the 20<sup>th</sup> of March 2012, through its former employee cannot avail the Applicant. The attached property was removed from the Applicant's premises in readiness for the sale in execution on 1<sup>st</sup> February 2012. The Applicant was well aware of this. More to this is that the Applicant failed to take the court into its confidence by revealing the identity of the alleged ex employee who allegedly gave it the information about the advertised sale. Applicant also failed to file a confirmatory affidavit from the said ex employee to add sustenance to its claims.

[18] The rules will only be abridged and a matter enrolled on the premises of urgency, if rule 6 (25) is complied with. As the case lies, the Applicant has failed woefully to meet the requisites of this Rule. This whole application ought to be dismissed on these premises alone.

[19] I will however, out of the abundance of caution and in the interest of the jurisprudence of the Kingdom, proceed to consider the other points raised *in limine*.

[20] **LACK OF SERVICE ON 2<sup>ND</sup> RESPONDENT**

In paragraph 3.1.5 of the answering affidavit, the Respondent alleged that the 2<sup>nd</sup> Respondent has not been served with the application instant, and as such, he is not aware that such a drastic relief is sought against him. Respondent contended that lack of service on 2<sup>nd</sup> Respondent, defeats this whole process.

[21] In paragraph 13 of its replying affidavit, the Applicant met the foregoing allegation of the Respondent, with the following averment:-

*“Contents thereof are admitted. The 1<sup>st</sup> Respondent is the one that through its attorneys instructed the 2<sup>nd</sup> Respondent. Service of court process on 1<sup>st</sup> Respondent’s attorneys sufficed in the circumstances”*

[22] The above is an outright admission that 2<sup>nd</sup> Respondent was not served with this process. I must say that I am not impressed at all with the justification which Applicant sought to advance for its failure to serve the 2<sup>nd</sup> Respondent with this process. It is common course that the 2<sup>nd</sup> Respondent, Silence Gamedze, is the Deputy Sheriff seized with the sale in execution of the said property. In an application such as this one, it is not only imperative

that the Deputy sheriff seized with the sale in execution of the property in issue be cited as a party to the proceedings, once cited, it is mandatory that the processes be duly served on him in compliance with the rules.

[23] The place of service of process upon parties cited in proceedings in court cannot be over emphasized. The essence of service on parties cited as Defendants or Respondents in proceedings before court, is to give them notice, so that they may be aware of, and be able to resist, if they so wish, that which is sought against them. Without such service, the Defendants may not know that the Plaintiff has sued them to court and what for. The rules thus require that they be served in compliance with the constitutional dictates of fair hearing enshrined in the Constitution Act no 001, 2005, vide section, 21 (1) thereof.

[24] It is apposite for me to add here, that the rule of fair hearing is not a technical doctrine. It is one of substance. It does not reside in the question whether injustice has been done because of lack of hearing. It is rather steeped in the consideration, as to whether a party entitled to be heard before deciding, had infact been given the opportunity of a hearing. Once an

appellate or reviewing court comes to the conclusion that the party was entitled to be heard before a decision was reached, but was not given the opportunity of a hearing, the order or judgment thus entered is bound to be set aside. This is because such an order is against the rule of fair hearing, one of the twin pillars of natural justice which is expressed by the maxim *audi Alteram partem* see **Ernest Mngomezulu v Lucky Groening N.O. and others, Civil Case No. 2107/2010.**

[25] It is beyond controversy from the foregoing, that where service of process is required, failure to serve is a fundamental vice, and the person affected by the order but was not served with the process, is entitled *ex debito justitiae* to have it set aside as a nullity. See the following Supreme Court of Nigeria cases: **Obiomonure v Erinoshu and another (1966) All NLR 250, Mbadinuju v Ezuka (1994) 10 SCNJ 109 at 128, Skenconsult v Ukey (1980) 1SC 6 at 26.**

[26] It is thus obvious to me that any proceedings in the absence of a party who is entitled to be served but was not served with the process, confers no jurisdiction on the court to proceed with such proceedings, as same is a

nullity being a violation of the principles of fair hearing. See **National Bank v Guthrie (1993) 4 SCNJ at 17 (Nigeria Supreme Court)**.

[27] In casu, the 2<sup>nd</sup> Respondent was entitled to be served with this process. The mere fact that he was instructed by counsel for the Respondent to conduct the said sale cannot defeat the said fact of service. Nor can service on Respondent's counsel derogate the paramount service on 2<sup>nd</sup> Respondent, especially in view of the fact that there is no evidence to show, that said counsel also acts for 2<sup>nd</sup> Respondent in these proceedings.

[28] Since the Applicant has admitted that the process in casu was not served on the 2<sup>nd</sup> Respondent, this state of affairs renders these proceedings a nullity liable to be set aside.

[29] **3. DISPUTES OF FACT**

It is the Respondent's stance that there are certain disputes of the material facts of this matter, that render it inappropriate for motion proceedings.



I must say that after a very careful perusal of the conspectus of facts serving before court, that I am inclined to agree with the Respondent, that this application exudes certain disputes of its material facts, which cannot be resolved on the papers herein.

[30] It is fundamental for me at this juncture, before dabbling into the facts and detailing the disputes of fact, to return to first principles and state the propositions on the question of disputes of fact, which are well known in this jurisdiction.

[31] I count it now judicially settled, that in as much as the court can entertain applications by motion proceedings, such proceedings are however not suited for the purposes of deciding real and substantial disputes of fact, which properly fall for decision by action. The learned authors **Herbstein and Van Winsen in the Text the Civil Practice of the Supreme Court of South Africa, 4<sup>th</sup> edition, page 234**, postulated this position of the law in the following terms:-

*“It is clearly undesirable in cases in which facts relied upon are disputed to endeavor to settle the disputes of fact on an affidavit, for the*

*ascertainment of the true facts is effected by the trial Judge on consideration not only of probability, which ought not to arise in motion proceedings but also of credibility of witnesses giving evidence viva voce. In that event it is more satisfactory that evidence should be led and that the court should have the opportunity of seeing and coming to a conclusion”*

[32] It is apposite for me to state here, that the continued application of the foregoing principles in the courts of the Kingdom, has rendered them sacrosanct. The cases are legion. They include but are not limited to **Didabantu Khumalo v The Attorney General Civil Appeal No. 31/2000, Pauline Mnguni v City Jap Auto (Pty) Ltd and another Case No 4728/09, Hlobisile Maseko (nee Sukati) v Sellinah Maseko ( nee Mabuza) and others, Case No 3815/2010**, to mention but a few.

[33] Now, it is common course that the Respondent as Plaintiff successfully instituted proceedings against, MPD Group of Companies which is a coalition of companies, whose proprietor is one Mr. Mpheni Dlomo. The judgment debt against MPD Group of Companies was the sum of E461,895.00, excluding interest and costs.

[34] It is common course that a writ of execution was issued in execution of the said judgment, in consequence of which the sheriff of the court, Mr. Martin Akker for the Manzini District, attached a number of movable properties allegedly belonging to MPD Group of Companies, including the motor vehicle subject matter of this application, which is a Grey Toyota Camry, which was then registered SD 178 KN. It is common course that the said vehicle now has a new registration number, because of new registration numbers introduced by the Government.

[35] Now, the Applicant herein contends that the said motor vehicle belongs to it and not to MPD Group of Companies. In support of this allegation Applicant conveyed the Blue book of said vehicle, annexure MPDM I, to court via its replying affidavit. It is also the Applicant's position that it is not a part of MPD Group of Companies, since it is a separate legal entity, duly incorporated, with perpetual succession and powers to sue or be sued *eo nomine*. Therefore, the Deputy Sheriff had no powers to attach its vehicle in execution of a judgment debt owed to Respondent by MPD Group of Companies.

[36] It was contended replicando by the Respondent, that the Applicant is a part and parcel of the coalition of companies which together constitute what is now known as the MPD Group of Companies and that the said motor vehicle belongs to MPD Group. Respondent also took issue with exhibit MPDM 1, contending that such evidence should reside with the founding affidavit, where the Applicant is required by law to make out its case. Respondent called upon the court to discountenance annexure MPDM 1 in the circumstance.

[37] Let me start by saying that I agree with the Respondent that the law requires that an Applicant in a motion proceedings, makes out its case in the founding affidavit. This is good practice, which precludes the element of surprise and enables the Respondent to plead to all material allegations relied upon by the Applicant.

[38] The Supreme Court was faced with a similar situation in the case of Daniel **Didabantu Khumalo v The Attorney General Civil Appeal No. 31/2010**, and the court had this to say, per Ramodibedi C J:-

*“ In this court the appellant relied heavily on the affidavit of John Shaveila Mabuya who deposed that between 1980 and 1989 he was a member of Libandla of Ezulwini Royal Kraal and Endvuna yemajaha. He averred that the appellant khontaed at Ezulwini. The problem with this affidavit, however, is that it came at the replying stage when the respondent had no opportunity to deal with it. It is a matter of fundamental principle that an applicant must make out his case in the founding affidavit. Generally, a court will not allow an applicant to make out a case in reply----“*

**See Swaziland Development and Savings Bank (Swazi Bank) v ASPSP Investments (Pty) Ltd t/a Benguni Solomon Nxumalo, Civil Case No. 2327/09.**

[39] It appears to me therefore in these circumstances, that by conveying annexure MPDM1 to Court in its replying affidavit, that the Applicant foreclosed the Respondent’s rights to reply to same. It will thus be against the principles of fair hearing for this Court to countenance this annexure. In any event, I have taken the liberty of carefully scrutinizing annexure MPDM1, which appears on pages 104-105 of the book, and it tells me absolutely nothing about the motor vehicle in issue. This is because page 104 which should bear the relevant information about the change of ownership of said vehicle, is dark and incomprehensible. I notice that there

is some writing in black pen over the original document which appears on the right hand side of annexure MPDM1, on page 104. I cannot however countenance the information conveyed via the black pen writing, as there is no attestation or certification that such information is a true reflection of that contained in the original document. I will thus disregard annexure MPDM1, as being of no moment to this application.

[40] In the light of the foregoing, the question of the ownership of the said vehicle is still in dispute, along side the question as to whether the Applicant is a part and parcel of the coalition of companies known as MPD Group of companies. The Applicant failed to tender its Memorandum of Association in proof of its alleged corporate personality. It is quite an obvious fact to me, that these disputes cannot be resolved on the state of the papers serving before court.

[41] More to this is the question of the actual balance, if any, outstanding in the transaction between Respondent and MPD Group of Companies, pursuant to the judgment debt. This is a vexed question in these proceedings. One that was canvassed with anxiety and frenzy by both parties.

[42] The Respondent contends that there is still an outstanding balance of E286,626-50 on the judgment debt, which amount is inclusive of interests, and that two of the cheques issued to it by MPD Group in satisfaction of the judgment debt were dishonoured, as clearly accounted in annexure RC5.

[43] The Applicant for its own part contends that the judgment debt has been paid in full, leaving no balance outstanding. It is also Applicants position, that no cheque of payment to Respondent was dishonoured and that Respondent has failed to account properly for all amounts received or issue receipts in acknowledgement of same.

[44] As the case lies, the foregoing facts raise disputes as to the amounts owing, if any, on the judgment debt, which disputes cannot be resolved on the state of the pleadings. There is thus much force in the Respondent's proposition that this matter is not suited for motion proceedings, and is liable to be dismissed as the Applicant was fully aware of the dispute regarding the outstanding balance owed before it commenced proceeding by way of motion. See paragraph 5.3 of the founding affidavit. See also **Elmon Masilela v Wrenning Investment (Pty) Ltd and another Civil Case No.**

**1768/02, Mntomubi Simelane & another v Makwata Simelane and others Civil Case No. 4286/09.**

[45] **FAILURE TO SATISFY THE REQUIREMENTS FOR AN INTERDICT**

It appears to me that these disputes of fact which enure in these proceedings, deprive the application of the fundamental requirements paramount for the grant of the interdict sought against the Respondent, as set out in the celebrated case of **Setlogelo V Setlogelo 1914 AD 221 at 227**. The principles laid down in **Setlogelo (supra)**, have since gained Judicial approval in the Kingdom. In the case of **Thokondze Dlamini V Chief Mkhumbi Dlamini and another, Civil Appeal No. 2/2010, the Supreme Court, per Ramodibedi CJ**, pronounced these principle to be as follows:-

*“ Now following the celebrated case of **Setlogelo V Setlogelo---**, it is well established that the pre-requisite for an interdict are a clear right, injury actually committed or reasonably apprehended and the absence of similar protection by another remedy---”*

See **Megalith Holdings v RMS Tibiyo (Pty) Ltd and another (Supra)**.



[46] As I said in my decision in the case of **Mntomubi Simelane and another V Makwata Simelane and others (Supra)** at page 7:-

*“ It is my opinion, that of the three requirements set out in **Setlogelo** ante, clear right is of the most paramountcy to such an application. This is because the question of injury actually committed or reasonably apprehended, as well as alternative remedy, are all predicated on the presence of a clear right to the subject matter of the dispute. Therefore, the absence of a clear right automatically renders the other ingredients non-existent”.*

[47] The Applicant to an interdict, be it interim or final in nature, must therefore demonstrate a clear right to the subject matter of the interdict. The right which the interdict seeks to protect must be a legal right. That right must belong to the Applicant. The facts averred in the affidavit of the Applicant must be such as can establish the existence of the legal right. As the Court stated in the case of **Minister of Law and Order V Committee of the Church Summit 1994 (3) SA 89 at 98:-**

*“ Whether the Applicant has a right is a matter of substantive law. The onus is on the Applicant applying for a final interdict to establish on a balance of probability the facts and evidence which he has, a clear or definitive right in terms of substantive law. The right which the Applicant must prove is also a right which can be protected. This is a right which exists only in law, be it at common law or statutory law”.*

[48] In casu, the apparent disputes of fact as to whether or not the Applicant is a part and parcel of MPD Group of companies, against which a valid judgment in favour of the Respondent subsists, and whether or not the motor vehicle in issue, is the property of the Applicant or MPD Group of companies, robs the Applicant of the requisite clear right to the interdict sought. This state of affairs renders a consideration of the other requirements for an interdict nugatory.

[49] As the case lies, I will save myself the trouble of embarking on a consideration of the other points taken *in limine* by the Respondent, as such a course will amount to nothing but an educational exercise, serving no useful purpose.

[50] In the light of the totality of the foregoing, this application fails in its entirety.

I hereby make the following orders:-

1. That this application be and is hereby dismissed.
2. Costs to follow the event.

**For the Applicant:**

**Mr. S. Gumedze**

**For the Respondent:**

**Mr. B. Magagula**

**DELIVERED IN OPEN COURT IN MBABANE ON THIS**

**THE ..... DAY OF .....2012**

**OTA J.**

**JUDGE OF THE HIGH COURT**