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**IN THE HIGH COURT OF SWAZILAND**

**RULING**

Case No. 1950/2013

In the matter between

**OSBORNE J. NZIMA  
NZIMA AND ASSOCIATES**

**1<sup>st</sup> Applicant  
2<sup>nd</sup> Applicant**

and

**THE NATIONAL COMMISSONER OF POLICE**

**1<sup>st</sup> Respondent**

**THE ATTORNEY GENERAL**

**2<sup>nd</sup> Respondent**

**Neutral citation:** *Osborne J. Nzima & Ano. v National Commissioner of Police & Ano.* (1950/13) [2014] SZSC 10 (14<sup>th</sup> February 2014)

**Coram:** **MAMBA J**

**Heard:** **27 December, 2013**

**Delivered:** **14 February, 2014**

- [1] The second Applicant, who is a firm of attorneys practising as such and based in Manzini, filed an application before the Manzini Magistrate's court for the release of a certain motor vehicle. The stated applicant in that case is one Sabelo Masuku and the two respondents are the Commissioner of Police and the Attorney General respectively.
- [2] That application was accompanied by an affidavit apparently or allegedly deposed and sworn to or made by the said Sabelo Masuku. There were also other documents filed in support of the application.
- [3] This application triggered investigations by the Police. Such investigations, the Police say, led them to the said Sabelo Masuku who in a statement recorded on 28 November 2013 denied having instructed the applicants herein to file the application in the Magistrates Court. He also denied that he had deposed to the affidavit in support of that application.
- [4] As a result of this statement by Sabelo Masuku, the police began investigating a case of an attempt to defeat the ends of justice by the applicants herein. The police investigation, it is common cause, culminated

in the interrogation of the first applicant, who is the managing partner of the second applicant and other employees of the latter. Certain documents belonging to second applicant were in the process confiscated by the Police. The upshot of these investigations is the present urgent application.

[5] The applicants complain that the police investigation is unlawful inasmuch as it seeks to breach the attorney-client privilege that exists between them and their apparent client Sabelo Masuku – I say apparent because this relationship is denied by the respondents.

[6] The respondents contend that there is no attorney-client relationship between the applicants and Sabelo Masuku in respect of the matter at hand. They base this on the denial made by Sabelo to them on 28 November 2013. Therein in my judgment lies to issue for determination by this court. Is there an attorney-client relationship- and thus the privilege – between the applicants and Mr Sabelo Masuku?

[7] Neither of the parties herein have filed an affidavit by Sabelo Masuku. This may be understandable in view of the urgency of this matter but again neither of the parties have given a satisfactory explanation to the court why no such documents were forthcoming from Mr Masuku.

[8] I do not think that the justice of the case would adequately be served by deciding the case on the papers as they stand. The conflict or factual dispute referred to above is real. It cannot – at least I cannot, resolve it on the present papers. I would therefore refer the matter to oral evidence on that issue alone. That of course may mean that Mr Matse before whom the affidavit allegedly sworn to by Mr Sabelo Masuku would, together with Mr. Masuku be required to give the required evidence.

[9] For the foregoing, I make the following order:

9.1 The matter is referred to oral-evidence on the issue of the existence or otherwise of a client-attorney relationship and privilege between the applicants and Mr Sabelo Masuku in respect of the application filed in the Manzini Magistrate's Court.

9.2 The costs of this application shall be the costs in the cause.

9.3 The matter is postponed for hearing till 13 March 2014 and the rule nisi is extended till that date.

**MAMBA J**

**For the Applicants : Mr. Gumede**

**For the Respondents : Mr. M. Vilakati**