IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE **CASE NO. 280 & 281/2019**

In the matter between:

JACQUES VAN DEN HEEVER 1st Applicant

Q's SWAZILAND (PTY) LTD 2nd Applicant

And

IONNIS CALAVITIS 1st Respondent

THE GAMING BOARD OF CONTROL 2nd Respondent

In re:

JACQUES VAN DEN HEEVER 1st Applicant

Q's SWAZILAND (PTY) LTD 2nd Applicant

And

IOANNIS CALVITIS Respondent

In re:

Q's SWAZILAND (PTY) LTD **Plaintiff**

And

IOANNIS CALVITIS **Defendant**

Neutral Citation: *Jacques Van Den Heever & Another v Ioannis Calvitis & Another In re: Jacques Van Den Heever & Another v Ioannis Calvitis In re: Q's Swaziland*

(Pty) Ltd v Ioannis Calvitis (280 & 281/2019) SZHC [2020] 73 (15th April 2020)

CORAM: **N.M. MASEKO J**

FOR THE APPLICANTS: **MR B. GAMEDZE**

FOR THE RESPONDENTS: **MR KQ MAGAGULA**

HEARD: **17th February 2020**

DELIVERED: **28th April 2020**

Preamble:

Civil law – Civil Procedure – whether Rule 6 (24) dealing with Interlocutory proceedings is self-sufficient in dealing with such incidental applications – whether its proper in circumstances to subject interlocutory applications to the provisions of Rule 6 (9) (10) (11) and (12 of the Rules of Court and treat them as substantive applications.

RULING ON POINTS *IN LIMINE* TO CONTEMPT PROCEEDINGS

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[1] On the 17th February 2020, Counsel Mr K.Q. Magagula and Mr B. Gamedze, for the parties respectively argued points *in limine* that had been raised by Mr Magagula on behalf of his client as regards Contempt of Court Proceedings as contained at page 127 of the "BOOK OF PLEADINGS VOLUME A"

[2] It is common cause that on the 6th June 2019, the 1st and 2nd Applicants launched Contempt of Court Proceedings against the Respondents praying for the following relief.

(1) Declaring the 1st Respondent's conduct contemptuous of the Court's Order issued on the 15th April 2019.

(2) Directing the 2nd Respondent to furnish the above Honourable Court with the Deed of Sale between the Directors of the 2nd Applicant and V-Slots.

(3) Costs of suit.

(4) Further and/or alternative relief.

[3] Owing to these points *in limine* that were raised by the Respondents, it became necessary that the points be dealt with first. These points are contained in the Respondent's Answering Affidavit at page 140 of Book A and are crafted as follows:-

APPLICATION BAD IN LAW

- **The Applicants served my attorney's correspondences with the application on the 6th June 2019 and it stated that the Notice of Intention to Oppose should be filed by the 10th of June 2019 and the matter be heard by the Court on the 11th June 2019.**
- **Applicants did not comply with Rules of the above Honourable Court Rule 6 (12) (b) and treated the matter as if it is one brought by a certificate of urgency.**
- **The Applicants served the Notice of Motion with my attorney's correspondence. They did not comply with the Rules of Court that I should be served with the application personally as this is a contempt application.**
- **The Applicants failed to comply with the Rules of the above Honourable Court as the matter was treated as one brought by the certificate of urgency. The failure to comply with the Rules of Court renders the application bad in law. Furthermore the failure by the Applicants to serve me personally with the application renders the application bad in law.**

[4] On the 2nd July 2019, the 1st Applicant filed his Replying Affidavit and he replied as follows at pages 150-151 Book A in so far as the points *in limine* are concerned.

> ***"AD PARAGRAPHS 4.1, 4.2, 4.3, 4.4 & 4.5***
>
> ***The contents of these paragraphs are in dispute and are a demonstration of a lack of understanding of the rules of the Honourable Court. The present application is an application in terms of Rule 6 (24) of the High Court Rules. This is an interlocutory application and there is no need to make the averments as per Rule 6 (25 (a) (b) and (c) and Rule 6 (10) and 6 (12) (b).***
>
> ***This application is interlocutory in nature and does not require that the above mentioned rules be met."***

[5] Mr Magagula argued that the Applicant acted contrary to the Rules of Court by not serving the Contempt Proceedings personally on the 1st Respondent. He submitted that Contempt Proceedings were extraordinary in nature, hence service was to be effected personally on the 1st Respondent. He submitted further that in terms of Rule 6 (12) (b) the Respondents were entitled to fourteen (14) days within which to respond to the application as same did not come on a certificate of urgency and that even the Notice of Motion did not contain any prayer for urgency and further that even the Applicants' affidavit itself did not allege any urgency.

[6] Mr Gamedze on the other hand argued that the Contempt Proceedings are interlocutory in nature and were brought in terms of Rule 6 (24) of the Rule of Court. He submitted that the contempt proceedings were served on Respondent's attorneys of record and that there was no prejudice to the Respondents as they were able to advance their defence as can be seen from Answering Affidavit from pages 138-146 of Book A.

[7] I must state that Rule 6 (24) is the one that governs interlocutory applications. It is common cause that these contempt proceedings are interlocutory in nature and thus are regulated by Rule 6 (24).

[8] Rule 6 (24) provides as follows:-

> ***"6 (24)*** ***Notwithstanding the aforesaid sub-rules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the Registry or as directed by a judge."***

[9] At pages 424-425 **HERBSTEIN AND VAN WINSEN** in their book titled – *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA 5TH EDITION JUTA 2012* cite the South African Rules of Court per Rule 6 (11) which deals with interlocutory applications and which is worded exactly like our Rule 6 (24). This is how Rule 6 (11) of the Uniform Court Rules of the Republic of South Africa is framed –

> ***"6 (11) Notwithstanding the aforegoing sub-rules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge."***

[10] The learned Authors continue to state as follows:

> ***"The somewhat cumbersome procedure laid down in Rule 6 (5) need not be followed where the parties are already litigating. The practise is to use a short form of notice of motion similar to Forms 2, but citing the respondent. It has been held that the applicant can prescribe any reasonable period he deems fit between delivery of such an application and the hearing of it, but bears the risk of the respondent having inadequate opportunity to oppose the application. No directions are generally given with regard to the delivery of notice of***

> ***intention to oppose or the filing of answering affidavits. It seems that answering and replying affidavits, when they are necessary should be filed within a reasonable time."***

[11] I have referred to the South African position as regards interlocutory proceedings because it is exactly the same as in this jurisdiction. It is my considered view that the manner in which our Rule 6 (24) is worded is self-explanatory. Interlocutory proceedings fall to be dealt with in terms of Rule 6 (24). As can be seen from the wording thereof – the manner in which the matter may be set down is the domain of the Registrar or as directed by a judge.

[12] Where an interlocutory application is filed without the knowledge of the judge, it is the registrar who assigns the date on which it is to be heard. Once enrolled in Court and placed before the judge, then the judge would prescribe the timeline for filing of further pleadings, of course, subject to each matter and its circumstances.

[13] Where a judge is informed in Court by one of the parties that he/she/it intends to file an interlocutory application, then the judge can there and there grant such leave to that party and further prescribe when such application is to be filed and also prescribe the timeless for filing of further pleadings.

[14] The point I am making is this, interlocutory proceedings are not treated as a fresh or substantive applications that are governed by Rule 6 (9) (10) (11) and (12). The Rule 6 (24) appreciates that interlocutory applications are proceedings that are incidental to pending proceedings, and must therefore be treated as such and not be dragged to the provisions of Rule 6 (9) (10) (11) and (12) and to insist on doing that would be a recipe for protracted litigation resulting in an injustice and unnecessary costs.

[15] It is therefore advisable that interlocutory proceedings are treated as per the provision of Rule 6 (24), bearing in mind that the Court hearing the matter will issue directions as to the filing of the pleadings between the parties.

[16] I see no fault on the part of the Applicant in not alleging urgency in the proceedings and also in not serving the papers personally on the 1st Respondent, because firstly, there is no prayer for incarceration of the Respondents for the alleged contempt, and secondly, the application was served on the Respondent's attorneys in compliance with Rule 6 (12). Thirdly, once the interlocutory matter was in Court, directives were then issued by the Court on the filing of further pleadings by the parties within the spirit and intentions of Rule 6 (24) of the Rules of Court.

[17] In the circumstances, I hereby hand down the following order:-

1. The points *in limine* are all dismissed.

2. The interlocutory application is to be argued on the merits.

3. Each party to pay its own costs.

NKOSINATHI MASEKO
JUDGE OF THE HIGH COURT