

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 140/2004

In the matter between:

SMALL ENTERPRISE DEVELOPMENT COMPANY      Applicant

And

PHYLLIS NTSHALINTSHALI                              Respondent

CORAM:

N. NKONYANE                                              : ACTING JUDGE

D. MANGO                                                 : MEMBER

G. NDZINISA                                             : MEMBER

N. J. HLOPHE                                          : FOR APPLICANT

N. MULELA                                              : FOR RESPONDENT

RULING-16 JUNE 2004

This is an application brought before the court by the Applicant on a certificate of urgency seeking an order in the following terms;

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1. "1 Dispensing with the normal provisions of the rules of this Honourable court as relate to form, service and time limits and hearing this matter as an urgent one.
2. Staying or suspending execution of any Writ of Execution issued or to be issued by this Honourable Court pursuant to the ruling and or judgement in the above matter pending outcome of the appeal noted by the Applicant herein pursuant to such ruling or judgement.
3. Directing that an amount equivalent to the judgement debt be held by the Applicants attorney in their Trust Account pending the outcome of the said matter.
4. Directing that prayers 2 and 3 herein above operate with immediate and interim effect returnable on a date to be determined by this Honourable Court.
5. Granting Applicant the costs of this application only in the event of opposition thereto.
6. Granting Applicant any further or alternative relief."

The brief history of the matter is that on the 28th May 2004 this court presided by the President issued an order that the Applicant who was the Respondent, pays the present Respondent a sum of E60,195-00. The Applicant has noted an appeal against that order and is therefore seeking a stay of execution pending the outcome of the appeal.

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It has to be noted that in terms of Section 19 (4) of the Industrial Relations Act No 1 of 2000, the noting of an appeal shall not stay the execution of the court's order, unless the court on application directs otherwise.

The onus is on the Applicant therefore to show on a preponderance of probabilities that good grounds exist for the court to order a stay of execution.

In paragraph 10 of the Founding Affidavit the Applicant says that it stands to suffer an irreparable loss should the writ be issued and executed. The Applicant avers further that it is not aware of any assets of the Respondent to be sold in execution should the matter on appeal be decided in its favour.

In paragraph 11 the Applicant avers that the balance of convenience favours the grant of the order, because the Respondent does not stand to suffer any prejudice because the amount of the judgement debt is already secured.

The Respondent in answer to that denied that the balance of convenience favours the Applicant. The Respondent further averred in its Answering Affidavit that there was no reason and no basis for the Applicant to contend that if it were paid the money the Applicant could never recover it. The Respondent also made a counter application for the payment of the sum of E38,573.49 which the court will find that it is clearly misdirected against the Applicant as it was not the Applicant that sought a tax directive from the Commissioner of Taxes.

The court will now proceed to deal with the ground of irreparable loss. The Applicant says it will suffer irreparable loss because it is not aware of any assets of the Respondent to be sold in execution should the Court of Appeal rule in its favour. It was not argued that the Respondent has no assets. The Applicant is merely saying it is not aware of any assets of the Respondent. That the Applicant is not aware of the Respondent's assets is not enough to persuade the court to

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conclude that she therefore has no assets at all with which she could satisfy a judgement debt. The court will therefore come to the conclusion that the Applicant has failed to show on a balance of probabilities that it will suffer irreparable harm if the stay of execution is not granted. There will consequently be no need for the court to deal with the other grounds raised in support of the application.

The application is therefore dismissed. The counter-application by the Respondent is also dismissed for the reason already pointed out herein.

There is no order made for costs. The members also agree.

N.NKONYANE

ACTING JUDGE - INDUSTRIAL COURT

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