

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 179/04

In the matter between:

SHABIRI BHAGUBHAI

T/A NOBLE GENERAL DEALER

Applicant/ Respondent

SILVESTER NXUMALO

Respondent/Applicant

and

CORAM:

N. NKONYANE : ACTING JUDGE

D. MANGO : MEMBER

G. NDZINISA : MEMBER

B. MNTSHALI : FOR APPLICANT/RESPONDENT

M. MKHWANAZI : FOR RESPONDENT/APPLICANT

R U L I N G - 11.05.05

The applicant/respondent, who shall hereinafter be referred to as applicant, brought an urgent applicant against the respondent/applicant, hereinafter referred to as respondent for an order in the following terms:-

1. *That the rules of court relating to service, forms and time limits be waived and this matter be considered on an urgent basis.*
2. *That the writ of execution issued by this Honourable court be and is hereby stayed pending finalisation of this matter.*
3. *That the Deputy Sheriff be and is hereby directed to return the movable goods under attachment and belonging to the applicant.*

4. That a rule nisi do hereby issue calling upon the respondent to show cause on the 20th July 2004 why:

4.1 The Arbitration Award confirmed as an order of this court on the 22^{**} June 2004 should not be rescinded and/or set aside pending finalization of this application.

5. That prayer 2 and 3 operate with interim and immediate effect.

6. Costs of this application.

7. Further and/or alternative relief on 15.07.2004 a rule nisi was granted on 20.07.2004.

The respondent in its papers raised a point in *limine* that the application was defective and that it should be dismissed with costs as the Deputy Sheriff had not been cited and/or joined.

The point in *limine* was argued before the court on 07.09.2004.

Mr. Mntshali revealed to the court that they have since paid the amount of the judgement debt, and that the Deputy Sheriff had released the goods that were attached.

It seems therefore that prayers 2 and 3 of the applicants application have been overtaken by events.

The ruling of the court on the point raised in *limine* now clearly be academic.

The point of law raised is accordingly dismissed on the basis that the goods are no longer in the possession of the Deputy Sheriff, and she now has no interest in the matter.

No order for costs is made.

The matter is referred to the Registrar's office in order to be allocated a date of hearing on the merits after consultation with the attorneys.

The members agree.

N. NKONYANE

ACTING JUDGE - INDUSTRIAL COURT