

**IN THE INDUSTRIAL COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 358/09

In the matter between:

**LOMCO (PTY) LTD T/A MANTENGA  
CULTURAL VILLAGE**

**APPLICANT**

and

**LUNGILE SIMELANE  
DEPUTY SHERIFF - HHOHHO DISTRICT**

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

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

In re:

**LUNGILE SIMELANE**

**APPLICANT**

And

**JAN LOMBARD  
MANTENGA CULTURAL  
VILLAGE**

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

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

**CORAM:**

**S. NSIBANDE JOSIAH  
YENDE NICHOLAS  
MANANA**

**PRESIDENT**

**MEMBER**

**MEMBER**

**MR. W. MKHATSHWA  
MR. V. NDZINISA**

**FOR APPLICANT**

**FOR RESPONDENT**

## RULING - 28 JULY 2009

1. The Applicant has applied to the Industrial Court on a certificate of urgency for an order in the following terms :
  6. *Dispensing with the rules of the Honourable Court regarding time, manner and form of service to hear this matter application as one of urgency.*
  7. *Setting aside the order issued by this Honourable Court under the present case number as void and irregular, pending a proper application for rescission of the order granted on 29<sup>th</sup> June, 2009.*
  8. *Staying execution of the order referred to in the preceding paragraph, pending finalization of this application;*
  9. *Directing that a Rule Nisi do hereby issue returning on a date to be determined by this Honourable Court, calling upon the 1<sup>st</sup> Respondent to show cause why:*
  10. *An order in terms of prayers 2 and 2 should not be made final.*
  11. *Costs should not be awarded against the Respondents on the punitive scale.*

5. *Granting Applicant such further and or alternative relief as to this honourable Court seem meet.*

12. The Applicant is a company duly registered in terms of the laws of Swaziland trading as the Mantenga Cultural Village. It complains that the 1<sup>st</sup> Respondent served on its Managing Director, a Mr. Lombard a court order granted by this Court on 29<sup>th</sup> June 2009.

13. The order of 29<sup>th</sup> June 2009 records the default judgement entered at CMAC on 26<sup>th</sup> march 2009 as an order of this court. The Applicant complains that it was not cited initially and that it shares no previous relationship with the 1<sup>st</sup> Respondent. As a result of the order, it complains its goods may be attached for a debt not due from it.

14. It also complains that the order was obtained in an irregular manner in that the 1<sup>st</sup> Respondent still has a matter similar to the one in which the order was granted, pending before the Industrial Court under Case No. 629/08. That matter was opposed but instead of dealing with the points raised instead of dealing with the points raised in limine therein the 1<sup>st</sup> Respondent moved the application resulting in the order of 29<sup>th</sup> June without withdrawing the initial application. Applicant wishes to bring a rescission application and seeks to stay the execution of the order of 29<sup>th</sup> June pending the filing and finalization of the intended rescission application.

15. First Respondent opposes the application and has raised a preliminary objection namely that:

The rescission of the judgement of 29<sup>th</sup> June would be futile in that there no is rescission application pending before the CMAC, nor could an application for rescission be made to CMAC given the time frames set by the Act.

16. Our view is that there appears to be various irregularities with the order granted on 29<sup>th</sup> June 2007 and that to enforce the order granted on that day will give rise to an injustice. The Applicant was not cited when the Default judgement was granted at CMAC. Therefore no order against it was entered at CMAC. If it is correct that there is a matter pending before this court on the same set of facts and the same cause of action as the one which resulted in the order of 29<sup>th</sup> June 2007, then such order would have been obtained irregularly.

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17. In the premises the point raised in limine is dismissed. The court will stay the order of 29<sup>th</sup> June 2009 and any execution in pursuance thereof pending the finalization of this application.