

**IN THE SUPREME COURT OF ESWATINI
JUDGMENT**

In the matter between:

Case No. 70/19

SAMKELISIWE DLAMNI

Applicant

and

SIKHUMBUZO DLAMINI

Respondent

Neutral Citation : *Samkelisiwe Dlamini vs Sikhumbuzo Dlamini*
(70/2019) [2020] SZSC 07 (17 April 2020)

CORAM: **J.M. CURRIE AJA,**

DATE HEARD: **15 APRIL 2020**

DATE DELIVERED: **17 APRIL 2020**

Summary:

Civil Procedure – Application for leave to appeal against order of the High Court granting maintenance to wife and children in a specific amount from a specified date – date of commencement of maintenance disputed – leave to appeal granted.

CURRIE - AJA

INTRODUCTION

[1] This application for leave to appeal comes before me as a single judge of the Supreme Court of Appeal.

[2] Section 14 of the Court of Appeal Act provides the following:

**14. (1) An appeal shall lie to the Court of Appeal –
(a) from all final judgments of the High Court; and**

(b) by leave of the Court of Appeal from an interlocutory order, an order made ex parte or an order as to costs only. (My underlining)

(2) The right of appeal given by sub-section (1) shall apply only to judgments given in the exercise of the original jurisdiction of the High Court."

[3] On 6 February 2019, the Court *a quo*, issued an order in the following terms:

"1.1 The 1st Respondent (Respondent herein) shall from the 1st March 2019 contribute a sum of E 8000.00 per month to the Applicant towards the maintenance of her and the children."

[4] This order replaced the initial interim order of 28 January 2019, which stipulated that:

(i) ***“The 1st Respondent (Respondent herein) is ordered to forthwith pay the sum of E 3 500.00 towards the maintenance of the children of the marriage and this should happen with immediate effect.”***

- [5] Pursuant to this order, the Respondent instituted interlocutory proceedings seeking an interpretation of this order which he contended does not require him to pay the sum of E 8000.00 on the first day of each calendar month but that payment could be made any time during the month.
- [6] On 19 November 2019 the Learned Judge in the Court *a quo* held that ***“the Respondent, for the period before or until the 1st March 2019, was required to pay the sum he was hitherto paying, namely the sum of E 3 500.00 and only pay the sum of E8 000.”***
- [7] It is against this order of the Court *a quo*, which is in dispute, that leave to appeal is sought by the applicant. The issues in dispute appear to be (a) the date of commencement of the payment (1March 2019) and the intervals of the monthly payment as well as the question of costs.
- [8] The respondent has filed a notice to oppose but has failed to file any opposing affidavit as he is required to do in terms of Rule 9 (4) if he wishes to oppose the application for leave to appeal. This rule provides as follows:-

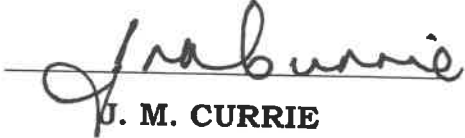
(4) ***“The respondent may file an affidavit in reply to the petition or motion within seven days from the***

date of service or within such longer period as the Registrar may allow.”

- [9] The respondent’s counsel appeared before this Court, not having filed any opposing papers and wished to rely purely on his heads of argument. In my view this is completely unacceptable conduct and the respondent had no right to be heard in the circumstances. The matter proceeded on the basis of the papers before the court purely in the interests of justice as the matter involves the welfare of three minor children.
- [10] As aforesaid, the terms of the court order dated 6th February are disputed by the parties. A variety of issues were raised before me but with respect they are not issues to be determined in this application. The issue I have to resolve in this application is a narrow one, namely, whether this is a proper case in which I could grant leave to appeal. There can be no doubt, in my view that leave ought to be granted and for the highest court in the land to deal with the issues in dispute.
- [11] The applicant’s counsel has applied that this matter be consolidated with the appeal lodged under Case **No. 6/2019** and I consider that to consolidate the two appeals is the correct way forward.
- [12] In the circumstances I make the following order:

- (a) The application for leave to appeal is granted.

- (b) These proceedings are consolidated with Civil Appeal filed under Case No. 6/2019.
- (c) Costs in the cause.


J. M. CURRIE
ACTING JUSTICE OF APPEAL

For the Appellant: **Mr. S. Dlamini**
MAGAGULA AND HLOPHE ATTORNEYS

For the Respondent: **Mr. B. S. Dlamini**
B.S. DLAMINI AND ASSOCIATES