IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 1901/98

IN THE MATTER BETWEEN

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| SABELO VUYOLETHU NKAMBULE | APPLICANT |
| VS UNIVERSITY OF SWAZILAND | RESPONDENT |
| CORAM | S.B. MAPHALALA - J |
| FOR APPLICANT | MR R. DHLADLA |
| FOR RESPONDENT | MR T. MASUKU |

JUDGEMENT

(17/08/98)

This is an urgent application for an order in the following terms:

1. Dispensing with the forms and service and time limits provided for in the rules of the court and to hear the matter as an urgent application.

2. That the respondent's decision to withhold the applicant's examination results for one academic year be reversed and set aside.

3. That in the event applicant is requested to write a supplementary examination, the respondent be directed to prepare a special supplementary paper/s and cause applicant to write same.

4. Directing that a rule nisi hereby be issued with immediate and interim effect returnable on a date to be determined by the court calling upon respondent to show cause why;

a) Paragraph 2 and 3 hereof should not be final.

b) Respondent should not be ordered to pay costs of this application.

5. Granting the applicant any further and/or alternative relief.



The application is duly supported by the founding affidavit of the applicant, which outlines facts in support of his case with various pertinent annexures.

The respondent has filed a notice of intention to oppose.

The matter came before me on the uncontested roll of the 14th August, 1998 and after hearing argument I reserved judgement to today.

Mr. Masuku in his spirited opposition argued from the bar points in limne. The first point taken was that the applicant has not shown urgency as envisaged by Rule 6 (25) (a) and (b) of High Court Rules which provides as follows:

a) In urgent applications, the court or judge may dispense with the forms and service provided for in these rules and may dispose of such matter and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as the court or judge, as the case may be, seem fit.

b) In every affidavit or petition filed in support of an application under paragraph of this subrule, the applicant shall set forth explicitly the circumstances which he avers the matter urgent and reasons why he claims he could not be afforded substantial redress at a hearing in due court.

Mr. Masuku submitted that the provisions of Rule 6 are peremptory. He directed the court attention to a decision by Dunn J in Humphrey H. Henwood vs Maloma Colliery Limited and another Case No. 1623/94 where the learned judge held that mere existence of some urgency does not permit an applicant to disregard the provisions of this rule.

The second point in limine contended is that it appears from the applicant's founding affidavit that the applicant seeks to review the proceedings of the Senate of the University and should therefore proceed in terms of Rule 53 of the rules.

Mr. Dhladla in reply submitted that in this case they are presently applying for an interim order not a final order.

These are the issues for determination. I have read the papers before me carefully and considered the points raised by Mr. Masuku and the reply by Mr. Dhladla thereto. It is my considered view that paragraphs 16, 17, 18, 19 and 20 prove urgency in conformity with Rule 6 (25) © and (b) of the High Court Rules. I am inclined therefore to grant the rule nisi in this matter.

Costs to be costs in the cause.

S.B. MAPHALALA

JUDGE