

IN THE HIGH COURT OF SWAZILAND

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CASE NO. 945/98

IN THE MATTER BETWEEN

DORBLY VEHICLE TRADING & FINANCE

COMPANY (PTY) LTD

APPLICANT

VS

INHLE TRANSPORT (PTY) LTD

RESPONDENT

CORAM

S.B. MAPHALALA - A J

FOR APPLICANT:

MR P. DLAMINI

FOR RESPONDENT:

MR L. MAMBA

RULING IN TERMS OF RULE 42 OF THE HIGH COURT RULES

(15/05/98)

For purposes of this ruling the respondent in the main application will be referred to as the applicant and the applicant as the respondent. Before proceeding with my ruling the papers filed by the applicant for rescission in terms of section 42 were badly drafted. The notice of application is referred to as "notice of application to resist summary judgement". However, I give applicant's attorney the benefit of the doubt that was merely an oversight.

Coming to the matter before court Mr Mamba launched an urgent application for the rescission of an order made by this court on the 24/04/98 in terms of Rule 42 of the High Court Rules. He submitted that this court acted in error in granting that order in that applicant had filed a notice of intention to defend and a notice requiring respondent to file security for costs with the Registrar as it was a peregrine company.

Mr Dlamini for the respondent strenuously opposed this application making a number of submissions and also made some concessions which I felt at the time were reasonable and still feel the same way this morning.

I have looked at the papers before me and listened carefully to the arguments by both counsel although there was a degree of cynicism on one side. However, this observation has not clouded my objectivity in this matter.

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When the order of the 24/04/98 the court was satisfied with the papers before it and that the matter was urgent. A return of service was duly exhibited to show that applicant had been served with the papers. There was no response ex facie the papers before court. It is not entirely correct to contend as Mr Mamba did that, the court granted the order in error. There was no error at all on the part of court in granting the order of the 24/04/98. There was no way the court would have known that the notices have been filed.

That was a matter known by the parties and the court was not privy to that knowledge. Even when the matter was argued yesterday the court was not shown these two crucial documents. These documents were not in the court file on the 24/04/98 when the order was made. I only got the documents at 4.00pm yesterday after I have spoken to the Registrar about this anomaly. It is a great mystery where these documents were all the time. It is my considered view that the circumstances of the case do not warrant the court to invoke Rule 42 of the High Court Rules. I thus dismiss this application on that ground.

On a minor matter Mr Mamba promised to furnish the court with certain authorities by the close of business yesterday but I still have not received them for whatever their worth, in view of what I just decided.

Now I come to the concession made by Mr Dlamini which I think in the circumstance of the case was fair and reasonable. I thus rule that the interim effect of the order be stayed for the parties to file papers in accordance with the rules of this court and the matter finally argued on the merits in the contested roll in due course.

Cost should be costs in the cause.

S.B. MAPHALALA

ACTING JUDGE