IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 2413/99

In the matter between

CHIOMA JAMES-MNADI	APPLICANT
And	
FIRST NATIONAL BANK OF SWD LIMITED	1st RESPONDENT
MRS E. DUNN	2ND RESPONDENT
Coram	SB. MAPHALALA – J
For the Applicant	MR. N. HLOPHE
For the Respondent	MR. J. KENWOOD

RULING ON RULE 6 (25) APPLICATION

(07/10/99)

Maphalala J:

This is an urgent application for an order inter alia. directing that a rule nisi issue with immediate effect calling upon the respondents to show cause on a date to be determined by this court why the first and second respondent should not be ordered to refund the applicant a sum of E14, 000 - 00 being money that was given to the respondents by the applicant and why the first and second respondents should not be ordered to pay the costs of this application at attorney-client scale.

The application is supported by the affidavit of the applicant. The matter appeared before me on the 1st October 1999 where the respondents filed a notice of intention to oppose the application. Mr. Henwood argued from the bar that on reading applicant's papers grounds for urgency have not been canvassed to satisfy the peremptory requirements of Rule 6 (25) of this court. On the other hand Mr. Hlophe advanced a contrary view. The court heard fullblown arguments on the question of urgency and in view of the lateness of the hour reserved its ruling to today.

Mr. Henwood is of the view that paragraph 21 which seeks to establish urgency falls short of satisfying the provisions of Rule 6 (25) more particularly (b) of the rale. The court was directed to the instructive judgement of Dunn J in Humphrey N. Henwood vs Maloma Colliery Limited and Attorney General Civil Case No. 1623/94 (unreported) where the learned judge thoroughly dealt with the requirements of Rule 6 (25) of the High Court Rule which is similar in both wording and meaning to Rule 6(12) of the South African rules. I am not going to discuss that judgement as I think it is well known to all legal practitioners practising in this court, if not, that particular practitioner who is ignorant of it is well advised to read it carefully and absorb the wisdom contained therein.

Mr. Hlophe contended in a spirited argument that applicant has satisfied the prescribes of the rule if one reads paragraph 19 together with paragraph 21 of the applicant's founding affidavit. He also invited the court to infer from the circumstances of this case that this matter is urgent. I must say, I find this argument ridiculous in the face of the clear wording of Rule 6 (25) to merit any consideration.

Without wasting too much time in this matter the applicant has dismally failed to satisfy the requirements of Rule 6 (25). Paragraph 21, which purports to do, so does not. Paragraph 19 does not even attempt to do so. The applicant has made no attempt to address the requirements of Rule 6 (25) (b) which reads as follows:

"(b) In every affidavit or petition filed in support of an application under paragraph (a) of this Sub-rale, the applicant shall set fourth explicitly the circumstances which he avers render the matter urgent and reasons why he claims he could not be afforded substantial redress at a hearing in due course (my emphasis)"

In the instant case this has not been done. The court is called upon to read between the lines and I must state categorically that I am not prepared to do that. The feeble argument by Mr. Hlophe that there would be no prejudice to the respondents if his client is granted a rule nisi without immediate effect is not only fanciful but overlooks the peremptory requirements of Rule 6 (25). I am not going to do such a thing.

The applicant has foiled to bring her application within the provisions of Rule 6 (25). The relief sought under prayer 1 for a waiver of the rules of court regarding notice and service of the application is in the circumstances refused. The applicant must proceed in the normal way under Rule 6 (10).

The relief under prayer 1 of the application is refused with costs.

S. B. MAPHALALA

JUDGE