

IN THE HIGH COURT OF SWAZILAND

DIESEL SERVICES LIMITED

Applicant

And

BP SWAZILAND (PTY) LIMITED

1st Respondent

ROB'S FILING STATION (PTY) LTD

2nd Respondent

THE MINISTER FOR TOURISM ENVIRONMENT AND COMMUNICATIONS

3rd Respondent

THE CHAIRMAN OF THE SWAZILAND ENVIRONMENT AUTHORITY

4th Respondent

MINISTER FOR NATURAL RESOURCES AND ENERGY

5th Respondent

THE ATTORNEY GENERAL

6 Respondent

Civil Case No. 4350/2006

Coram: **S.B. MAPHALALA** – J

For the Applicant: MR. L. MAMBA

For the 1st Respondent: MR. K. MOTSA

For the 2nd Respondent: MR. A. LUKHELE

For the 3rd to 6th Respondent: MR. VILAKATI

RULING

(On application for a postponement)

15th December 2006

[1] The 1st Respondent has applied that this matter be postponed to sometime early next year in this application which has been moved under a Certificate of Urgency. *Mr. Mamba* for the Applicant opposes the application for postponement but that the court issues an interim order in terms of prayers 1, 2, 3, 4, 5 and 6 of the Notice of Motion. *Mr. Lukhele* for the 2nd respondent also opposes the application for a postponement and agrees with the arguments advanced for the Applicant that a rule *nisi* should issue to protect the interests of their clients. For the Swaziland Government being 3rd to 6th Respondent their attitude is that Government will abide to whatever order the court issues. I listened to lengthy arguments on Wednesday for and against the application for a postponement.

[2] The basis for the application for a postponement by the 1st Respondent is that in view of the importance of this matter the parties ought to be given time to file their respective affidavits to aide a just decision in this case. In support of the 1st Respondent position *Mr. Motsa* took the court through the papers filed so far and he emphasized the need for all the parties in this case to file their affidavits. *Mr. Motsa* further highlighted the issue of prejudice that the court ought to weigh the prejudice on the parties in making a decision in this case. On the 12th December 2006, 1st Respondent's attorney addressed a letter to Applicant's attorneys stating, *inter alia*, that they were only instructed late on the afternoon of the 11th December 2006 and their client requested to have more time to file a substantive Answering affidavit as the one day was not enough and their officers who are well versed in this matter are in Durban, Cape Town and other parts of the South Africa. *Mr. Motsa* further directed to the court that the critical date in this matter is the 31st January 2007, and therefore the respondents are entitled to file their affidavits and the matter to be heard when the High Court opens next year.

[3] *Mr. Mamba* for the Applicant argued at great length against the postponement

and he also took the court to the affidavits filed of record to support his arguments.

[4] *Mr. Lukhele* for the 2nd Respondent also argued against the application for postponement taking the position that indeed this case is critically urgent and that the justice of the matter is that the application for postponement ought to be refused.

[5] I have considered all the arguments advanced in this regard and I am persuaded by the arguments by *Mr. Motsa* for the 1st Respondent that the Respondents be given time to file their opposition in this matter to aide a just decision in this matter. Clearly the Respondents have not filed any opposition in this matter except the 1st Respondent who has filed an Answering affidavit but is to file a more comprehensive affidavit deposed by the relevant officers based in Cape Town and in other cities of South Africa. In view of this state of affairs, I have taken the position that *Mr. Motsa* is correct that the matter be postponed to early January on a date to be agreed by the parties, so it is ordered.

**S.B. MAPHALALA
JUDGE**