

IN THE HIGH COURT OF SWAZILAND**NELSON MABUZA**

And

MAPHOKELA SHABALALA

Civil Case No. 4256/2006

Coram: S.B. MAPHALALA - J

For the Applicant: MR. S.P. MAMBA

For the Respondent: IN ABSENTIA

JUDGMENT14th September 2007

[1] Serving before court is an application for judgment by default for payment of a sum of E47, 732.11 being in respect of monies spent by the Plaintiff in preparation for a funeral. Interest thereon at 9% per annum and Costs of suit. The Plaintiff was granted the said default judgment pending further proof of the claim. On the 24 August 2007, the court heard *viva voce* evidence of the Plaintiff in proof as aforesaid.

[2] The brief facts of the matter are that on the 20 January 2006, Defendant moved an urgent application before this court wherein he prayed for an order interdicting and restraining the Plaintiff from burying and conducting the funeral of his wife Mrs Gastinah Mabuza at Dwalile on the 22nd January 2006 or any other day without the consent of the Chief of Dwalile, Maphokela Shabalala. The reason cited by the Defendant was that he had built his home in his area he was failing and/or refusing to pay allegiance to him as his directives and requests in terms of custom as his Chief.

[3] On the 20 January 2006, a rule *nisi* was issued calling upon the Plaintiff to show cause why an order interdicting and restraining him and/or any other person from burying and conducting the funeral of his wife on the 22nd January 2006, or any other date without the Defendant's consent should not be made final. As a result of the said order of court, the funeral could not proceed on the scheduled date and Plaintiff incurred costs as a result of the delay. On the 14 February 2006, the rule *nisi* issued on 20 January 2006 was discharged. The Defendant was also ordered to pay one half of the costs. The Plaintiff avers that he had spent E37, 191-99 in preparation for the funeral and stated that although he did not keep all the receipts, however, he referred the court to the annexure filed hereto as proof of some of expenses incurred.

[4] As stated earlier in paragraph [1] *supra* the plaintiff gave *viva voce* evidence before this court and submitted various receipts which were entered collectively as exhibit "A". In paragraph 7 of his affidavit in proof of damages the Plaintiff contends that he had spent a sum of E37, 191-99 in preparation for the funeral and that although he did not keep all the receipts he has however referred the court to the annexure hereto as proof of some of the expenses incurred.

[5] I have considered the above-mentioned annexures in paragraphs [4] *supra* and I have come to the considered view that the Plaintiff has led *viva voce* evidence in proof of the claim in the combined summons. The affidavit in proof of damages by the Plaintiff has proved this aspect of the matter.

[6] In the result, for the afore-going reasons judgment is granted in terms of prayers 1, 2 and 3 on the Notice of set-down with Registrar's stamp of the 11th July 2007.

S.B. MAPHALALA

J U D G E