IN THE HIGH COURT OF SWAZILAND

NONZWAKAZI E. GWIJI

Applicant

And

NELSON STANISLAUS ZEEMAN

Respondent

Civil Case No. 3919/2007

Coram: S.B. MAPHALALA – J

For the Applicant: MISS N. GWIJI

For the Respondent: MR. T. MOFOKENG

JUDGMENT

1st November 2007

[1] The Applicant is the mother of a minor child born out of wedlock with the Respondent who has taken the said child from their common household to his

individual place of abode. As a result of this state of affairs the Applicant has filed before this court an urgent application seeking a return to her custody of the said child and that a rule ***nisi*** to issue to operate effectively in the interim returnable on the 30th November 2007, calling upon Respondent to show cause why an order in terms of prayers 2 and 3 should not be made final. Further that Respondent should not pay costs of this application.

[2] The Applicant is an attorney of this court and is the mother of the above-cited minor child. She has also filed a Founding affidavit to the application and also advanced arguments herself when the matter was argued on the points ***in limine*** yesterday. In the said Founding affidavit the necessary averments are made in support of this application.

[3] The Respondent oppose the application and have raised from the bar three points ***in limine.*** The first point raised is that the Certificate of Urgency does not conform to the Rules in that it does not state succinctly the nature of the application. The second point ***in limine*** is that prayer 1 applies in ***ex parte*** applications. The third point is that the Founding affidavit fails to address Rule 6 (25) (a) and (b) of the High Court Rules.

[4] As a general principle, the Rules of court must be complied with as far as practicable, but in the case of urgency the court or Judge may disperse with the forms and service provided for in the Rules and may hear the matter at such time and place, and in such manner and according to that procedure, as the circumstances require. The more urgent the matter the more readily and more radically the provisions of the rules may be deviated from in a case of extreme urgency the matter may be proceeded without service on or notice to the Registrar, (see ***C P. Prest,***

The Law Practice of Interdicts 1956 Juta & Co. Ltd at page ***254*** and the cases

cited thereat).

[5] Having considered the arguments of the parties it is my view on the facts of this case that a rule nisi be issued to restore the ***status quo ante*** between the parties. The Applicant clearly is a preferred parent of the illegitimate child and custody of that child should be restored to her. As far as the technical points raised by the Respondent as stated above, I have come to the view that the Applicant had to draft the papers herself in such a highly emotional case where her child has been taken from her custody. It would be unfair to expect a properly drafted application. For this reason I would condone whatever defects as stated by the Respondent and grant a rule nisi in terms of the Notice of Motion, forthwith. I further rule that costs to be costs in the main application. The Respondent has to file opposing affidavits in accordance with the Rules of court.

S.B. MAPHALALA
JUDGE