



## IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 207/16

In the matter between:

**NIKIWE PURITY SIMELANE**

**APPLICANT**

**In re:**

**NIKIWE PURITY SIMELANE**

**APPLICANT**

**And**

**GEORGE NXUMALO**

**1<sup>ST</sup> RESPONDENT**

**INGCAYIZIVELE FARMERS ASSOCIATION**

**2<sup>ND</sup> RESPONDENT**

**Neutral Citation** : Nikiwe Purity Simelane vs George Nxumalo &  
Ingcayizivele Farmers Association (207/16) [2016]  
SZHC 193 (13 OCTOBER 2016)

**Coram** : MABUZA –J

**Delivered** : 13 OCTOBER 2016

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## SUMMARY

**This is an application for confirmation of a *rule nisi* issued on the 29 January 2016 in particular prayer 3 therein pertaining to interest at the rate of 9% per annum and costs.**

## JUDGMENT

### MABUZA J

[1] On the 29<sup>th</sup> January 2016, the Applicant obtained the following orders:

1. The usual forms and procedure relating to the institution of proceedings are dispensed with and the matter is allowed to be heard as a matter of urgency.
2. A *rule nisi* returnable on Friday 5<sup>th</sup> February 2016 is issued calling upon the 1<sup>st</sup> Respondent to show cause why an Order in the following terms should not be made final.
3. The 2<sup>nd</sup> Respondent is directed not to make payment, alternatively not to deliver cheque in payment to the 1<sup>st</sup> Respondent pending the final determination of a claim to be instituted by Applicant against 1<sup>st</sup> Respondent for payment of interest at the rate of 9% per annum and costs.
4. Pending the final determination of this Application, the 2<sup>nd</sup> Respondent be interdicted and restrained from making payment or from delivering cheque in

payment to the 1<sup>st</sup> Respondent in the sum of E60,000.00 (Sixty thousand Emalangeneni).

5. On service of this application on it and any order issued by this Honourable Court the 1<sup>st</sup> Respondent file within 5 days its opposing affidavit if any.
6. Directing that the 1<sup>st</sup> Respondent pays costs of this application.

[2] The Applicant now seeks confirmation of the rule.

[3] However, the application is opposed by the 1<sup>st</sup> Respondent.

[4] The background narrated by the Applicant hereto is that the 1<sup>st</sup> Respondent won a tender from the 2<sup>nd</sup> Respondent. The tender was for the supply and installation of irrigation equipment at the 2<sup>nd</sup> Respondent's farm situate at Nkambeni area.

[5] On or about the 24<sup>th</sup> April 2015, the 1<sup>st</sup> Respondent approached the Applicant and requested that they enter into a joint venture. He had the technical-know-how and she had the funds with which to purchase the material required to fulfil the tender. The tender was worth in excess of E263,000.00 (Two hundred and sixty three thousand Emalangeneni).

- [6] The parties entered into an oral agreement. Pursuant to the said agreement the Applicant handed over to the 1<sup>st</sup> Respondent the sum of E84,000.00 (Eighty four thousand Emalangeni).
- [7] The understanding was that whenever the 2<sup>nd</sup> Respondent paid the 1<sup>st</sup> Respondent, he would re-pay the Applicant.
- [8] The 1<sup>st</sup> Respondent denies that there was a joint venture between himself and the Applicant. He says that he borrowed money from the Applicant because she is a shylock. He had borrowed money from her in the past. He says that this time he borrowed the money on behalf of a company called Somaphongo Investments (Pty) Ltd in which he is a director. It is this company which was awarded the tender by the 2<sup>nd</sup> Respondent and not himself. He also states that the amount loaned to him was the sum of E40,000.00 (Forty thousand Emalangeni) with an interest of 20% per month. He says that during the discussion with the Applicant, he told her that the money was being sourced for the company.
- [9] The 1<sup>st</sup> Respondent attached a copy of an order from the 2<sup>nd</sup> Respondent (“GN2”) which is addressed to the said company.

- [10] The Applicant says that when the 1<sup>st</sup> Respondent was paid by the 2<sup>nd</sup> Respondent he failed to pay her.
- [11] The impression I have gleaned from these papers is that both the Applicant and the 1<sup>st</sup> Respondent are untruthful people
- [12] I say this because the Applicant has not been forthcoming that she is a shylock, because she would have to file a formal agreement between her and the 1<sup>st</sup> Respondent in terms of the Credit and Finance Act. She would have had to comply to that Acts lending amounts plus the interest legalized therein which is much less than shylocks charge.
- [13] She has not filed any proof of the amount that she actually handed over to the 1<sup>st</sup> Respondent. The amount of E84,000.00 (Eighty four thousand Emalangi) is a large sum of money to just hand over without any written record as proof.
- [14] The 1<sup>st</sup> Respondent has not filed any receipt of payment from himself or from Somaphongo Investments (Pty) Ltd as proof that he received only E40,000.00

from the Applicant even though he has filed a certificate of incorporation of the company.

[15] In desperation the Applicant lodged a complaint with the Royal Swaziland Police at Tshaneni Police Station. The outcome thereof was an acknowledgment of debt ostensibly authorized and signed by the 1<sup>st</sup> Respondent (Annexure “A”). It is signed by the 1<sup>st</sup> Respondent (debtor) before Sergeant 3187 who attested it and who is also a commissioner of oaths. It is not the standard acknowledgment of debt but it has sufficient details which confirms its contents. It clearly identifies the 1<sup>st</sup> Respondent as being indebted to the Applicant. It clearly states that he owes the Applicant the sum of E84,000.00 (Eighty four thousand Emalangeni). It clearly sets out how the payments are to be made.

[16] The amount of E30,000.00 (Thirty thousand Emalangeni) to be paid on or before 31/08/2015 and the balance of E44,000.00 (Forty four thousand Emalangeni) to be paid on or before the 22/09/2015.

[17] The contents of the acknowledgment of debt are in my view sufficient to bind the 1<sup>st</sup> Respondent to paying the Applicant.

[18] As a director of Somaphongo Investments (Pty) Ltd he is empowered to bind the company.

[19] A cheque payment was made to the Applicant subsequent to the drawing up and signing of the acknowledgment of debt. The amount therein is reflected as E30,000.00 (Thirty thousand Emalangeneni). The parties both admit that the sum of E10,000.00 (Ten thousand Emalangeneni) has been paid.

[20] At paragraph 7 (1) of his answering affidavit he says:

**“7.1 I humbly submit that on the 24<sup>th</sup> April 2015 I entered into an agreement with the Applicant whereby she was to loan me a sum of E40,000.00 (Forty thousand Emalangeneni) with an interest of 20% per month.”**

[21] However, it is not the interest of 20% per month which the Applicant seeks but interest at 9% per annum and costs which is the subject matter of prayer 3 of the court order dated 29<sup>th</sup> January 2016.

[22] The claim pertaining to interest has not been computed nor has a bill of costs been drafted to at least give the court an idea as to what sort of moneys are contemplated. Hence the order that follows:

- (a) The confirmation of the *rule nisi* is hereby suspended for (1) calendar month from the date of the judgment hereof.
- (b) During the interim period the Applicant is ordered to institute the claim in respect of prayer (3) of the order of court dated 29<sup>th</sup> January 2016 and failing compliance therewith, the rule be hereby discharged with no order for costs.

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Q.M. MABUZA  
JUDGE OF THE HIGH COURT

For the Applicant : Mr. du Pont  
For the 1<sup>st</sup> Respondent : Mr. Mthethwa