



## **IN THE HIGH COURT OF SWAZILAND**

CIVIL CASE NO. 373/93

**IN THE MATTER BETWEEN:**

**CASH AND CARRY (SWD) (PTY) LTD**

**VS**

**INTERCON CONSTRUCTION (SWD) (PTY) LTD**

<b>CORAM</b>	<b>:</b>	<b>MATSEBULA J</b>
<b>FOR THE PLAINTIFF</b>	<b>:</b>	<b>MR. DLAMINI</b>
<b>FOR THE DEFENDANT</b>	<b>:</b>	<b>NO APPEARANCE</b>

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### **JUDGMENT**

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By combined summons dated 19<sup>th</sup> March 1993, the plaintiff sued for (a) payment of a sum of E24 000 00; (b) cost of suit; (d) further and/or alternative relief.

The matter was initially opposed by attorneys from Robinson Bertram & Company who subsequently withdrew and then the attorneys from Currie & Company entered appearance to defend and there were certain pleadings which were conducted and they too subsequently withdrew. The present attorneys are supposed to be Howe & Company.

The matter came before this court on the 14<sup>th</sup> March 1997 on a date the plaintiff asked that judgment be granted against a certain legal entity ODI Driveways (Pty) Ltd and that the matter against the present defendant be postponed and placed on the contested roll. This was done. This morning when the matter commenced, Mr. Dlamini who is appearing on behalf of the plaintiff informed the court that the offices of Howe & Company have not sent any representative nor have they been in touch with him and there was no one representing the defendant. Therefore, Mr. Dlamini stated that his client had instructed him to proceed in

terms of Rule 39 (1), the rules of court and in the absence of any representative by the defendant. Mr. Dlamini further handed in a notice of set down dated 27<sup>th</sup> April 1999 and proved that this notice was served on the attorneys for the defendant, that is the present attorneys for the defendant on the 28<sup>th</sup> April 1999 at 12:19. He also referred the court to a minute that was signed by the parties. In terms of Rule 37, the parties agreed that notice period shall be a period of six weeks and according to Mr. Dlamini the six weeks had run by today and he asked to proceed with the matter. Mr. Dlamini also indicated that the plaintiff had in the meantime as against, ODI Driveways (Pty) Ltd asked an assessor to assess the damages suffered by the plaintiff and this assessor filed an affidavit dated 4<sup>th</sup> May 1998. The assessor being Harry O A Shirley who according to the affidavit is an adult-chartered architect attached to Harry O A Shirley Associates whose offices are situated at Logwaja Street, Extension 6, Manzini District.

According to Mr. Shirley, he submitted that the plaintiff had suffered damages in the amount of E14 137.65 not the initial amount that was claimed in terms of the summons. Mr. Diamond who is the director of the plaintiff has now given evidence in rebuttal of the pleadings which were entered into by the present defendant and has also asked this court to accept the affidavit in prove of damages by Mr. Shirley. He also asked that instead of the E24 000.00 which he initially asked for, he is now asking that the amount be E14 1367.65 and he is also asking under further and/or alternative relief that he be awarded 9% interest from 19<sup>th</sup> March 1993, that is when the summons was issued to date of payment and he is asking for costs.

The court is satisfied that the evidence given so far has proved on a balance of probability that the plaintiff is entitled to the amount which was assessed by Mr. Shirley. He is also entitled to the costs of these proceedings and to the interest of 9% per annum from March 1993 to date of payment and the court grants judgment accordingly.

J.M. MATSEBULA

JUDGE