

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.514/96

In the matter between;

SWAZILAND DEVELOPMENT & SAVINGS BANK

VS

JABULANI LUCAS MANANA

CORAM : J.M. MATSEBULA J

FOR THE PLAINTIFF : MR. FINE

FOR THE DEFENDANT MR. MANZINI

JUDGMENT

25/07/96

By summons issued on 29/02/96 Plaintiff sued Defendant for payment of;

- a) E23,242.74;
- b) interest on the said amount of 14% per annum;
- c) costs of suit.

Attached to the particulars of claim were annexures A1, A2, and A3 and annexure 'B'. Annexures A1 - 3 sets out statements of payment in respect of Account No.1L8737/03. Annexure 'B' is not very comprehensive but prima facie seem to be an application of either a loan or an overdraft facility of E31,750.00. There is a also opposite 'period' a figure of 20 years. This apparently is a period over which the loan/overdraft is payable at a repayment of E395.00 per month with effect from 20th December 1990.

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On the 25th March 1996 Defendant entered a Notice of Intention to defend and Plaintiff applied for summary judgment on 20th May 1996 which was resisted by Defendant in an affidavit filed with the Registrar on 12th June 1996. Defendant had also raised certain points in limine which points Mr. Manzini on behalf of Defendant abandoned before making his other submissions.

In his paragraph 5 Defendant states categorically that Plaintiff's clerk made an error and that it is not indebted to Plaintiff in the amount claimed or at all. In paragraph 6 Defendant refers to the Account No.1L8737/03 which is the same account as reflected in annexures A1 - 3. I have not been able to see how Account No.1L8737/03 is connected with annexure 'B' and how the amount of E31,750.00 has anything to do with amounts reflected in annexure A1 - 3. This difficulty is further compounded by what is contained in paragraph 9 in which paragraph Defendant refers to annexure A1 and to a credit of E32,290.67 was made. Annexure A1 reflects the E32,290.67 as a debit, but on 19th September 1991 the Account No.1L8737/03 a credit of E66,420.00 made. This entry is to me a mystery which needs to be explained by Defendant; and it can never be explained in an affidavit and has not been explained in Plaintiff's affidavit.

Now, summary judgment constitutes an extraordinary and a

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very stringent remedy in that it permits a final judgment to be entered against a Defendant and denying such Defendant an opportunity to be heard. Defendant has certain options open to him.

- a) He may opt to give security to the Plaintiff to the satisfaction of the Registrar for any judgment including costs which may be given or;
- b) satisfy the court by an affidavit delivered within certain time limits in which affidavit the Defendant should disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

Defendant has chosen the latter option and has filed his affidavit resisting the summary judgement.

The Plaintiff in its Replying Affidavit referred to annexure RA1 which is a copy of a letter written by Defendant whose contents purports to suggest that Defendant is infact admitting liability in the sum of E13,572.13. Now that sum mentioned in the letter is not the amount claimed in Plaintiff's particulars of claim.

Mr. Manzini who appeared for the Defendant stated in his address that he had had an explanation regarding the circumstances under which annexure RA1 was written, that is, the letter written by the Defendant. He was however denied

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the opportunity to advance the explanation because his client, the Defendant had not dealt with the issue in his Opposing Affidavit.

Between now and the time when this matter was postponed I have had an opportunity to consult authority in this regard and have found the following:

In AREND AND ANOTHER VS ASTRA FURNISHERS (PTY) LTD 1974(1)SA @ 314 B-C where it was held that Defendant is not precluded from raising issues relating to the validity of Plaintiff's application simply because he has not referred to these matters in his Opposing Affidavit. Infact, In MONSCHENSON AND MONSCHENSON VS MERCANTILE ACCEPTANCE CORPORATION 1959(3) SA 362(W) it was held that Defendant in an action for summary judgment may attack the validity of the application on any aspect, this, it was held, was inkeeping with the important fact that summary judgment was an extraordinary remedy and a very strigent one permitting judgment to be given without hearing the other party. This is referred to at Page 314 of Arend's case.

The objective of summary judgment is limited, that is, to enable a Plaintiff with a clear case to obtain a swift enforcement of his claim against a Defendant who has no real

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defence to that claim. The court can only afford this remedy to a Plaintiff who has in effect an unanswerable case against the Defendant and Defendant's intention to defend being an equivalent to an abuse of the process of the court. See in this respect, EDWARDS VS MENEZES 1973(1) SA 299 NC.

In the present case I find the Defendant to have made a prima facie case that he has not entered an appearance to defend solely for the purpose of delaying the action. He has infact a bona fide defence

to the claim.

Mr. Manzini also applied that costs be costs on an attorney and client scale. Costs on an attorney and client scale can only be ordered by a court where special grounds are present. These include but are not confined to:-

- a) the party against whom costs are ordered, has been guilty of dishonesty or fraud or that his motives have been vexatious, reckless and malicious or frivolous;
- b) in summary judgment applications - Plaintiff knew that the Defendant relied on a contention which would entitle him to leave to defend.

The present case, this in the court's opinion is not one case where it merits awarding costs on an attorney and client. In the result the summary judgment is hereby dismissed with costs on the ordinary scale.

J. M. MATSEBULA

JUDGE