

IN THE HIGH COURT OF SWAZILAND

CASE NO.2436/95

In the matter between:

SWAZILAND DEVELOPMENT & SAVINGS BANK PLAINTIFF

and

MOSES M. MATSEBULA DEFENDANT

JUDGMENT ON SUMMARY

JUDGMENT APPLICATION

Plaintiff issued summons against Defendant on 22nd January 1996 for payment of a sum of E44,351.83 being in respect of money alleged to be due and owing by Defendant to Plaintiff.

Paragraph 3 of Plaintiff's particulars of claim sets out the sum it claims Defendant owes and interest thereon being 24.5%. Plaintiff refers to copies of computer print out statements annexed to the summons marked A1-A5.

There is also a deed of hypothecation annexed and marked 'B' .

According to annexure 'B' Plaintiff undertook to advance to defendant sums from time to time not exceeding and an amount mentioned in the first schedule being the maximum of E21 00.00.

On the second schedule there are two different figures of interest written:-

2 i) On the maximum amount of E21,00 00 an interest of 25.5% is chargeable ii) Second schedule has a proviso setting out how the Defendant pays in instalments of the principal debt - which instalments axe charged an interest of 23 5%.

Third schedule sets out repayment of the money lent together with the interest being E5 250.00 plus interest to be paid on or before 30th September 1994 to 1996.

There is also annexed as a loan agreement form annexure 'C'.

Annexure 'C' reflects an amount of E5,000.00 being the loan and sets out the interest thereon at the rate of 24.5% and repayment being E600.00 per month and immediately under repayment is written as follows:-

E5,250.00 plus interest on or before 30th September 1991/94.

On 15th May 1996 Defendant entered notice of its intertion to defend and on 20th May 1996 Plairtiff applied for summary judgment accompanied by an affidavit of the Credit Manager. The application was resisted by the Defender t in an. affidavit dated 5th June 1996 in which Defendant states that it has a. valid and bona fide defence against Plaintiff s action and in paragraph 3.1 Defendant denies that it is indebted to the Plaintiff in the amount claimed or in any amount at all and in paragraph 3.1.1. sets up a valid defence in that for the first time in all the papers before

the court reference is made to certain farm implements which Plaintiff should have delivered to Defendant but failed and reference is made to annexure MM1 which was a letter written by Plaintiff agriculture manager contents self explanatory.

Plaintiff has denied the contents of Defendant's paragraph dealing with the annexure MM1. I find that the issues raised here are issues which should go to trial (see in this respect MONSCHENSON & MONSCHENSON .VS MERCANTILE ACCEPTANCE CORP 1959(3) SA 362(W) - where it was held that because of the extraordinary nature of summary judgment application Defendant may attack the validity of the application on any aspect.

In summary judgment application Plaintiff should present a case which is an unanswerable on the part of the Defendant and Defendant's intention to defend should be an equivalent to abuse of the process of the court - see EDWARDS VS MENEZES 1973(1) SA 299NC.

In the present application I cannot find this to be the case. I therefore dismiss summary judgment application with costs.

DATED AT MBABANE ON THIS 28TH DAY OF AUGUST 1996.

J. M. MATSEBUI

JUDGE