

CASE NO. 2415/96

IN THE MATTER BETWEEN:

**ASIKHUTULISANE SAVINGS & CREDIT
CO-OPERATIVE SOCIETY LIMITED**

PLAINTIFF

VS

RUTH MAKHOSAZANA DLAMINI

DEFENDANT

CORAM:

S.B. MAPHALALA-AJ

FOR PLAINTIFF:

MR MAVUSO

FOR DEFENDANT:

MR ANDRIAS LUKHELE

JUDGEMENT

Before me is an application for summary judgement for an order in the following terms:

- a) Payment of the sum of E152,537-17.
- b) Interest thereon at the rate of 9% per annum a tempore morae.
- c) Another declaring that the defendant's shares and savings in the sum of E35,000 be forfeited to the plaintiff,
- d) Collection commission
- e) Costs on the Attorney and client scale,
- f) Further and/or alternative relief.

The defendant has filed a notice of intention to defend.

The matter came before me on the contested roll of the 24th October, 1997 and I reserved judgement after hearing submissions for and against the application.

The brief history of the matter is that on the 8th November, 1996 the plaintiff and the

defendant entered into a written loan agreement the terms of which, inter alia, the plaintiff loaned and advanced a sum of E108,386-33 to the defendant at the defendant's special instance and request. That the loan agreement was subject to the plaintiff's constitution and bye-laws. That the loan would be repaid over a period of three years in monthly instalments of E4,276 commencing on the 30th November, 1996. The defendant pledged her shares and savings in the sum of E35,200 as collateral security for the loan. As additional security for the loan defendant signed another written agreement in terms whereof she pledges her two motor vehicle namely a Toyota Cressida bearing registration number SD 103 EG and a Toyota Corolla bearing registration number SD 748 DG.

In terms of the plaintiff's constitution and bye-laws the loan generates interest at the rate of 1.17% per month, defendant also incurs penalties in the event that she fails to make repayments in terms of the loan agreement. It was further agreed that in the event of any amount being claimed from the defendant by the plaintiff under the loan agreement a certificate by the treasurer or secretary of the plaintiff shall be sufficient and conclusive evidence as to the amount of the defendant's liability for the purpose of enabling judgement to be obtained against defendant in any court of law.

The defendant also accepted liability to pay interest, penalties, collection commission and plaintiff's legal costs on the attorney and client scale.

The defendant opposes the application for summary judgement and has filed an affidavit in opposition. She raised a point "in limine" that as a woman married in community of property she has no locus standi in judicio.

On the merits she admits that during 1996 she obtained a loan from the plaintiff. However, denies that plaintiff advanced and loaned her the sum of E108,386-33. She only applied for and was granted a loan of the sum of E35,000 as seen in her application from annexed and marked Annexure "A". That her collateral for such a loan were her shares valued at E35,000 which she had with the plaintiff. As additional security she offered her two motor vehicles to be sold in the event she failed to repay the said loan. She was to repay the loan by way of monthly instalments of E4,276. She denies that the agreement signed by her and the plaintiff provides that she pay interest, penalties, collection commission and plaintiff's legal costs at attorney and client scale.

She denies further that she only paid two instalments to the plaintiff and that she was in arrears with her payments. That she is presently up to date with her payments. She denies that she is presently indebted to the plaintiff in the sum of E152,537-17 as alleged or at all. She challenges the accuracy and corrections of the certificate of the treasurer on the grounds that the original loan granted to her was not the sum of E108,386-33 and that the computation of the original interest and penalty interest is based upon false and/or erroneous criteria contrary to law, equity and the agreement between the parties. As such by virtue of the false and erroneous computation the amount hereof is false and/or erroneous.

In the premises she admits that the plaintiff's claim is grossly overstated, and determination of the amount claimed by the plaintiff, if any, requires trail of issues involved.

Mr Mavuso for the plaintiff contended that it is abundantly clear from the papers before court that the is an equivocal acknowledgement of receipt of the money. That defendant was opposing this application merely to buy time and thus delay the proceedings.

Mr Lukhele for the crown on the other hand argued that plaintiff's claim is not provided by Rule 32 (1) of the High Court Rules. It is not a liquidated amount in money. His client challenges Annexure "c" being the treasurer's certificate. The loan agreement does not reflect the rate of interest. The computation of the interest is being disputed. That there are numerous disputes of facts and that this matter should go to oral evidence.

These are the issues before me. It is trite that the summary judgement procedure as provided by the rules has always been regarded as one with a limited objective to enable a plaintiff with a clear case to obtain swift enforcement of his claim against a defendant who has no real defence to that claim. The courts have in innumerable decisions stressed the fact that the remedy provided by this rule is an extraordinary one which is "very stringent" in that it closes the door to the defendant, and which will thus be accorded only to a plaintiff who has, in effect, an unanswerable case. (see Herbstein and Van Winsen the Civil Practice of the Supreme Court of South Africa (4th ED) at page 434).

In the case in casu it is my considered view that the liquidity of the document the plaintiff is relying on is questionable. There are numerous disputes of facts which can best be addressed in a full blown trial. Annexure "c" does not state what the rate of interest is and thus the computation to the figure of E152,537-17 is highly suspect.

I thus rule that the plaintiff was not prove a case for summary judgement to be granted.

The application is dismissed with costs.

S.B. MAPHALALA
ACTING JUDGE