IN THE HIGH COURT OF SWAZILAND CASE NO.1046/93 In the matter between: LUKE SIBANYONI APPLICANT AND DAVID P. MAMBA RESPONDENT NOTICE OF APPLICATION FOR RESCISSION OF DEFAULT JUDGMENT IN TERMS OF RULE 31(3)(b)

05/07/96

By a combined summons issued on 12/07/93 Plaintiff obtained judgment by default on II/03/94. Return of service indicating that summons was served at Defendant's place of employment Leites S.M.F. Villiers Street Manzini on Bongani Simelane being a storeman.

On 07/06/95 the judgment creditor moved an application in terms of Rule 45(2)A of the High Court Rules for a garnishee order. This order was served on the judgment debtor on 12/06/95 at the same address as indicated on the summons.

On 22/11/95 Defendant filed a notice of application for a rescission of the default judgment granted on 11/03/94. This application was opposed by Plaintiff by a notice of intention to oppose dated 23/11/95.

The matter has been postponed from time to time and on some occasions struck off.

2

Finally the matter was argued before me on 28/06/96.

Mr. Magagula appearing for the Applicant stated that the service on Defendant was not personal and consequently it never reached him or came to his notice.

Mr. Magagula stated that defendant had a bonafide defence to the action of the motor vehicle collision. Defendant also challenges the amount granted for damages. Mr. Magagula also told the court that the applicant had complied with the requirement of paying security.

The founding affidavit of applicant was very scanty and referred to an annexure 'A' which was not annexed to the affidavit. The annexure 'A' was supposed to have been signed on 20/10/94.

On 28/10/94 applicant filed an additional affidavit this still did not have annexure 'A. The annexure 'A' was an important document because it indicates the date on which Applicant became aware of the existence of the default judgment. It would have been on this date that Applicant would start counting the numbers of days to comply with the time limit within which to apply for a rescission of judgment.

The application for a rescission of judgment is only made on

3

22/11/95 - a year after applicant had become aware of the existence of the judgment.

In the additional affidavit applicant states in paragraph 4 that (I quote), "I have a bonafide defence in that I deny that I drove negligently and that the collision was due to my negligence. This is clearly insufficient for purposes of showing a good cause. Applicant must set out briefly how he alleges plaintiff was negligent and not him. In this regard see Nathan (Pty) Ltd vs All Metals (Pty) Ltd 1961(1) SA 296(N) at 29B F-G.

In the result, the application for a rescission of judgment is dismissed with costs.

BY ORDER OF THE COURT GIVEN UNDER MY HAND AT MBABANE THIS 1ST DAY OF JULY 1996

J. M. MATSEBULA

JUDGE