IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 970/96

In the matter between:

SWAZILAND DEVELOPMENT AND SAVINGS BANK PLAINTIFF

and

LAWRENCE MFANA MNCINA DEFENDANT

CORAM: MATSEBULA J

FOR THE PLAINTIFF: MR. KHUMALO

FOR THE DEFENDANT:

SUMMARY JUDGMENT RULE 32(1)

29/11/96

Plaintiff issued a combined summons case no. 970/96 against defendant Lawrence Mfana Mncina on 23rd April 1996 claiming judgment for the following:-

- a) Payment of E60 000.00;
- b) Interest thereon at the rate of 24.5% a calculated from the 22nd September 1995 to date of final payment;
- c) Costs of suit;
- d) Further and/or alternative relief annexed to the summons were annexures 'A' 'B' C and 'D .

 Annexure 'D' purports to be a surety and co-principal debtor. Paragraph 7 of Plaintiff's particulars or claim states and I quote:

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- 7. "On or about the 2nd May 1991 and at Mbabane the defendant signed a written Guarantee a copy of which is annexed marked 'D'
- 8. In terms of such Guarantee:
- 8.1. the defendant bound himself as surety for the company and co-principal debtor with the company subject to a limit of an amount of E60,000.000;
- 8.2. the defendant renounced the benefit of legal exceptions of benecium ordinis seu execursionis. End of quote.

On 4th June 1996 plaintiff applied for default Judgment. On 13th June 1996 the defendant through the offices of Howe and Associates filed an intention to defend and the parties agreed on 14th June 1996 that the matter should take its normal cause.

On 9th July 1996 the defendant on a notice of motion moved an application under Rule 30 of the High court Rules asking the court to set aside plaintiff's combined summons as being irregular in terms of that rule and asking for costs.

The application by defendant in terms of Rule 30 - complied with subsection (1) and the proviso and subsection (2).

On the 19th July the matter was postponed to the 26th July on which date my brother SAPIRE A.C.J. ordered the plaintiff/Respondent to:

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- (i) file a full and clear copy of annexure 'D'
- (ii) date of signature;
- (iii) costs of the cause.

On 11th July 1996 plaintiff/respondent filed a notice to oppose and filed a counter application in which leave was sought to remove the cause of complainant in terms of Rule 30 and attached to the application annexure 'A' a photo copy with a signature purporting to be one of Lawrence Mncina.

Annexure A' had no signature of the two witnesses on the space provided for.

On 20th September 1996 Plaintiff applied for summary judgment which application was opposed by defendant defendant filing affidavit on 18th September 1996. Defendant challenged plaintiff's deponent Philemon Mathokoza Makhubu's competency to depose to the affidavit supporting the application for summary judgment and goes on to refer to annexure 'D' and "D1'. Annexure 'D' has a signature supporting to be that of on Lawrence Mncina but undated and in the space provided for signature by witnesses there is no signature and the word 'Mbabane' is not there.

Annexure "D1" has a signature purpoting to be that of Lawrence Mncina it is dated and there are two signatures of witnesses and the word Mbabane is there.

Defendant argues that the two documents differ materially and defendant wishes to have the plaintiff called to the

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witness stand to explain this difference in the two documents - both purporting to be in support of the E60,000.00 claim.

The court mero muthu, has noted that the combined summons of the 23rd April 1996 cites Lawrence Mfana Mncina as defendant and has not cited Peak Construction (Pty) Ltd in respect of whom the overdraft facilities in terms of annexure 'A' 'B' and 'C' would have been advanced to it as company defendant.

Mr. Khumalo for plaintiff has referred the court to Rule 32 (4) and asked the court to exercise its discretion and compare the signatures on the two documents and to find that they belong to one and the same person. There are a number of difficulties with the approach suggested by Mr. Khumalo.

Firstly, it is not the court's duty to decipher handwritings. The parties must prove this by evidence. The defendant has denied that he ever signed the documents.

Secondly there must be some explanation on how these two documents originated This can be done by human being going into the witness stand and explaining. The objective of summary judgement is limited. It is to enable a plaintiff with a clear claim to obtain a swift enforcement of his claim against a defendant who has no real defence to that claim but has entered intention to defend for the purposes

of delay. In other words the plaintiff must come with an unanswerable case against the defendant.

The defendant's intention to defend must be an equivalent to an