



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