## IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 1923/95

In the matter between

SWAZILAND GOVERNMENT 1st Plaintiff

ATTORNEY GENERAL 2nd Plaintiff

and

SIPHO DAVID MABUZA Defendant

CORAM: DUNN J.

FOR THE PLAINTIFF: MISS SHONGWE

FOR THE DEFENDANT: MR Z. MAGAGULA

**JUDGMENT** 

(19TH SEPTEMBER 1996)

This is an application for summary judgment. Summons were issued against the defendant, a former employee of the plaintiff, on the 7th September 1995 claiming payment of the sum of E22 203.69, being the balance of a loan of E29 000.00 made by the plaintiff to the defendant. The application is opposed by the defendant.

The defence raised by the defendant Is that he has a "bona fide counter-claim against the plaintiff for payment for more money" than that claimed by the plaintiff. The defendant gives details of his employment by the plaintiff as a Senior Magistrate. He states that he resigned from his post on the 7th February 1994. He further states that he was arrested on the 8th March 1994 and interdicted from work with effect from the 11th March. No explanation is given of the relevance of the averment of his interdiction, given his resignation on the 7th February. He sets out at paragraph 3.3 that his interdiction was revoked with effect from the

2

1st August 1994, with an order by the Chief Justice that he be paid his salary "which had been unlawfully stopped as from April 1994" Reference is made in that regard to an annexure 'B' which for some unexplained reason has not been annexed to the answering affidavit. The defendant proceeds to state at paragraph 3.4 " According to the Civil Service Regulations read together with the Judicial Service Commission under which I had been interdicted 1 was supposed to serve 3 months notice from the date of resignation and I was supposed to be paid my full salary during this period." Here again, the relevance of the 3 months notice the defendant states he was required to serve is not explained, given his earlier resignation. There is no allegation by the defendant that he has not been paid any salary which was due to him following his resignation.

The defendant next states (paragraph 4) that the plaintiff is liable to him in the sum of E26 062.19. No details are given of how this amount is arrived at. It is then alleged at paragraph 5 that on the 1st day of April 1994" all Civil Servants were awarded a salary increment of 13.5 %. This increased the salary due to me by E502.63 per month." The defendant finally submits at paragraph 6 that "the above sums

added together and increased by 9% interest from April 1994 to date hereof (3rd June 1996) amount to E31 346.48" Once again the basis for the defendant's claim to a higher salary is not explained. No indication is given as to the number of months for which the defendant claims the increased salary.

No basis is set out for the 9% interest claim from April 1994 to the 3rd June 1996.

Whilst it is open to a defendant in an application for summary, judgement application, to raise a counter-claim as a defence, it is well settled that sufficient detail must be

3

given of such claim so as to enable the court to decide whether it is well founded. See Herbstein and Van Winsen, THE CIVIL PRACTICE OF THE SUPERIOR COURTS IN SOUTH AFRICA 3Ed 306 and the authorities there cited. The defendant has paid no attention whatsoever to this requirement.

Summary judgment is granted as prayed with costs.

B. Dunn

**JUDGE**