

IN THE HIGH COURT OF SWAZILAND

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CASE NO. 2557/96

IN THE MATTER BETWEEN:

ELMON MAGONGO

APPLICANT/RESPONDENT

VS

FANIYA HLOPHE

RESPONDENT/APPLICANT

CORAM:

MR S.B. MAPHALALA - A J

FOR APPLICANT:

MR NKAMBULE

FOR RESPONDENT:

MR KHUMALO

RULING ON POINTS IN LIMINE

(21/11/97)

There is an application that has been brought by the respondent for a rescission of an order of this court made on the 9th September, 1997. The import of that order was declaring the applicant as a lawful possessor in terms of Swazi Law and Custom, of the premises upon which the respondent had built his homestead at Egebeni area in the Manzini Region. That order was granted by default of appearance by the respondent.

The respondent in the present application who was applicant has raised a point in limine that this application is irregular and must be dismissed with costs on the grounds that applicant brought the application in terms of Rule 31 (3) (b) of the High Court Rules which deals with default judgements in matter brought by way of summons.

The applicant as represented by Mr Nkambule opposes the objection in limine on the ground that this application falls under this rule. Even if it does not fall under this rule the common law should apply.

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I agree with Mr Khumalo that this application was brought under a totally irrelevant rule of court. The rule applies to default judgement in actions brought by way of summons "where the claim is of a debt or liquidated demand.... ". The rule cited by the applicant being Rule 31 (3) (b) prescribes that a defendant seeking a default judgement is to furnish to plaintiff security for the payment of the costs of the default and such application to a maximum of E200-00 applicant's papers were badly drawn and an application was brought under an irrelevant rule of court.

I am not going to outrightly dismiss this application which I can, but will allow the applicant to amend his papers and for him to pay wasted costs incurred on the day the matter came for arguments and

today's wasted costs.

S. B. MAPHALALA

ACTING JUDGE