

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.259/98

In the matter between:

LEO WILSON MCABANGO MAZIYA

PLAINTIFF

and

RHINO HOLDINGS (PTY) LTD

RESPONDENT

CORAM:

MATSEBULA J

FOR THE PLAINTIFF:

MR MANZINI

FOR THE RESPONDENT:

MR VBLAKAZI

JUDGMENT ON APPLICATION FOR SUMMARY JUDGEMENT

The Applicant moved a notice of motion on 4th February 1998 under a certificate of urgency for the following prayers:

1. That a rule nisi does hereby issue calling upon the Respondent to show cause on a date to be fixed by the court, why:-

1.1 the Sheriff of Swaziland or his lawful deputy for the Manzini Region or any other authorised person should not be directed and authorised to attach any movable goods found on Lots 217 and 218, Matsapha Town pending the finalisation of an action to be instituted By the Applicant against the Respondent for:-

- (a) Cancellation of the lease agreement between Applicant and the Respondent.
- (b) Ejectment of the Respondent from Lots 217 and 218 Matsapha Town.
- © Costs of suit.

The court ordered the Applicant on 6th February 1998 to file the papers for the intended action and on 9th February 1998 the Applicant issued summons with prayers similar to the ones in the application under the certificate of urgency of the 6th February 1998. The Plaintiff in the particulars of claim also annexed to the summons a copy of a written lease of agreement marked 'A'.

1

The Defendant filed a notice of intention to defend on 8th April 1998. On the 8th May 1998 the Plaintiff moved for a summary judgement which was resisted by the Defendant in his affidavits filed by the respective parties and arguments were heard by this court on 19th June 1998 and I reserved judgement on the matter.

Mr. Manzini on behalf of the Applicant based his argument mainly on the contents of annexure 'A' the memorandum of agreement of the lease. Mr. Manzini referred the court to Clause 15 of the lease agreement which provides in a part that if the tenant (Defendant) shall commit a breach of any stipulation or condition of the lease, the landlord (Plaintiff) shall be entitled, notwithstanding any previous or existing waiver of any right of entry forthwith to declare this lease cancelled and terminated. Mr. Manzini asked the court to grant the prayers sought by the Plaintiff based on this provision. The difficulty I have encountered with this contention is that Plaintiff entered into this lease agreement which has many flaws, for instance

clause 16. This clause deals with procedure to be followed in the event notices to the respective parties are given but fails to give the necessary address in respect of clause 17 as to where the landlord is to be traced.

Clause two is worded in such a way that there ought to have been some written instruments indicating the people to whom payment by the Defendant may be made. Indeed the Defendant made payments to various persons as mentioned in paragraphs 8 and 9 of its affidavit and states that the Liquor Distributors are keeping with them an amount of E20,000.00 which should be accounted for. If this is the true then the total amount paid by Defendant to date is far in excess of the E55,000.00 claimed by the Plaintiff.

The summary judgement being an extra-ordinary remedy at the disposal of the Plaintiff the Plaintiff should present an unanswerable and unarguable case before the court can grant summary judgement. Summary judgement is refused with costs.

J.M. MATSEBULA

JUDGE