

IN THE HIGH COURT OF SWAZILAND

a:Nsingwane

BONGI NSINGWANE

vs

THOKO SHONGWE

CIV. CASE NO. 2129/97

Coram Sapiro, A C J

For Applicant Mr. Masuku

For Respondent Mr. Vilakazi

JUDGMENT

(09/06/98)

This is an application for rescission of judgment. An order has already been made pending the outcome of this application that execution on the judgment be stayed.

It seems that the argument that the Default judgement granted on an amended summons which was never served upon the Defendant should be set aside must be upheld. Although it was argued that the amendment was of no material significance, this argument is belied by the fact that the plaintiff found it necessary to make the amendment. The Defendant should have been given an opportunity to react to the amended summons.

1. The judgment entered against the applicant in favour of the respondent in this matter on the 24th October 1997 is rescinded and set aside.
2. The costs of this application in so far as the application is unopposed are to be costs in the cause but costs occasioned by opposition are to be paid by the respondent/plaintiff.

S.W. SAPIRE

ACTING CHIEF JUSTICE