

IN THE HIGH COURT OF SWAZILAND

CIV.CASE NO.1263/98

IN THE MATTER BETWEEN

SIHLE NDLANGAMANDLA

PLAINTIFF

VS

HAMBA MFANA INVESTMENTS (PTY) LTD

DEFENDANT

CORAM

S.B. MAPHALALA - A J

FOR PLAINTIFF

MR SIMELANE

FOR DEFENDANT

MR HOWE

JUDGEMENT

(31/07/98)

Before court is an application set down in terms of rule 30 of the High Court Rules for an order in the following terms:

1. That the notice of intention to oppose (my emphasis) filed by the defendant dated the 9th day of July, 1998 be set aside as irregular on the grounds that defendant should have filed a notice of intention to defend (my emphasis) the action.
2. That the defendant pays costs of this application.
3. Further and/or alternative relief.

The matter came before me for arguments on the 24th July, 1998. The application was argued by Mr Simelane who contended that a notice of intention to oppose is only filed in motion proceedings not in action proceedings as the present case. Further, that plaintiff is not obliged or rather that there is no duty on him to give the other party notice because the document had an effect on the dies induciae.

On the other hand Mr. Howe argues that the difference is that of form rather than essence. The essence of the matter is that defendant is opposing the matter. He argued further that the other party suffer no prejudice in the matter. It is a clear case of error to use wrong wording.

This is the issue before me. Mr Simelane is entirely correct in his contention that a notice of intention to oppose is used when one is opposing motion proceedings and a notice of intention to defend on action proceedings according to normal practice. There seem to be a fine line between the two and I have tried unsuccessfully to find authority to explain the reason behind the difference and whether a party who uses one form instead of another would render his act fatal so as to be visited by the rigours of rule 30. That as it may, I accept Mr Howe's explanation that this was clear case of error. For this reason I am not going to grant the order in terms of rule 30.

In the result, I rule as follows:

1. That defendant amend its papers to conform with normal practice;
2. The defendant also pays wasted costs.

S.B. MAPHALALA

ACTING JUDGE