



# IN THE HIGH COURT OF SWAZILAND

*CIVIL CASE NO. 1368/98*

*IN THE MATTER BETWEEN:*

**CLIFFORD HOLDINGS (PTY) LTD**

**PLAINTIFF**

**Vs**

**SWAZILAND GEARBOX DIFF CENTRE (PTY) LTD      DEFENDANT**

**CORAM** : **MATSEBULA J**  
**FOR THE PLAINTIFF** : **M/S ZWANE**  
**FOR THE DEFENDANT** : **MR. NXUMALO**

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**JUDGEMENT DATE**

**23/04/99**

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By summons issued on 11<sup>th</sup> June 1998, Plaintiff in its particulars of claim prayed for the following reliefs:

- (i) Payment of the sum of E21, 450.00.
- (ii) Interest thereon calculated from date of issue of summons.
- (iii) Costs of suit.
- (iv) Further and/or alternative relief.

On 2<sup>nd</sup> December 1998 Defendant filed its notice of intention to defend and on 4<sup>th</sup> February 1999 Plaintiff filed a notice of application for summary judgement accompanied by an affidavit in support of the summary judgement application deposed to by one Kobla Quashie.

Quashie verifies Plaintiff's/Applicant's cause of action against Defendant in its paragraph 4 of its affidavit, and states in paragraph 5 that Defendant/Respondent has entered a notice of

intention to defend solely for purposes of delay and that it has no *bona fide* defence to the claim by Plaintiff/Applicant.

On 18<sup>th</sup> February 1999 Defendant/Respondent filed an affidavit resisting the summary judgement application one Thobile Patricia Dlamini deposed to the affidavit. Defendant/Respondent has set out its defence in paragraph 4 up to 4(d).

I do not propose to repeat the defence in this judgement but can only point out that Plaintiff/Applicant in dealing with paragraph 4 – 4(a) admits averments in 4(c) and denies others and puts Defendant/Respondent to prove those averments it denies. Now clearly Plaintiff's/Applicant's attitude already indicates that the matter ought to have been allowed to proceed to a pleading stage.

M/s Zwane requested the court to allow Plaintiff/Applicant to replicate even though M/s Zwane referred to replying affidavit, it is infact a replication because Plaintiff/Applicant had already replied.

It has been held on numerous occasions in matters involving summary judgement applications that a court can only grant this application if the Plaintiff's/Applicant's case viewed against the Defendant's/Respondent's case amounts to an abuse of the court's process and that Plaintiff's/Applicant's case is an unanswerable one. (See **AREND VS ASTRA FURNITURES (PTY) LTD 1974 SA298 ©** and **MAHARA J VS BARCLAYS NATIONAL 1976(1) SA418(A)**).

I accordingly agree with Mr. Nxumalo for the Defendant/Respondent that has a *bona fide* defence and has not entered intention to defend solely for the purposes of delay. The application is dismissed with costs

J.M. MATSEBULA

JUDGE