

IN THE HIGH COURT OF SWAZILAND

Civil case no. 543 99

In the matter between:

SWAZI WIRE INDUSTRIES LTD	APPLICANT
VS ROBERT LOBIZWANE	DEFENDANT
CORAM	: MATSEBULA J
FOR THE PLAINTIFF FOR THE	DEFENDANT

JUDGEMENT ON PROVISIONAL SENTENCE SUMMONS

IN TERMS OF RULE 8(1)

14/05/99

The Plaintiff issued a provisional sentence summons on 3rd March 1999 against the Defendant and listed three claims:-

1. Claim A in respect of A cheque for an amount of E5 059 47 drawn by the Defendant in favour of one AA Abdulla or bearer dated 30th June 1997 on Barclays Bank of Swaziland Ltd (Malzini Branch).

On the 12th September 1997 the said Abdulla endorsed the cheque payable to the order of Swazi Wire and signed the endorsement accordingly. Swazi Wire is therefore Plaintiff.

The said cheque was duly presented to the bank by Plaintiff when it was due and payable and the presentation being for payment. The cheque was dishonoured by non-payment and referred to the Plaintiff marked "Payment stopped."

Plaintiff has dispensed with notice of dishonour under Section 49(2)© of the SWAZILAND BILLS OF EXCHANGE ACT NO. 11/1902 in that the drawee bank was in no obligation to accept or pay the cheque and also the drawer had countermanded payment. The Plaintiff has duly annexed a copy of the said cheque marked "A" and during the hearing of this matter the original was handed in.

In respect of claims "B" and "C" the same state of affairs as in claim "A" obtains. For convenience sake, I do not propose to go into details on these claims suffice it that although the cheques, bearing the same amounts, were presented at different dates the modus operandi was exactly the same.

The Defendant does not deny its signature on the three cheques. The defence raised by Defendant is that the drawee one Abdulla had failed to complete certain fencing to the satisfaction of the Defendant and Defendant consequently stopped payment of the said cheques to the said AA Abdulla or to any other person receiving title from Abdulla.

The defence raised by Defendant cannot avail him in terms of Section 37 of the BILLS OF EXCHANGE ACT 11/1902, Plaintiff has a right of election. Plaintiff has elected to sue Defendant and Defendant's signature appears on all three cheques.

In the result the court grants provisional sentence against Defendant in terms of :-

- (a) 1. Claim "A" E5 059 47.
2. Claim "B" E5 059 47.

3. Claim "C" E5 059 47.

- (b) Interest of 9% a tempore morae on each amount.
- (c) Costs of suit.

J.M. MATSEBULA

JUDGE