



SWAZILAND HIGH COURT

ABSA BANK LIMITED
Plaintiff

vs

Du-Plesis Jacobus Christoffel (Jnr)
Du-Plesis Magdanene Cornelia
Defendant

Civ. Trial No. 2391/2000

Coram

Sapire, CJ

For Plaintiff
For Defendant

Adv. P. Flynn
Mr. P.M. Shilubane

JUDGMENT
(25/09/2001)

This is an application for summary judgment. The applicant/plaintiff's claim is set out in an amended summons, which clearly indicates that the plaintiff is a commercial bank that treated the first and second defendants as customers.

The first defendant opened a current account with the plaintiff on the 8th May 1999 and authorised the 2nd defendant to operate on this account. The account was subject to the normal rules applicable thereto and over a period of time the 1st defendant withdrew amounts on the account and eventually a balance of E54 684.00 was owing on this account.

The plaintiff prays for judgment against the 1st defendant and the 2nd defendant jointly and severally the one paying and the other to be absolved. On looking at the papers this does not seem to me that it is possible to give judgment against the 2nd respondent. This being so

because the customer according to paragraph 4 is first defendant 2nd defendant on the account merely as agent for the 1st defendant. The defendant has not filed an affidavit but has raised points as follows:

1. The first is that there is no allegation in the plaintiff's amended particulars of claim that the plaintiff's claim is for monies lent in advance. This point is ill conceived because the withdrawing on current accounts amounts to a loan and it is not necessary for the words "*lent and advanced*" specifically to appear.
2. There is no allegation that the defendants agreed that they would be bound by the certificate of balance. There is such an allegation in the summons and the particulars of claim. The Defendants have not traversed it at all, and the allegation has not been contraverted.
3. The point raised in relation to the power of attorney authorising the second defendant to operate on the account has no merit whatsoever. No denial of the allegation that the second Defendant was so authorised has been made.

In view of these considerations there is no substance in the legal points raised. As there is no affidavit on the merits summary judgment ought to be entered against the first defendant. I accordingly enter summary judgment against First Defendant in favour of the plaintiff for:

1. payment of a sum of E54 684.00
2. interest of this amount at the rate of 14.5% calculated from the 28th June until date of payment;
3. costs on the attorney and own client scale

SAPIRE, CJ