

SWAZILAND HIGH COURT

WINILE DLAMINI

Plaintiff

Vs

CHARLES MASEKO

Defendant

Civ, Case No. 1127/2000

Coram SAPIRE, CJ

For Plaintiff Mr. Z. Magagula

For Defendant No appearance

JUDGMENT

(22/02/2002)

This is an application of rescission of judgment essentially. I have read the papers and pondered over the problems raised by the applicant. The chief reason why the applicant says he did not enter the appearance to defend timeously was because he was not able to raise a deposit to engage attorneys.

Normally speaking this is not an acceptable or excusable reason for being in default. It is always open to each litigant to appear in person and to, if necessary, approach the Registrar to see what has to be done.

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But there are other considerations which apply. It does seem as though a notice for intention to defend had been filed even before default judgment had been granted and in those circumstances it is proper to at least give the defendant further notice to afford him an opportunity of applying for condonation if this is to be done.

The amount of judgment in this matter is a big award and it is true that the applicant as she claims is in dire need, having been injured in an accident which she says was the fault of the applicant in this matter, nevertheless it does not seem to me as though the judgment is going to help her if the debtor this is the person who even found difficulty of finding E350.00 to instruct an attorney bearing in mind that the judgment is in excess of E1 million.

But be that as it may this is a case which I think the proper way to be dealt with is that rescission should be granted and the defendant would be ordered to file a plea within seven days and once a plea has been filed the plaintiff would be free to call a meeting in terms of Rule 33 bis in order to determine a date for the hearing of the case. In this connection also as it seems that the plaintiff's defence will rest on technical matters the evidence of the technical expert is to be filed within 7 days of the plea.

SAPIRE, CJ