

THE HIGH COURT OF SWAZILAND

RANBAXY (SA) (PTY) LTD T/A

RANBAXY LABORATORIES

Applicant

And

SWAZI PHARM WHOLESAL (PTY) LTD

Defendant

Civil Case No. 1878/2003

CORAM : S. B. MAPHALALA - J.

For Plaintiff : Mr P. Dunseith

For Defendant : Miss L. S. Masango

JUDGEMENT

5/12/03

Before Court is a notice in terms of Rule 30 (1) where it is alleged by the Defendant that the Summary Judgement Application filed by the Plaintiff is inappropriate in that there is a pending issue in respect of security for costs which has not been determined and resolved By the Registrar of this Court.

The Plaintiff on the other hand opposes the Rule 30 notice on the basis that a demand for security for costs does not automatically stay the proceedings. It is contended in this regard that a party must apply to Court on notice for an order that proceedings be stayed, and this can only be done if the other party has failed to furnish security in the amount fixed by the

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Registrar per Rule 47 (3). In casu, the Defendant is not yet entitled to a stay of proceedings. Moreover, the Defendant has not applied for a stay.

It is contended further that in the absence of an Order that proceedings be stayed; there is no reason in law why an application for summary judgement cannot be made. Such Application is not in the circumstances an irregular proceeding, and the Defendant's notice in terms of Rule 30 (1) should be dismissed.

Furthermore, it is contended on behalf of the Plaintiff that since the Defendant has not filed an Affidavit opposing summary Judgement, the Plaintiff is therefore entitled to judgement as prayed.

In the case of First National Bank of South Africa Ltd Vs Paul Zondikhaya Shabangu Civil Case No.1956/98 Sapire CJ. (as he then was) dealt with a similar question and in my view, the learned Chief Justice correctly concluded as follows: And I quote;

"There is nothing in the Rule, which stays proceedings pending the decision of the Registrar on the amount of security to be furnished."

I agree with the views expressed by the learned Chief Justice in the above cited case and I must say that

I had occasion to apply the dictum propounded in that case in the case of E. I. S. Marketing (Pty) Ltd Vs Millennium Oil Mills (Pty) Ltd and Another Civil Case No.1069/2003 (unreported).

Having found that in terms of Rule 47 there is no automatic stay of proceedings it behoves me to therefore decide the application for summary judgement. The Defendant has not filed an affidavit opposing summary judgment, therefore Plaintiff is entitled to judgment as prayed for.

In the premise, the application in terms of Rule 30 is dismissed. Further the summary judgment is granted with costs.

S.B. MAPHALALA

JUDGE