

THE HIGH COURT OF SWAZILAND

EMELYN GININDZA

Plaintiff

And

**THOMAS BOAHEN t/a INSTITUTE OF PROFESSIONAL
STUDIES HIGH SCHOOL**

Defendant

Civil Case No. 3453/2004

Coram:	S.B. MAPHALALA - J
For the Plaintiff:	MR. M. SIMELANE
For the Defendant:	MR. MABUZA

JUDGMENT

(12th July 2006)

[1] The issue for consideration presently is the Defendant's contention that it has been wrongful cited in these proceedings in that this action is totally and fatally defective for the non-joinder of Institute of Professional Studies (Pty) Ltd. The said Institute of Professional Studies is a registered and incorporated

company with a distinct and separate personality with the capacity to sue and be sued in its own name.

[2] In support of this position the court was referred by the Defendant to the case of *Salamon vs Salamon and Company* [1897] A.C. 22 HL and to what is stated by legal authors *Herbstein and Von Winsen, The Civil Practice of the Superior Court in South Africa, 3rd Edition* at page 167 where the following is stated:

"The only cases in which a Defendant has been allowed to demand a joinder of a third party, as of right, are those where the third party has a joint financial or proprietor interest

[3] It was further contended for the Defendants citing the above legal authors *Herbstein et al (supra)* that where a party has a direct and substantial interest he is then a necessary party and should by operation of the law be joined in the proceedings unless he expressly waives his right to join. Furthermore the court was referred to what is stated in the case of *Abramhse and others vs Cape Town City Council* 1953 (3) S.A. 855 (C) 859 to the legal proposition that the mere presence of a possibility of such an interest is sufficient, it is not necessary for the court to determine that it does, as a matter of fact, exist. The court was also referred to the case of *Amalgated Engineering Union vs Minister of Labour* 1949 (3) S.A. 637 (AD) 659.

[4] On the other hand on this point the Plaintiff has taken the position that if the Defendant alleges that some other party ought to be joined it should have moved in terms of Rule 13 of the High Court Rules.

[5] Rule 13 of the High Court Rules of 1954 provides for third party procedure

and appears to me not to apply to the facts of the case. It appears to me Rule 12 of the High Court Rules which provides for intervention of persons, as Plaintiff or Defendants would apply to the facts of the case. The said Rule provides that any person entitled to join as a Plaintiff or liable to be joined as a Defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a Plaintiff or Defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to the further procedure in the action as it may seem meet.

[6] From the above therefore, it appears to me that the Plaintiffs argument has no merit as Rule 13 of the High Court Rules does not apply to the facts of the present case. I however rule that Plaintiff join the "Institute of Professional Studies (Pty) Ltd" in the proceedings within a period of 14 days from the date of this judgment. Thereafter, the matter to take its normal course. I further rule that costs to be costs in the course.

S.B. MAPHALALA

JUDGE