

IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASES NO'S.: 2581/05

In the various matter between

LEWIS STORES (PTY) LTD.

Plaintiff

and

VUSUMUZI SAMUEL THWALA

Defendant

JUDGMENT DELIVERED ON: 24th July 2006

CORAM: P.Z. EBERSOHN J.

PLAINTIFF'S ATTORNEY:

**MR. MAGAGULA
/g.k./L.345S OF ROBINSON
BERTRAM**

JUDGMENT

EBERSOHN J:

[1] The plaintiff operates shops in Swaziland where it sells furniture and other goods, apparently also in terms of the provisions of the Hire Purchase Act, No. 11 of 1969 ("**the Act**"). Section 23 of the Act reads as follows:

"23. No decree of civil imprisonment or garnishee order for the purpose of enforcing payment by the buyer of any amount payable under an agreement or as a result of the termination or rescission thereof or as damages for any breach thereof, shall be made by any court."

[2] It is not alleged in the summons whether the alleged deed of sale was concluded in writing or orally.

[3] It is so that in the event that if an agreement was concluded which did not fall under the provisions of the Act, section 23 would not apply.

[4] This Court has a duty to make enquiries and to ensure that correct instructions were given by the plaintiff to its attorneys with regard to the causa in each case. If judgment is granted where the matter in fact falls under the Hire Purchase Act and it is not picked up, such a defendant can be seriously prejudiced. The plaintiff, on the other hand, is entitled to the full force of the debt recovery provisions in the event of it being found that the sale does not fall under the provision of the Hire Purchase Act.

[5] The fact that the Court directs this query must not be regarded as any slur on the integrity of the plaintiffs attorneys.

[6] I accordingly make the following order in the matter:

- 1. The plaintiff is ordered to within a month state under oath in the case:**
 - a) what was sold and the selling price of each item;**
 - b) whether the sale was orally or in writing and if in writing a copy thereof must be furnished to the Court;**
 - c) how the amount claimed is made up by way of a specified account and if it is a balance, how the balance is made up specifying interest, the rate applied, and all other amounts debited, on the account;**

d) whether the provisions of the Hire Purchase Act, No. 11 of 1969, apply to the sale or not;

e) that none of the goods sold has been repossessed by the plaintiff and if it has been repossessed, full details of the circumstances thereof must be stated indicating what credit was passed in the favour of the defendant with regard thereto.

2. Default judgment in the matter may not be granted before the requisite affidavit, which is satisfactory in all respects, has been filed and considered by the Court.

**EBERSOHN J
JUDGE OF THE HIGH COURT**