

**IN THE HIGH COURT OF SWAZILAND**

(HELD AT MBABANE)

CASE NO.: 151/05

In the matter between

**SNYMAN & PARTNERS (PTY) LTD.**

**Plaintiff**

and

**JUSTICE MAZIYA**

**Defendant**

JUDGMENT DELIVERED ON: 4th AUGUST 2006

**CORAM:**

**P.Z. EBERSOHN J.**

**PLAINTIFF'S ATTORNEY:**

**ZONKE MAGAGULA & CO.**

**JUDGMENT**

**EBERSOHN J:**

[1] The plaintiff is the cessionary of the alleged claim by Bee Gee against the defendant according to the particulars of claim.

[2] The plaintiff applies for default judgment. The first problem is that the request for default judgment was not signed by the plaintiffs attorney.

[3] Secondly, Bee Gee apparently operate shops in Swaziland.

[4] The particulars of claim merely alleges "goods sold and delivered" without complying with rule 18(4) and 18(6).

[4] Quite often plaintiffs merely instruct their attorneys to sue for "goods sold and delivered" without informing the attorney that the claim relates to a hire purchase agreement. Section 23 of the Hire Purchase Act, No. 11 of 1969 ("**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."**

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

[6] 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.

[7] 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.

[8] The fact that the Court directs this query must not be regarded as any slur on the integrity of the plaintiff's attorneys.

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

**1. The plaintiff is ordered to within a month furnish an affidavit by a responsible person in the employ of the cedent wherein it is stated under oath:**

**(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 and until the request for default judgment has been signed by the plaintiff's attorney.**

**JUDGE OF THE HIGH COURT  
EBERSOHN J.**