

IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASE NO.: 4547/05

In the matter between

STANDARD BANK SWAZILAND LTD.

Plaintiff

and

CORNEL OMONDI WASONGA

Defendant

JUDGMENT DELIVERED ON: 4th AUGUST 2006 **CORAM:**

P.Z. EBERSOHN J.

PLAINTIFF'S ATTORNEY

ROBINSON BERTRAM

REF. KJM/BN/S.240D

JUDGMENT

EBERSOHN J:

[1] In this matter the plaintiff applied for default judgment. The matter was placed before me by the Registrar for consideration.

[2] The plaintiff issued a simple summons. Prayer 1 thereof reads as follows:

"1. The payment of E31,424-56 being in respect of monies lent and advanced by the plaintiff to the defendant at the latter's special instance and request and/or order which monies are now due and owing as of 12 December 2005 and which the defendant fails, neglects and or refuses to pay to the plaintiff."

[3] Interest is claimed at 24% per annum and also costs on the scale of attorney and client including collection commission with no basis therefore being set out in the summons.

[4] It is clear that the peremptory provisions of rule 18(4) and (6) have not been complied with.

[5] On the 12th February 2006 I caused the plaintiff's attorneys being informed that no agreement was attached to the summons.

[6] This is one of the unfortunate matters where the attorney did not react.

[7] This court is thus compelled to go on record in this regard lest an allegation is made that the judges are not doing their work.

[8] I accordingly make the following order:

1. The plaintiffs attorney is ordered to comply with the provisions of rules 18(4) and (6) within a period of 30 calendar days from the 4th August 2006 and to amend the summons and if a written agreement is relied upon to attach it to the summons and thereafter to file the original with the Court so that the application for default judgment can be considered afresh.

2. The plaintiffs attorney must after the amendment was effected file heads of argument with regard to the claim for 24% interest per annum and the attorney and own client costs and collection commission claimed.

3. Default judgment may not be considered and granted unless paragraphs 1 and 2 of this ordered have been complied with.

P.Z. EBERSOHN J

JUDGE OF THE HIGH COURT