

IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASE NO.: 802/06

In the matter between

ENJABULWENI SCHOOL

Plaintiff

and

MOSES F. HLOPHE

Defendant

JUDGMENT DELIVERED ON: 11th AUGUST 2006

CORAM: P.Z. EBERSOHN J.

PLAINTIFF'S ATTORNEY:

BEN J. SIMELANE & ASSOCIATES

JUDGMENT

EBERSOHN J:

[1] This judgment deals with an application for default judgment by the plaintiff.

[2] This is one of many similar cases instituted by the plaintiff against parents of pupils for the alleged non-payment of tuition fees.

[3] In paragraph 1 of the particulars of claim it is alleged that the plaintiff is a company but for some, as yet unknown, reason the plaintiff was not cited as such in the papers.

[4] Paragraphs 3, 4 and 5 of the particulars of claim read as follows (quoted verbatim):

"3. On or about 11th September 2004, and at Plaintiff's premises, an oral agreement was entered into between Plaintiff, who was represented by its Headmaster whilst Second (sic) appeared personally.

4. The terms of the agreement were that Plaintiff would provide an education and enrol (sic) Defendant's son Menzi Hlophe and enrol her (sic) at its facilities Enjabulweni High School (sic).

5. It was agreed inter alia and in writing that should Defendant wish to withdrew the aforesaid Menzi Hlophe, he shall give a full term's fees in lieu of such notice. A copy of such term is contained in the application for admission form, a copy of which is annexed herein(sic) marked "ESI."

[5] Attached to the particulars of claim there is a form with the heading "APPLICATION FOR ADMISSION." This form contains the following paragraph:

"In the event of withdrawing my child from the school for any reason whatsoever, I/We undertake to give one full term's notice, or alternatively, to pay a term's fees in lieu of notice."

[4] It is not clear whether the application for admission was the only document signed or not and where it fits in and in any case whether the provisions of rule 18(4) and (6) were properly complied with or not. In any case the allegations about an oral agreement in paragraph 3 of the particulars of claim are contradicted by paragraph 5 of the particulars of claim where a written agreement is alleged.

[5] Default judgment cannot be granted on the plaintiffs current particulars of claim.

1. Default judgment is refused.

EBERSOHN J

JUDGE OF THE HIGH COURT