

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.2167/05

In the matter between:

ANDREW DLAMINI

PLAINTIFF

AND

BONGIWE SIFUNDZA

DEFENDANT

CORAM: MATSEBULA J

FOR THE PLAINTIFF: MR. L. GAMA

FOR THE DEFENDANT: MR. MAGONGO

JUDGMENT

FEBRUARY 2006

By a combined summons issued by the plaintiff, plaintiff prays for the following relief:

- 1) Payment of a sum of E26,400.00 being arrear rentals.
- 2) Ejectment of defendant.
- 3) Costs of suit.

Defendant entered a notice of intention to defend on 5th July 2005 and filed a request for further particulars. These were duly furnished by plaintiff on 22nd August 2005.

Defendant left the matter in abeyance until plaintiff gave a notice of bar on 31st August 2005. Only on the 20th September did defendant plead.

On 5th October 2005 plaintiff filed a notice of exception in terms of Rule 23 of the Rules of Court attacking the averments made by defendant on the basis that same lacked averments necessary to sustain a defence. Plaintiff prayed that defence be dismissed with costs. On 11th November 2005 the matter was before court and was struck off the roll because counsel involved did not appear. It was then set down on 9th December 2005 in the contested roll court for the next session.

On 3rd February 2006 when the matter was called on Mr. Magongo asked that it be postponed. However, Mr. Gama strongly opposed any postponement in view of the above chronicle events of the case. The court then ordered that the matter proceed.

Mr. Gama advanced his submission in support of the provisions of Rule 23 of the Rules of Court. Rule 23(1) provides as follows:

"23(7) Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence as the case may be, the opposing party may, within the period provided for filing any subsequent pleading deliver an exception thereto and may set it down for hearing in terms of Rule 6(14)."

Mr. Gama substantiated in his argument that he had complied with the rules above and asked that defendant's plea be dismissed.

Mr. Magongo on the other hand merely asked why the plaintiff did not opt for a summary judgment instead of Rule 23(1). That was as far as Mr. Magongo would take the matter.

I am satisfied that plaintiff is entitle to his prayer in terms of Rule 23(1). I accordingly dismiss defendant's plea with costs.

J.M. MATSEBULA
JUDGE