

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO.2796/05

In the matter between:

SHELTON MANDLA TSABEDZE APPLICANT/DEFENDANT

AND

STANDARD BANK OF SWAZILAND LTD 1st RESPONDENT

DEPUTY SHERIFF (HHOHHO DISTRICT) 2nd RESPONDENT

CORAM

MATSEBULA

FOR THE APPLICANT/DEFENDANT

FOR THE RESPONDENTS

APPLICATION FOR AN ORDER FOR RESCISSION OR SETTING ASIDE

SUMMARY JUDGMENT GRANTED ON 2nd SEPTEMBER 2005

FEBRUARY 2006

Applicant is applying to have a summary judgment set aside and relies on

Rule 32(11) which states:-

- (a) Any judgment given against a party who does not appear at the hearing of the application under sub-rule (11) or sub-rule (6) may be set aside or varied by the Court on such terms as thinks first (*sic*).

First respondent issued summons against the applicant in terms of which it sought payment of E440.464.82 in respect of an overdraft facility and an amount of E208.987.00 in respect of mortgage loan.

- (i) It is common cause that 1st respondent properly served a notice of motion for summary judgment on applicant on the 18th August 2005.
- (ii) Applicant did not file any opposing affidavit and judgment was granted on 2nd September 2005. This was followed by a writ of execution issued out by the Registrar on 5th September 2005.
- (iii) On 7th September 2005 applicant's attorney wrote a letter to first respondent's attorneys and indicated that it was not opposing the claim.
- (iv) Some instructions were needed on the part of the first respondent's attorneys as to how the claim was to be settled.
- (v) There was further correspondence that followed and this court does not deem it necessary to go into details.

Considering the fact that applicant's attorneys were aware all along of the proceedings in the matter and that they even engaged first respondent's attorney in correspondence after the grant of the summary judgment. This court is not satisfied that applicant has advanced an acceptable and reasonable explanation why it should be granted the rescission it is seeking.

In the result, the application is dismissed with costs, costs should include those of counsel in terms of Rule 68(2) of the Rules of Court.

J.M. MATSEBULA

Judge