

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CIVIL CASE NO. 1914/06

In the matter between:

**SPEEDSPORT CC (SWAZILAND)**

and

**EDDIE JOUBERT**

CORAM: Q.M. MABUZA -AJ

FOR THE PLAINTIFF: MR. J. HENWOOD

FOR THE DEFENDANT: MR. S. HLOPHE

**RULING 7/12/06**

[1] The Application herein is to compel the Defendant to supply further particulars.

[2] The Plaintiff issued combined summons against the Defendant who after entering a notice of intention to defend filed a request for further particulars to enable him to plead. The request is dated 22/6/2006.

[3] The Plaintiff did not respond to the request and on the 10/8/06 the Defendant's attorney filed a notice of application to compel further particulars.

[4] The Defendant's submission is that this application is based upon Rule 21 (3). Mr. Henwood countered this submission by quoting Section 21 (3) which states:

***'fin order under this rule shall not be made before delivery of the plea unless, in the opinion of the court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.'***

[5] Mr. Hlophe countered this submission by stating that Rule 21 (3) gives a discretion to this court to order the Plaintiff to deliver further particulars even before the plea.

[6] I do not agree with Mr. Hlophe's submission. The word "**shall**" precludes any discretion at all.

[7] My understanding of Rule 21 (3) is that in order for the Court to form an opinion that the order sought is necessary or desirable to enable the Defendant to plead or for some other special reason then the court has to be supplied with information which will assist it arrive at the opinion referred to.

[8] The only way such information can be furnished is upon affidavit in support of the application before court.

Q.M. MABUZA -AJ

