

THE HIGH COURT OF SWAZILAND
M V TEL COMMUNICATIONS (PTY) LTD

1st Plaintiff

E TOP UP (PTY) LTD

2nd Plaintiff

And

SWAZI MTN LTD

Defendant

Civil Case No. 7/2006

Coram:	S.B. MAPHALALA - J
For the Plaintiff:	MR. L. MAMBA
For the Defendant:	MR. C. MAPHANGA

JUDGMENT

(3rd February 2006)

[1] The Plaintiff had set the matter down for judgment by default in a notice with a Registrar's stamp dated 31st January 2006. In the said notice the Plaintiff is seeking various forms of relief outlined in prayers (a) to (m). The Plaintiff has filed the usual Notice of Application for default in terms of Rule 31 (3) (a) of the High Court Rules. The claim is based on combine summons with the relevant Particulars of Claim. Also filed therein is a Memorandum of Understanding being annexure "A". There are further annexures "B" and "C" being letters of correspondence between the parties. It is also reflected in the return of service that the combined summons was served on the Defendant on the 9th January 2006, upon one Zanele Thwala a responsible employee of the Defendant at the principal place of business at MTN Office Park, Smuts Street Mbabane, in the district of Hhohho.

[2] The Defendant filed a Notice of Intention to Defend on the 31st January 2006. The matter came before me on the 1st February 2006, where Plaintiff sought judgment by default as outlined in the usual *pro forma* for default judgments. The issue then arose between the parties that Defendant filed their Notice of Intention to Defend out of time and therefore

Plaintiff was entitled to judgment forthwith. *Mr. Maphanga* for the Defendant conceded that the Notice of Intention to Defend is out of time, however he applied that the court proceeds in terms of Rule 7 (3) of the High Court Rules. The effect of this is that the Defendant be granted leave to file an application for condonation as provided in the Rules of Court.

[3] On the other hand *Mr. Mamba* for the Plaintiff strenuously objected to this application taking the position that his client is entitled to default judgment in the absence of a Notice of Intention to Defend. In this regard the court was referred to the High Court case of *Wandile Ndzinisa vs Steers Fast Foods and Restaurant- Civil Case No. 1457/2004* where the court also cited the *ratio* in the case of *George Hotel Properties (Pty) Ltd vs Swaziland Development and Savings Bank - Civil Case No. 2932/2002 (unreported)* and the Court of Appeal case of *D.Z. Civils and Building (Pty) Ltd vs David Zietsman and Standard Bank of Swaziland - Appeal Case No. 56/1999*.

[4] It would appear to me that *Mr. Mamba* for the Plaintiff is correct in his submissions. The Plaintiff in *casu* is entitled to the judgment by default. I say so because the Defendant has not filed its Notice of Intention to Defend as required by the Rules of Court. The application by *Mr. Maphanga* is clearly an application for an indulgence, and if it is opposed, as it is in the present case, I ought to consider such opposition. In the present case the issue of prejudice is important. I have come to the considered opinion that Plaintiff is entitled to judgment in the circumstances of the present case.

S.B. MAPHALALA

JUDGE