

## **IN THE HIGH COURT OF SWAZILAND**

CIVIL CASE NO. 3007/03

In the matter between:

**NATIONAL AGRICULTURAL MARKET BOARD**

**PLAINTIFF**

and

**MAGALELA NGWENYA**

**DEFENDANT**

CORAM: Q.M. MABUZA-AJ

FOR PLAINTIFF: MR. MAGAGULA

FOR DEFENDANT: P.M. SHILUBANE

### **RULING 12/5/06**

This matter came before me on the 8<sup>th</sup> March 2006.

The Plaintiff through its attorneys issued and served on the defendant a combined summons during November 2003. The defendant filed his notice of intention to defend during December 2003.

During January 2004 a notice for application for summary judgment was served and filed by the plaintiffs attorneys. Thereafter the defendant filed his affidavit resisting summary judgment through his attorney.

Subsequently the plaintiff filed a replying affidavit during February 2004.

It is this replying affidavit which is the subject of contention. Mr. Shilubane for the defendant filed a notice of application in terms of rule 30 to the effect that:

[1] The plaintiffs replying affidavit dated 10<sup>th</sup> February 2004 should be set aside it being an irregular step because the plaintiff had not obtained the leave of the court to file same.

[2] Costs

Rule 32 (5) (a) states that:

*"a defendant may show cause against an application under sub-rule (1) by affidavit or otherwise to the satisfaction of the court and **with the leave of the court**, the plaintiff may deliver an affidavit in reply"*[my emphasis).

My understanding of the above sub-section is that the plaintiff should have filed a formal application to this court for an order allowing him to file a replying affidavit to the affidavit filed by the defendant resisting summary judgement. The plaintiffs replying affidavit is an irregular step in terms of rule 30.

I order as follows:

[a] The plaintiffs replying affidavit dated 10<sup>th</sup> February 2004 is hereby set aside.

[b] The plaintiff is ordered to pay the defendant's costs.

**Q.M. MABUZA -AJ**