

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO. 3711/05

HELD AT MBABANE

In the matter between:

ALPHEOUS MAKWEMPE SOKO

APPLICANT

and

**THE SWAZILAND DEVELOPMENT AND
SAVINGS BANK**

RESPONDENT

CORAM: Q.M. MABUZA-AJ
FOR APPLICANT : MR. T. DLAMINI
FOR RESPONDENT : MR. Z. MADAU

JUDGEMENT 12/05/06

[1] This matter came before me on the 24th March 2006 solely for the purpose of arguing the issue of costs. Judgment had already been entered into on the 18th November 2005 in favour of the applicant in respect of prayers [a] and [b] of the applicants notice of application wherein the applicant had sought an order in the following terms:

[a] Ordering and directing the Respondent to cancel any mortgage bond it might have over Lot No. 108 situate in Jojo Street, M.sunduza Township Extension No. 3 District of Hhohho and held by the Applicant under Deed of Transfer No. 137/1988 dated 18th March 1989.

[b] Ordering and directing the Respondent to deliver to Applicant's attorneys Messrs NTIWANE & ASSOCIATES of 1st Floor Richard House, Gwamile Street, Mbabane the Deed of Transfer No. 137/1988 within 10 days from date of the order.

[c] Costs of suit on the attorney/client scale.

[2] The aforesaid judgment was granted by consent of the parties. In fact other than filing a notice of intention to oppose, the respondent readily agreed to the judgment. It did not employ delaying tactics by dragging out and prolonging the matter by filing answering affidavits etc.

[3] During the submissions before me I was advised that the respondent had even offered to pay the costs of suit but this offer was turned down by the applicant who wanted his "*pound of flesh*" by insisting that he wanted costs on the attorney-and-client scale. The respondents attorney continued to offer payment of costs during the submissions on the ordinary scale.

I have perused the documents that initiated the action herein and which set out the cause of action.

[4] The background of the matter is that the applicant had been indebted to the respondent who had secured its debt with a surety mortgage bond over the applicants immovable property described as Lot No. 108 Jojo Street, Extension 3 situate in Mbabane in the Hhohho District.

[6] The applicant failed to properly service this loan and fell into arrears. Annexure "B1" B2" and "B3" set out the unfortunate history of the repayments and arrears. As on the 31st March 1998 the amount owed to the respondent stood at E59,707.82 (fifty nine thousand Emalangeni seven hundred and seven and eighty two cents) from an amount of E23,402.74 (twenty three thousand Emalangeni four hundred and two and seventy four

cents) as on the 31st March 1992. Instead of coming down the amount kept going up.

[7] This unsatisfactory state of affairs caused the respondent to call up the bond and issue summons against the applicant for the recovery of this amount.

[8] I am advised that the applicant was able to make suitable arrangements to settle the debt with the respondents attorneys.

[9] In this way the applicant's property was not sold in execution and even then the amount owed was not repaid in one lump sum but in installments per courtesy of the respondents attorneys.

[10] Unfortunately for the respondent the shoe is now on the other foot and the applicant is unwilling to make any concessions. The issues pertaining thereto are set out in the applicants founding affidavit and I shall not repeat them as it is not necessary to do so.

[11] The grounds upon which the court may order a party to pay his opponents attorney-and-client costs are set out on pages 718-720 of **Herbstein and Van Winsen: "The Civil Practice of the Supreme Court of South Africa." (4th edition)**. They include cases in which special circumstances or considerations justify the granting of such an order, each circumstance or consideration peculiar to each case. The list is not exhaustive.

[12] In the present case I do not find any special circumstances or considerations which justify the grant of such an order.

[13] In fact I find that the respondent has been exemplary in that it consented to judgment in the applicants favour very early in the matter and also offered to pay the applicants costs.

[14] In the event I order that the respondent pay costs on the ordinary scale and not on the attorney-and-client scale.

Q.M. MABUZA-AJ