

IN THE HIGH COURT OF SWAZILAND**MUSA DLAMINI****Plaintiff****And****BHEKINYAWO Defendant****Civil Case No. 3223/2006**

Coram

S.B. MAPHALALA - J

For the Plaintiff

MR. M. SHABANGU

For the Defendant

MR. J. MAVUSO

JUDGMENT18th May 2007

[1] The Plaintiff in this matter has filed an exception on the following grounds:

- (a) The Defendant's plea consists only of bare denials.
- (b) Defendant's plea does not clearly and concisely state all or in fact any material fact(s) upon which he rely in his defence.

[2] In the alternative, plaintiff contends, that the Defendant's plea is irregular and improper in that it does not comply with the provisions of Rule 22 (2) of the High Court Rules in that it does not clearly and concisely state all or even any of the material facts upon which he relies for his defence.

[3] On the main ground Plaintiff prays that the plea be struck out and/or dismissed with costs. On the alternative ground Plaintiff prays that the plea be declared an irregular step within the ambit of Rule 30 with costs

[4] The Plaintiff in support of the above-cited argument has relied on what is stated by the legal authority in *Erasmus, H.J on Superior Court Practice*, at page Bl - 129 where the learned author states that "**pleadings are the written statements of the parties served by each party in turn upon the other which must set out in summary form the material facts on which each party relies in support of his claim or defence, as the case may be. The object of the pleading is to define the issues so as to enable the other party to know what case he has to meet**".

[5] Plaintiff further relies on the authority in the South African cases of *Nassionale Aartappel Koop vs Price Waterhouse Coopers Ing 2001 (2) S.A. 790* at 799 and that of *Imprefed 1993 (3) S.A. 94 (A)*, *Dubach vs Fairway Hotel Ltd 1949 (3) S.A. 1081 (SR)* at 1082, *Odgers On Principles of Pleadings and Practice in Civil actions in the High Court of Justice (22nd Ed)* at page 113 and *Herbstein and Van Winsen, The Practice of the Supreme Court of South Africa 4th edition*) at pages 464 - 466 and the case of *Hlongwane vs Methodist Church of South Africa 1933 WLD 165*. The court was also referred to the legal author *Beck's Theory and Principles of Pleadings in Civil Actions (6th Ed)*.

[6] In the alternative, it is the Plaintiffs argument that the Defendant's plea is an irregular step in terms of Rule 30 in that Defendant has failed to comply with the provisions of sub-rule 2 and 3 of Rule 22 and the provisions of Rule 18 (4) as well.

[7] In opposition the Defendant contends that Plaintiffs exception on both the main

and alternative grounds be dismissed with costs for the following reasons:

(i) In the present case Plaintiff has subsequently filed amended particulars. It is trite law that Defendant should be afforded the opportunity of filing its amended plea.

(ii) If in the Plaintiffs view the time for filing such an amended plea had elapsed, Plaintiff should have been aware that the next step would be to issue a notice of bar.

[8] Defendant further submits that it is only pleadings which contain averments which are scandalous, vexatious or irrelevant which can be struck out. This is not the Plaintiffs contention and only comes up in his prayer.

[9] It is my considered view that the position adopted by the Defendant is correct as stated in paragraphs [7] and [8] *supra* and in this regard I find that the exception taken is without merit and therefore it is dismissed with costs.

S.B. MAPHALALA

JUDGE