

**IN THE HIGH COURT OF SWAZILAND
MOTHER TRUCKERS (PTY) LTD**

Plaintiff

For the Plaintiff For the Defendant

And

**SHARP FREIGHT (PTY) LTD
Defendant**

Civil Case No. 1555/2006

Coram

**S.B. MAPHALALA - J
Advocate P. FLYNN
(Instructed by Currie and
Sibandze) MR. A.
LUKHELE**

**JUDGEMENT
15 JUNE 2007**

**[1] The Plaintiff has applied for summary- judgment which
is opposed by the Defendant.**

[2] The Plaintiff has applied that judgment be entered against the Defendant for payment of the sum of E8, 213-20 and interest thereon at the rate of 9% per annum. The cause of action relied upon by the Plaintiff is based on an agreement as is pointed out in prayer 1 of the simple summons, reiterated in paragraphs 7, 8 and 9 of the declaration and several paragraphs of the affidavit in support of the application for summary judgment.

[3] The history of how the agreement came about is fully set out in the declaration in paragraphs 3-8. It is stated therein that during or about May 2004, the parties entered into a verbal agreement in terms of which the Defendant agreed to offer freight services for cargo provided by the Plaintiff. It was an express, alternatively an implied term of the said agreement that Defendant would provide insurance for the cargo to be ferried.

[4] The Defendant represented to the Plaintiff that it had the requisite insurance, i.e. "goods in transit insurance for cargo ferried by the Defendant's" acting on the belief of the correctness of this representation, Plaintiff was induced, to its detriment, to enter into a contract with the Defendant, wherein it ferried cargo belonging to Swaziland Beverages on behalf of the Plaintiff, which cargo the Defendant duly accepted. On the 21st June 2004, the cargo was hijacked in transit, as a result of which the Plaintiff suffered actual financial loss and was inconvenienced to an amount of E110, 818-00 constituting the full value of the cargo including GST of 14% on the 7th July 2004.

s, *inter alia*, that the agreement was as a result red, Swaziland Brewers. The insured,

had not red, Swaziland Royal Insurance Corporation .ature of the agreement marked "A". The at SRIC, the insurers of Swaziland Brewers, to had indemnified their insured, Swaziland only paid an excess of E15, 000-00 to SRIC. In ogation, the insurers on paying are entitled to ed whereby the loss insured against can be le court was referred to the legal authority of *mecantile Law of South Africa " 17th Edition (1975)*

referred to the legal authority of *Aimer's Edition, page 162* where the learned authors the right to step into the insured's shoes)ring an action against a third party in the it the latter's knowledge and consent". The the cases of *Schoonwinkel vs Galatides 1974 eper vs MsGees Motors (Pty) Limited 1956 (1) i Respondent's contention that the Plaintiff was as not due to the Plaintiff but to Swaziland insurer indemnified its insured, the subrogation her Swaziland Royal Insurance (the insurer) Defendant) in its own name or Swaziland Royal king the wrongdoer in the name of its insured, and for this purpose annexing a cession of action to prove its *locus standi in judicio*. (see *Lawsa Vol. 12 page 220*).*

[7] The Defendant further contends that a compromise is a substantive contract which exists independent of the cause which gave rise to the compromise. That the alleged compromise (whose existence is denied) cannot exist independently of the cause in *casu* since the liability arises from a contract of insurance. Alternatively, that if such a compromise was entered into, then same was not entered into in error by both parties who were not conversant with their respective rights in light of the circumstances of the case. On the law governing the granting of summary judgments legal Counsel cited the legal authority in *Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th Edition at page 453*.

[8] Having assessed the arguments of the parties in this case I have come to the considered view that the application for summary judgment in the present case cannot be granted on the facts of the matter. It appears to me that Defendant is able to prove that the insured was Swaziland Brewers and not the Plaintiff; that the insured was indemnified by the insurer, and no cession of action was done, then summary judgment cannot be granted, (see also *Lawsa Vol. 12 page 220*).

[9] In the result, for the afore-going reasons the application for summary judgment is refused with costs.



S.B. MAPHALALA