

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 4410/2005

PETER MALINGA

Plaintiff

And

SWAZILAND GOVERNMENT

Defendant

Coram:

S.B. MAPHALALA-J

For the Plaintiff:

MR. S. DLAMINI

For the Defendant:

NO APPEARANCE

**JUDGMENT**

[1] The Plaintiff Peter Malinga an adult male Swazi of Mankayane District of Manzini has filed a combined summons against the Swaziland Government cited as the 1<sup>st</sup> Defendant and 2<sup>nd</sup>

Defendant being Basil Reid (Pty) Ltd for damages he suffered in the sum of El 80, 000-00 being the costs of repairing the borehole and loss of use thereof and consequently acquiring alternative source of water.

[2] In his Particulars of Claim the Plaintiff avers that while the road works were ongoing, his borehole situate on his farm collapsed due to the road activities and required a drilling rig and PVC pipes. The collapse of the borehole was a direct and sole result of the negligence of the 2<sup>nd</sup> Defendant who failed to take the necessary precautions and to exercise reasonable care and skill while carrying out the road works.

[3] The Defendants have not defended the suit and the Plaintiff accordingly obtained default judgment. The Plaintiff was to lead evidence in proof of damages in due course.

[4] Indeed, on the 5<sup>th</sup> August 2008, the Plaintiff lead the evidence of an Agricultural expert one Michael Mduduzi Dlamini who is an Extension Worker under the Ministry of Agriculture. In evidence he handed the court his report which was entered as exhibit "A". The said report is reproduced hereinunder *ipssisima verba* as follows: **TO WHOM IT MAY**

**RE: OUTSTANDING COMPENSATION CLAIM OF A COLLAPSED BOREHOLE FOR  
MR PERT MALINGA OF FARM NO. 99 - SICUNUSA.**

Due to the collapse borehole cause by the construction of the Luyengo - Sicunusa Road; Mr. Malinga was using the water to supply the following projects: Piggery, Poultry and Honey Bee Farming.

He suffered a great deal to sustain the projects since they all depend on the availability of water.

The total amount of loss per year is estimated at E282, 288 - 00 and the breakdown of details is as follows:

A: Piggery) 4sows + 1 Boar

Annual production for the project (4 sows) is estimated as follows:

4 x 17piglets/year = 68 piglets per year.

A piglet at the age of slaughter has an average of 65kg.

Sales plan for project is as follows:

68 x 65 (kg per piglet) x E8.40 (price per kg)

**=E37 128 – 00**

B. Poultry (1000 Broilers)

Number of batches per year = 6

1000 x 6 batches/year - 6000 broilers per years.

A broiler at the age of 6 weeks has an average of 1.2kg.

Sales plan for the project is as follows:

6000 x 1.2(kg per bird) x E15-30 (price per kg)

**=E110 160-00**

C. Honey Bee Farming (Swazi Top Bar Hives)

Number of beehives = 150

Average frequency of harvesting = 2 times /year

Average yield per hive = 15kg

Price per kg (farm gate) = E30-00 =150 x 2 x 15 x E30-00

= E135 000-00

**TOTAL AMOUNT A+ B+ C = E282 288 - 00**

[5] In argument before me Mr. Dlamini for the Plaintiff contended that his client is entitled to the judgment on a balance of probabilities as stated in the above-cited evidence of the expert. That

according to the expert the Plaintiff is entitled to a sum of E282, 28800 yet Plaintiff has settled for a lesser amount of E1 80, 000-00 in his summons.

[6] Having considered the facts of the matter and the evidence of the Agricultural expert Mr. Dlamini, it is my view that Plaintiff is entitled to judgment in the sum of E1 80, 000-00.

[7] In the result, for the afore-going reasons judgment is granted in terms of prayer (a) and (b) of the Particulars of Claim.

Pronounced at the High Court sitting at Mbabane this .....28<sup>th</sup> .....day of August 2008.

**S.B. MAPHALALA**  
**PRINCIPAL JUDGE**