

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 911/2007

In the matter between:

SWAZILAND DEVELOPMENT FINANCE
CORPORATION

APPLICANT

and

BUSISIWE MARY MANZINI _____ 1 ST RESPONDENT

SIBUSISO DALUCOLO MANZINI _____ 2 ND RESPONDENT

CORAM _____ : Q.M. MABUZA -J
FOR THE APPLICANT: MR. Z. JELE OF ROBINSON
BERTRAM
FOR THE RESPONDENT : MR. MANZINI OF M.J.
MANZINI

RULING 15/2/08

[1] The matter herein is an application for summary judgment as follows:

- a)** Payment of the sum of E63,490.92
- b)** Interest thereon at the rate of 22% p.a. calculated from the date of summons to date

of final payment.

c) Costs on the attorney & client scale.

d) Further and or alternative relief.

[2] The Respondents are opposing the aforesaid application and has filed an affidavit resisting summary judgment

[3] The Applicant states that the loan was to be repaid within 36 months at the rate of E1650.00 per month plus an additional amount sum of E1,000.00 per month totalling E2650.00. The interest rate thereon at 22% per annum.

[4] The Respondents deny that the repayment was to be E1650.00 + E1000.00 per month. The Respondents admit repayment in the sum of E1000.00 and that they signed a stop payment order in that regard. The Respondents also deny that there was a date stipulated upon which payments were to commence. The Respondents admits that final payment was to be made within 36 months and states that 36 months is not up.

[5] I have persused the documents filed off record and the following are my observations:

The Loan Agreement dated 30/08/05

- The preamble to the loan agreement refers to the first schedule as setting out the terms and conditions of the loan (see clause (c) thereto)

- The first schedule inter alia states:
 1. Capital of loan 52050.00
 4. Period of loan 36 months
 5. Interest rate 22% p.a.
 5. Interest and
principal payable monthly
 6. Loan purpose Buy building material

[6] The first schedule does not set out how much is to be repaid per month and the commencement date thereof.

[7] The facility letter (dated 30//8/05) states:

- Loan amount : 52 050.00
- Interest rate: 22% p.a.
- Duration 36 months
- Repayment cycle monthly

- Repayment mode stop order of E1,000.00 over the salary of Sibusiso Manzini at Government Treasury.

[8] The facility letter does not state the amount to be repaid each month and the commencement date thereof.

[9] The stop order authorisation (dated 30/8/05). This authorisation is on Applicants letterheads. It is not necessary for me to set out the contents thereof in detail. The pertinent clauses read as follows:

“I the undersigned hereby authorize my employer to deduct the sum of E1000-00 (in words) ONE THOUSAND EMALANGENI ONLY and remit same by cheque to Swaziland Development Finance Corporation”.

“I undertake that this stop order instruction shall remain in force until the outstanding sum of E71 561-30 (in words) SEVENTY ONE, FIVE HUNDRED AND SIXTY ONE, THIRTY CENTS is fully repaid”.

[10] Nowhere in this document does it state when payment

was to commence. The document does however authorise the payment of E1000.00 which corroborates the repayment mode in the facility letter.

[11] As the stop order authorisation is on the Applicants letterheads I assume it remained in Applicants possession to enable Applicant to forward it to the Government. This Applicant did and payments began during September 2006. This then in my view marks the effective date of commencement of payment and the 36 months is reckoned therefrom.

[12] In my view the submissions as to why the stop order was only effected during 2006 raise disputes of fact which would best be aired by leading oral evidence.

[13] I cannot find anywhere in the documents as to how the amount of E1600.00 in respect of monthly repayments is factored or provided for. This too would best be aired by leading oral evidence.

[14] It is obvious to me that the parties hereto were not ad idem on a few aspects such as the commencement of the repayments and the amounts thereof. In order to clear this stalemate oral evidence has to be led.

[15] The Applicant has claimed costs on an attorney client scale. I cannot find any justification for these on the papers before me and oral evidence would have to be led as to why the Applicant seeks costs on a punitive scale.

[16] For the foregoing reasons, the application for summary judgment is refused and the application is dismissed. Costs are reserved until the matter has been finalised.

Q.M. MABUZA -J
