

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3837/07

In the matter between:

SHILUBANE, MASEKO & PARTNERS

PLAINTIFF

and

SANDILE DLAMINI

DEFENDANT

CORAM

FOR THE PLAINTIFF

FOR THE DEFENDANT

: Q.M. MABUZA -J
: MR. SHILUBANE OF SHILUBANE,
MASEKO & PARTNERS
: MR. S.V. MDLADLA OF SV
MDLADLA 85 ASSOCIATES

RULING 17/10/08

[1] The Plaintiff herein has applied for summary judgment based on a dishonoured cheque by non-payment and was referred to drawer.

[2] A logical reading of the facts would be that the Defendant drew a cheque for E25,936.00 in favour of the Plaintiff which was referred to drawer, Plaintiff having paid out against it before it was cleared. A clear mistake in my view. However, the Plaintiff denies that this is what happened otherwise I would have granted the application.

[3] Otherwise it is not clear why the Plaintiff insists on

payment unless it is for his fees which must be considerably lower than the amount claimed. The Defendant has advanced a good defence that he would suffer prejudice twice if he were to pay the amount claimed herein and that claimed by Abdullah Sindhi.

[4] The application for summary judgment is refused, costs to be in the cause.

Q.M. MABUZA-J