



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1530/2007

NICHOLAS DLAMINI

Plaintiff

And

DAISY DLAMINI

1st Defendant

GABSILE DLAMINI

2nd Defendant

TERESA DLAMINI

3rd Defendant

MADODA DLAMINI

4th Defendant

SAKHILE LAMINI

5th Defendant

MAXWELL DLAMINI

6th Defendant

Coram

S.B. MAPHALALA – J

For the Plaintiff

MISS X. SHABANGU

For the Defendant

MR. MABUZA

JUDGMENT

2nd May 2008

[1] The issue for determination presently is concerned with the application to compel further particulars by the Defendants where Plaintiff has filed a Notice of application for summary judgment. The said application is for an order ejecting all the Defendants from Lot Number 152, Isomi Street, Msunduza Township, Mbabane.

[2] The Plaintiff's papers avers that by virtue of Deed of Transfer No. 90 of 1988, Plaintiff is the owner of the above-cited property. The defendants are in occupation of the property and claim to be co-owners of the property.

[3] Plaintiff has filed a Notice of Intention to oppose the application to compel further particulars and states the following:

1. The particulars sought were furnished to the Defendants as more fully appears from annexure "A1" and "A2" being the request and reply thereto.

An order to compel the furnishing of further particulars may only be made under Rule 21 (3) if the particulars sought are necessary or desirable to enable the defendants to plead or for some other special reason.

[4] The Notice to compel further particulars of claim was filed on the 15th January 2008, compelling the Plaintiff to file its further particulars within seven (7) days of the said order. In prayer 2 thereof awarding the Defendant the costs of the application.

[5] In a letter directed to the attorneys of the Plaintiff of the 17th October 2007, Defendant's Counsel requested for further particulars as follows:

1. **AD paragraph 8**

; Exactly, how did the Plaintiff acquire the ownership of the said property.

; Who did the Plaintiff acquire the ownership of the property from? The full details of the previous owner are requested.

2. **AD paragraph 9**

; How did the Defendants come into occupation of the property.

Is it alleged that the Defendants have no interest in the property at all.

[6] In terms of Rule 21 (3) of the Rules of court an order under this Rule shall be

made before delivery of the plea unless, in the opinion of the court, the order is necessary or desirable to enable the Defendant to plead or for some other special reason.

[7] According to the learned author *Erasmus, Superior Court Practice, Juta* at B1 – 138 in determining what particulars fall within the scope of the Rule, one would look primarily at the pleadings. A party cannot, however, be required to give particulars in relation to a mere denial.

[8] I have considered the arguments by the parties against the general principles governing Rule 21 of the High Court Rules and I have come to the considered view that the Defendant be granted its application for further particulars as outlined above in paragraph [5] of this judgment. Costs to be costs in the main trial.

S.B. MAPHALALA
JUDGE