

THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil trial No. 304/2006

In the matter between

MIKE KARAMITSOS

Plaintiff

and

MADELEIN THRING

Defendant

Coram

Banda, CJ

For the Plaintiff

Masuku

For the Defendant

Lukhele

RULING

[1] This is an application brought under Rule 33(4) of the High Court Rules. The Notice of application was filed on 16th May 2007. Rule 33(4) is in the following terms:-

"If it appears to the Court mero motu or on the application of any party that there is, in any pending action, a question of law or fact which it would be convenient to decide either before any evidence is led or separately from any other question, the court may make an order directing the trial of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of "

[2] Mr. Lukhele has submitted that it is trite law that for a party to bring another to court the latter party must have the locus standi to be sued. He has submitted that defendant being a married woman in community of property the plaintiff must show that she has *locus standi* to be sued. Evidence was called to prove the defendant's marriage. The defendant stated in her evidence that she was involved in an accident with the plaintiff and that her husband was not served with any court processes and that he does not know what is going on. It was clear to me that as far as the defendant was concerned this was her problem and that it had nothing to do with her husband as she stated in her own words, *"I had an accident with Mr. Karamitsos. I was driving the vehicle involved in the accident.....my husband was not involved; he was not driving the vehicle nor was he a passenger. I was served with the summons."*

[3] It is the contention of Mr. Lukhele that the defendant is the wrong party to be brought before this court because, he submitted, that delectual claim is against a married woman who was married in community of property and that therefore she cannot be sued without being duly assisted by her husband and that there was no such evidence in the present proceedings to show that the defendant's husband had authorised or acquiesced in the proceedings. Mr. Lukhele cited two cases to support this proposition; **Rand Wholesale Outfitters (Pty) Ltd vs Cassels** 1955 (2) S.A. 66 and **Meyer vs Naude** 1957 (2) S.A. 30.

[4] Mr. Masuku for the plaintiff has submitted that the particulars of claim provide complete and sufficient description of the defendant to cover the legal point which Mr. Lukhele has raised. He has argued that the particulars of claim sufficiently describe the defendant as a married woman who was being duly assisted. Mr. Masuku has further contended that in answering the claim the defendant admitted in para two of her plea her description in paragraph two of the particulars of claim. He also submitted that the defendant conceded in the pretrial minutes that the description of litigants and the court's jurisdiction were not in issue.

[5] The issue of *locus standi* of a party to litigation is a point of law and it is properly taken in this application. It cannot be waived by any party, see the case of **Rand Wholesale Outfitters v Cassels** 1955 (2) SA 66. It was further stated in the same case "that a married woman, being a minor, has no *persona standi in judicio* and must in law proceed by or with the assistance of her husband". The summons in this case was issued

on 30th January 2006 and the defendant's plea was filed on 14th March 2006. The Notice of Application to raise the legal point was not filed until 16th May 2007 almost a year after the plea had been filed and it was after nine months after a request for a date of hearing had been filed. This was one and half (1½) years after the summons had been filed.

[6] I have carefully considered the submissions which both counsel have made to this court. I have also considered the history of the case as disclosed on the papers before court. Let me first make one comment on the evidence of the defendant. I did not believe her when she stated that her husband did know what was going on about her involvement in the accident. I do not believe that her husband was so indifferent to the fact that she had been involved in a car accident which involved making a statement to the police. Clearly her statement was not true.

[7] I am satisfied and I find that the particulars of claim sufficiently described the defendant and that she was being duly assisted. While it is true that the name of the person providing the assistance was not named it would have been clear to any body reading the particulars of claim that the defendant was a married woman who was being assisted. I am also satisfied and find that the defendant had accepted that there was no issue in the manner the litigants had been described. What the law requires is that the woman defendant be assisted by her husband. As Holmes J stated in the Case of **MEYER V NAUDE** 1957(2) SA 30 at 31:

"There is judicial unanimity on the proposition that a

woman married in community of property can be sued as a defendant, assisted by her husband for damages based on delict."

[8] The particulars of claim in this case duly described the defendant as a married woman who was being assisted. Failure to have the assistant named should not, in my view, be fatal to the proceedings and especially in view of the admissions made by the defendant. I would therefore dismiss this application with costs. The case should now proceed to full trial.

R.A. BANDA
CHIEF JUSTICE