

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. TRIAL CASE NO. 4119/08

In the matter between:

SIPHO ANTONY NKOSI

PLAINTIFF

And

BUKA INVESTMENTS LIMITED

DEFENDANT

EDWARD MACELENI NKOSI

DATE OF HEARING: 13 MARCH, 2009

DATE OF JUDGMENT: 13 MARCH, 2009

Mr. Advocate L. Maziya for the Plaintiff

Mr. Attorney T.L. Dlamini for the Defendant

EX TEMPORE JUDGMENT

MASUKU J.

[1] This is an application in terms of the provisions of Rule 30 (1) of the High Court Rules. In this matter the plaintiff sues the defendant for defamation in the sum of E3.000.000 and E1 500.000, respectively.

[2] The defendants in this matter filed a notice to defend and followed up that notice with a request for further particulars. The further particulars were supplied to the defendants on the 26 February, 2009 and simultaneously the reply to the further particulars, the plaintiff also served them with the notice of bar bearing the same date. The relevant rule which founds the Rule 30 application is Rule 22 (1) which reads as follows:-

"WHERE THE DEFENDANT HAS DELIVERED A NOTICE TO DEFEND, HE SHALL WITHIN 21 DAYS AFTER THE SERVICE UPON HIM OF A DECLARATION OR WITHIN 14 DAYS AFTER DUE DELIVERY OF FURTHER PARTICULARS, DELIVER A PLEA WITH OR WITHOUT A CLAIM IN RECONVENTION OR AN INCEPTION WITH OR WITHOUT AN APPLICATION TO STRIKE OUT."

[3] It is therefore clear from the provisions of Rule 22 (1) that where a defendant has filed an application for further particulars and those particulars have been furnished, the defendant has 14 days within which to file a plea. I find that the step which was taken by the plaintiff of serving the defendant on the same date with both the reply for further particulars and the notice of bar was irregular and that step is accordingly set aside. In the circumstances the Rule 30 application succeeds with costs.

[4] And I may say before I finalize this matter that the plaintiff was duly served with the application in terms of Rule 30 on the 4 March 2009, and today is 13 March, 2009 and there is no indication on the Plaintiffs part that he wishes to oppose the application for setting aside the notice of bar as an irregular step.

DELIVERED IN OPEN COURT IN MBABANE ON THIS 13TH DAY OF MARCH, 2009.

T.S MASUKU

JUDGE