

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CIV. CASE 3568/08**

**In the matter between:**

**CASPER GROENEWALD**

**Plaintiff**

**And**

**SPAR SUPERMARKET - MATSAPHA**

**Defendant**

**Date of hearing: 10 June, 2009**

**Date of judgment: 10 June, 2009**

**R U L I N G**

**MASUKU J.**

- [1] Presently serving before Court is an application in terms of Rule 30, which seeks to set aside as an irregular step or

proceeding a combined summons issued by the Plaintiff against the Defendant.

[2] The context in which the notice in question arises is the following:

The Plaintiff, by combined summons dated 11 September, 2008, sued for the Defendant for an amount of E 112,000.00 in respect of pain and suffering, emotional shock, medical expenses, future medical expenses and loss of income. In his particulars of claim, the Plaintiff alleges that on 27 January, 2008, he purchased a bottle of juice in the Defendant's outlet at Matsapha, which he immediately consumed.

[3] Not long thereafter, he suffered severe abdominal pains and cramps. He concluded that it was the juice that caused his aforestated condition because upon reading the container thereof, he discovered that it had expired. He went to the Defendant's shop where he lodged a complaint and found that there were more bottles that had similarly expired. It is his averral that as a result, he had to undergo several medical tests. He further avers that the Defendant failed to monitor its stock and failed to remove expired stock from the shelves.

[4] In its notice in terms of Rule 30 aforesaid, the Defendant takes issue with the Plaintiffs particulars of claim. In particular, it claims that the said particulars fail to comply with the mandatory provisions of Rule 18 (10), which require a claimant for personal injuries to specify the date of birth, nature and extent of the injuries suffered, nature and effects and duration of the disability which gives rise to the damages in question. Furthermore, the said sub-Rule requires the claimant to state the medical costs and how they are made up and in respect of claims for pain and suffering, to state whether the injuries caused are temporary or permanent and which injuries caused it.

[5] A cursory perusal of the Plaintiffs particulars of claim shows indubitably that there was no effort spared to ensure compliance with the said sub-Rule. In particular, the plaintiffs date of birth is not disclosed. The nature and extent of the injuries should also be disclosed. This was also not disclosed nor was the nature, effect and duration of the disability disclosed in the instant case. On the above, I have no doubt that the Combined Summons is not compliant to the provisions aforesaid. I therefore hold that the notice in terms of Rule 30, which I must note is not opposed by the Plaintiff, is well taken and that in the circumstances, the provisions of Rule 18(12) should apply.

[6] I further note some problems with the Plaintiffs pleadings. In the first place, it is not clear whether the Defendant does have capacity to sue and be sued in its own name. It is certainly unclear whether the Defendant is a company, partnership or any such entity which has capacity to sue and be sued as aforesaid.


[7] I have also noted that the combined summons contains no page numbers. This is indeed queer and shows an unacceptable degree of inattention on the part of the Plaintiffs attorneys. The order that I shall issue should afford the Plaintiff a welcome opportunity, not only to attend to the issues raised in the Rule 30 notice, but to also rectify the issues I have adverted to above.

[8] In view of the foregoing, I come to the conclusion, which in any event appears inexorable, that the Rule 30 notice is meritorious and the following order is appropriate in the circumstances:

8.1 The Plaintiffs particulars of claim be and are hereby set aside as an irregular proceeding for failure to comply with the provisions of Rule 18 (10) of the High Court Rules;

8.2 The Plaintiff be and is hereby ordered to pay costs of the Rule 30 application on the scale between party and party.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS THE 10<sup>th</sup> DAY OF JUNE, 2009.**



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**T. S. MASUKU**  
**JUDGE**

**Messrs. Fakudze Attorneys for the Plaintiff Messrs.**  
**Mabuza Attorneys for the Defendant**