



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 3629/2007

USUTHU CREDIT & SAVINGS
CO-OPERATIVE SOCIETY LIMITED

Applicant

And

LINDIWE C. MABUZA

Respondent

Coram

S.B. MAPHALALA - J

For the Applicant
For the Respondent

MR. J. RODRIQUES
MR. J. MAVUSO

JUDGMENT

19th March 2009

[1] Serving before court is an application for summary judgment for payment of the sum of E10, 935-00 and interest thereon at the rate of 9% per annum calculated from the date of issue of summons to date of payment. In prayer 1.3 thereof costs of suit.

[2] The Respondent opposes the granting of the above cited orders and has filed an affidavit resisting summary judgment where a point *in limine* has been raised.

[3] According to the Respondent in terms of Applicant's 2003 by-laws (the section on disputes) any dispute concerning these by-laws or business of the society, between members or past members of the society or person claiming through them or between such members, past members, alternatively, persons claiming and the committee or any officer of the society or between this society and another registered **shall** be referred to the Commissioner in accordance with Section 98 of the Co-operative Societies Act No. 5 of 2003.

[4] The crux of the argument is that this clause ousts the High Court's jurisdiction to hear this matter.

[5] On the other hand it is contended for the Applicant that the above-cited extract is not the correct position if the section is to be read in its entirety and in this regard cited Section 98 (1) (d) of the Co-operative Societies Act 2003 which states the following:

“... such dispute **may** be referred ... to the Commissioner who shall refer the case to the co-operative tribunal”.

[4] The Plaintiff has an option to refer the matter for mediation and once referred it then becomes peremptory that once referred to the Commissioner it must be referred to the Co-operative Society Tribunal as established in terms of the Act.

[5] After assessing the arguments of the parties on this point it appears to me that the Applicants arguments are correct when one looks at the entire legislation. Section 9.1

thereof does not make it peremptory that disputes as defined in terms of Section 98 of the Act be referred to the Commissioner.

[6] It appears to me that the Applicant reserves the right to deal with disputes regarding in particular loan defaulters in the manner it sees fit, thereby vesting the court with the jurisdiction to adjudicate upon this matter. As a result, the point *in limine* is dismissed and I proceed to consider the merits of the application.

[7] On the merits of the case Respondent avers her defence in paragraph 5 of her affidavit resisting summary judgment. For the sake of clarity these paragraphs are reproduced *in extenso* as follows:

Respondent denies that she owes the sum of E10, 935-00 as claimed. Respondent wishes to state that prior to being granted the E10 000-00 loan, all her previous loans and interest thereon had been paid up. This is evidenced by Applicant's annexure "USCC1" up to annexure

“USCC4”.

Respondent submits that her savings (E4, 100-00) should be used to reduce the sum of E11, 500-00 which is the sum total of her loan and interest thereon as reflected as annexure “USCC4”. The remaining balance, would therefore be the sum of E7, 400-00 upon deduction of the E4, 100-00. Respondent submits that the sum of E1, 411-64 on the interest column of annexure “USCC5” has been illegally charged and should be deducted from the sum of E7, 400-00 (the remaining balance after deducting Respondent’s savings). The balance due now is the sum of E5, 988-36.

Respondent joined the Applicant and started making monthly savings of E100-00 sometime in January 1998. By the 31st December 1999, excluding interest the Respondent had at least accumulated savings amounting to E2, 400-00. Deducting the sum of E2, 400-00 from the balance due of E5, 988-36, the remaining balance becomes E3, 588-00.

The Respondent would in the circumstances accept an order for E3, 588-36 only.

[8] The Applicant on the other hand has answered to the above-cited averment in its Replying Affidavit at paragraph 6.2 to 6.3 in the following terms:

6.2 AD Paragraph 5 (c) (d) (e) and (f)

It is submitted that the Defendant was loaned and advanced the total sum of E22, 900-00 excluding the previous outstanding balance on her loan account of E600-00 as aforesaid, plus interest in the agreed amount of E4, 846-64 as per the loan application forms – as per (annexures “ESCC1” to USCCA5”) from which amount, Defendant was credited with total repayments of E13, 424-00

and her savings of E4, 100-00 thus reducing her indebtedness to the balance of which now due, owing and payable.

The Defendant's indebtedness is calculated as follows:

<u>Item</u>	<u>Amount</u>
Outstanding balance as at 29/11/99	E 600-00
Total loans advanced on 29/11/99, 21/08/00, 1/2/01, 24/10/01	E22, 900-00
Agreed interests on loans	<u>E 4, 846-64</u>
Total	<u>E28, 346-64</u>
Less total payments received	E13, 424-00
Less credit on savings account	E 4, 100-00
Total	<u>E10, 822-64</u>
Handling fee	<u>E 112-36</u>
Total due	<u>E10, 935-00</u>

In the circumstances the Defendant is indebted in the amount claimed as the Defendant has not liquidated the money loaned and advanced to her inclusive of interest and handling fee as agreed.

[9] After weighing the two versions reproduced above in paragraphs [7] and [8] of this judgment I have come to the considered view that the Defendant does not have a *bona fide* defence to Plaintiff's claim. The Plaintiff has made a clear case against the Defendant that the Defendant was at all material times loaned and advanced various sums of money in the total sum of E23, 000-00 plus a fixed interest

rate of 15% as more fully appears from annexures USCC1 to USCC5 at pages 10 to 14 of the Book of Pleadings.

[10] It is also clear on the papers that the monies lent and advanced to the Defendant pursuant to the various loan agreements between the parties were totally independent of each other, such that every subsequent loan agreement between the parties would not reveal the outstanding balance of the previous loan agreement between the parties.

[11] Pursuant thereto Defendant made payments towards the settlement of his loan accounts in the sum of E13, 424-00 in addition thereto Defendant was credited with a sum of E4, 100-00 being the credit balance of her savings with the Plaintiff as per paragraph 5.4 of the Plaintiff's declaration (see page 7 of the Book of Pleadings).

[12] In the result, for the afore-going reasons the application for summary judgment is granted with costs.

S.B. MAPHALALA
PRINCIPAL JUDGE