

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 2868/2001

MARY SEHLEPHI CHIMWAZA

Applicant

And

SWAZILAND NATIONAL HOUSING BOARD

Respondent

Coram

S.B. MAPHALALA - J

For the Plaintiff

Mr. Z. Magagula

For the Defendant

Advocate L. Maziya

(Instructed by Mthembu,

Mabuza Attorney)

JUDGMENT 12th
February 2009

[1] At the close of the Plaintiffs case the Defendant has made an application in terms of Rule 39 (6) of the High Court for absolution from the instance.

[2] The said Rule of court provides that at the close of the case for the Plaintiff, the Defendant may apply for absolution from the instance, in which event the Defendant or one Counsel on his behalf may address the court and the Plaintiff or one Counsel on his behalf may apply. The Defendant or one Counsel on his behalf may thereupon reply on any matter arising out of the address of the Plaintiff or his Counsel.

[3] Advocate Maziya appearing for the Defendant premised his arguments on the *dictum* in the leading case of *Gascoyne vs Paul & Hunter 1917 T.P.D 170* which contain the following formulation:

"At the close of the case for the Plaintiff, therefore the question arises for the consideration of the court is, is there evidence upon which a reasonable man might find for the Plaintiff?... The question therefore is, at the close of the case for the Plaintiff was there a *prima facie* case against the Defendant Hunter, in other words, was there such evidence before the court upon which a reasonable man might, nor should, give judgment against Hunter?"

[4] Having considered the evidence of the Plaintiff *in toto* with the legal arguments of Counsel on the point of absolution from the instance I have come to the view that the Defendant has a case to answer. I find that the evidence led for the Plaintiff might lead

the court to rule in his favour. The question whether the court should give judgment for the Defendant is another matter that will be fully answered when the Defendant has led his evidence in rebuttal. In coming to this conclusion I have followed the *dictum* in the case of *Gascoyne (supra)*.

PRINCIPAL JUDGE

.B. MAPHALALA

[5] In the result, for the afore-going reasons the application for absolution from the instance is refused with costs.