

## **IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CIV. TRIAL CASE NO. 3961/08**

**In the matter between:**

**PLAZA TOTAL (PTY) LTD**

**PLAINTIFF**

**And**

**VUKUYITHATHE TRANSPORT**

**DEFENDANT**

**Date of hearing: 4 March, 2009**

**Date of judgment: 4 March, 2009**

**Mr. Attorney M.C. Simelane for the Plaintiff**

**Mr. Attorney B.G. Mdluli for the Defendant**

### ***EX TEMPORE JUDGMENT***

**MASUKU J.**

[1] This is a claim in which the plaintiff, Plaza Total (Pty) Ltd sued out from the office of the Registrar of this Court, a summons, claiming payment of the amount of E12 834.75 interest thereon at the rate of 9% per annum *tempore morae* and costs of the suit. It is alleged in the particulars of claim that there was an oral agreement between the plaintiff and the defendant in respect of which the

defendant was allowed to draw fuel from the plaintiffs petrol pumps and that the amount of the fuel would be settled by the defendant on demand.

It is claimed that the defendant notwithstanding that it drew fuel from the plaintiffs pumps has not paid for the same and is indebted to the plaintiff in the amount of E12 884.75 aforesaid. The plaintiff attached to its particulars of claim the summary of accounts in relation to the defendant's alleged indebtedness.

Upon receipt of summons, the plaintiff filed a notice to defend whereupon the plaintiff filed an application for Summary Judgment. The defendant raised a preliminary point of law namely that the plaintiffs claim does not fall within the realms of Rule 32 (2) of the Rules of this Court relating to Summary Judgment. In particular it was argued that the basis of the plaintiffs claim is not a liquid document nor is the amount claimed liquidated.

I dismiss that point of law without further ceremony for the reason that it is clear from a reading of the plaintiffs papers, particularly the statements of account that the amount claimed from the defendant is a liquidated amount in money. Now coming to the merits of this application for Summary Judgment, two things are clear from the affidavit opposing Summary Judgment.

- 1) The defendant claims that in terms of the oral agreement it was supposed to be provided with the statements which it would sign in acknowledgement of the amount owing, an

allegation which it says was not complied with by the plaintiff in the instant case. In my view this raises a triable issue and puts into question whether or not the defendant is liable because the statements which have been attached do not bear the defendant's signature, if his version be true.

- 2) Secondly, the defendant states in its affidavit resisting Summary Judgment that in so far as its records are concerned it owed an amount of E4 500.00 to the plaintiff which it has paid in full. It therefore denies at all that it owes the amount claimed by the plaintiff in the application for Summary Judgment.

Authority is legion that in matters of Summary Judgment, the defendant does not have to prove that it has a cast iron defence. It is sufficient if it raises facts, which *prima facie* raise issues that require a trial. I am of a view that in the instant case what the defendant has stated in its papers raises triable issues. In the circumstances, I hereby grant the defendant leave to defend this matter and the defendant shall file its plea within 14 days from the date of this judgment and thereafter the matter shall take its normal course in terms of the rules. The costs of the Summary Judgment shall be postponed for determination by the trial court.

**MASUKU J  
JUDGE**

**DELIVERED IN OPEN COURT IN MBABANE ON THIS 4<sup>TH</sup> DAY OF  
MARCH, 2009.**