



IN THE HIGH COURT OF SWAZILAND
JUDGMENT

Case No: 3142/10

In the matter between:

PROTON CONTRACTORS (PTY) LTD

Plaintiff

and

SIVUKILE FARMERS ASSOCIATION

Defendant

Neutral citation: Proton Contractors (Pty) Ltd v Sivukile Farmers
Association (3142/10) [2011] SZHC 14 (10
February
2012)

Coram: MABUZA J

Delivered: 10 February 2012

[1] The Plaintiff issued a simple summons against the Defendant. The Defendant filed its notice of intention to defend. The Plaintiff followed up with its declaration and an amendment thereto. On the 15th December 2010, the Defendant filed a notice in terms of Rule 23 (1) wherein it raised an exception to the Defendant's declaration as amended on the grounds that same was vague and embarrassing and that it did not disclose a cause of action. The cause of complaint raised was that while it was alleged that the parties' agreement was a written one, a copy thereof was not annexed to the Plaintiff's pleadings in terms of Rule 18 (6) by notice dated 16th November 2010, the Plaintiff was requested to remedy the defect.

[2] The Plaintiff failed to do so and instead served an application for summary judgment on the Defendants on the 21 January 2011 which was slated for hearing on the 4/2/2011 totally ignoring the Defendant's notice to cure the defect. The Defendant immediately prepared and filed its affidavit resisting summary judgment. The affidavit with its filing notice is some nine pages in length. Its preparation, serving and filing together with court fees therein surely put the Defendant out of pocket.

- [3] The parties appeared before the above Honourable court on the 4/2/2011 and the Plaintiff was granted leave to file a replying affidavit. This appearance further put the Defendant out of pocket.
- [4] Instead of filing a replying affidavit as ordered by the Honourable court within fourteen days the Plaintiff instead served and filed a notice to abandon the application for summary judgment. The reason for abandonment has not been stated nor has the Plaintiff tendered costs for such abandonment.
- [5] In his oral submissions before me Mr. Manyatsi stated that the Plaintiff had merely abandoned the application for summary judgment and not the main action. He did not state the reason(s) for the abandonment. I strongly suspect that the abandonment is due to the litany of errors that Mr. Ndlovu has been at pains to point out from the outset of this matter which seem to have been ignored by the Defendant. I have my doubt as to whether Mr. Manyatsi will proceed on the same papers. I suspect that he will have to withdraw the action and start afresh if he is to avoid the issues raised by Mr. Ndlovu.

[6] In my considered view the Defendant is entitled to its costs and is accordingly granted such costs as it seeks including the costs occasioned by this application.

Mabuza J

Judge High Court of Swaziland

For Applicant: Mr. Manyatsi

For Respondent: Mr. Ndlovu