



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No.1926/2012

In the matter between:

MAXWELL UCHECHUKWU

Applicant

vs

PRESIDENT STREET PROPERTIES (PTY) LTD

Respondent

Neutral citation: *Maxwell Uchechukwu vs Motsa-Manyatsi Associates Attorneys (1926/2012) [SZHC 139] (12 July 2013)*

Coram: **MAPHALALA PJ**

Heard: 12 June 2013

Delivered: 12 July 2013

For the Plaintiff: Mr. S. Jeje

For the Respondent: In absentia

Summary: (i) This is an Application for judgment by default in terms of Rule 31(3) (a) of the Rules of this Court. The Applicant led *viva voce* evidence in proof of damages.

- (ii) The court called the Applicant to prove the *quantum* of damages sought in the Particulars of Claim.
- (iii) In the result, the court grants an order by default in terms of prayers (a) (b) & (c) of the Particulars of Claim.

Cases referred to in judgment:

- (a) *Borfung vs Coetzee 1979(2) SA 632 (NC)*;
- (b) *Herbstein and von Wissell, The Civil Practice of the Supreme Court of South Africa, 4th edition* and cases cited thereat.

JUDGMENT

[1] Before court is a Notice of setdown for judgment by default in terms of Rule 31(3) (a) of the Rules of the High Court orders in the following terms:

- (a) Payment of the sum of E528 331,67;
- (b) Interest at the rate of 9% per annum from date of service of summons to final date of payment;
- (c) Costs of suit;
- (d) Further and/or alternative relief.

[2] The matter appeared before me on the 12 June, 2013 for proof of damages in terms of the law.

[3] The Defendant, President Street Properties (Pty) Ltd being the 1st Respondent was served with summons in this matter on the 12 December 2012 and

Defendant does not oppose the claim and therefore, it was treated as a default judgment in terms of Rule 31(3) (a) of the High Court Rules.

[4] The Plaintiff filed a summons before this court on the 19 November, 2012 with Particulars of Claim relating to the matter between the parties.

[5] As I have stated above in paragraph [2] of this judgment the Plaintiff gave *viva voce* evidence being led by his attorney Mr. Z. Jele.

[6] It is trite law as stated in the South African case of *Borfung vs Coetzee 1979(2) SA 632 (NC)* that where the claim was for damages, The practice of the Courts was to require the Plaintiff to lead evidence only with regard to *quantum* of damages. The court rejected this argument holding that the evidence which might be required to be led in terms of Rule 31(3) (a) is not necessarily confined to the issue of *quantum* but may also relate to the cause of action. The court has an unfettered discretion in this regard. (See also page 535 of *Herbstein and von Wissell, The Civil Practice of the Supreme Court of South Africa, 4th Edition*) and the cases cited thereat.

[7] Rule 31(3) (a) provides as follows:

“(a) Whenever a Defendant is in default of delivery of notice of intention to defend or a plea, the Plaintiff may set the action down as provided in sub-rule (5) for default judgment and the

court may, where the claim is for a debt or liquidated demand, without hearing evidence, oral or documentary, and in the case of any other claim, after hearing such evidence as the court may direct, whether oral or documentary, grant judgment against the Defendant or make such order as to it seems fit.”

- [8] The Plaintiff related at some length the circumstances in this matter in the same manner as the Particulars of Claim in support of his cause of action.
- [9] He deposed under oath that on or about October, 2011 he and the 1st Defendant entered into an oral lease agreement and he remained in occupation ever since.
- [10] He testified that on or about the 2nd July, 2012 and with an irregular court order the Defendants acting in consent and/or with a common purpose removed from the Plaintiff’s business premises the items listed in annexure “MV1” and further closed down the shop without having given Plaintiff notice to vacate the said premises.
- [11] He testified that as a result of the 1st Defendant unlawful and wrongful conduct the Plaintiff has suffered damages in the sum of E518,331.67 comprising of the book and market value he referred to in annexure “MV1” and the sum of E15,000.00 representing loss of business.

[12] He testified further that the said sum of E528,331.67 is now due owing and payable and despite demand Defendant fail, neglect and/or refuse to pay the same. Further he handed to the court various documents pertinent to the claim being exhibit “1”. Various receipts of his payments for rent to the 1st Defendant “exhibit 2” being Petitioner’s Restitution Request for damages and exhibit “3” being various invoices.

[13] In view of the above legal position the Plaintiff gave *viva voce* evidence being led by his attorney and submitted pertinent annexures to the claim before court.

[14] I have considered all the papers before me and the evidence of the Plaintiff and I come to the considered view that Plaintiff has proved the *quantum* of damages sought in the Particulars of Claim.

[15] In the result, for the foregoing reasons judgment is granted by default of the Defendant in terms of prayers (a), (b) & (c) of the Particulars of Claim.

STANLEY B. MAPHALALA

PRINCIPAL JUDGE