



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 4339/09

In the matter between

ABRAHAM ZWANE

Plaintiff

and

SAMUEL M. DLAMINI

Defendant

Neutral citation: *Abraham Zwane v Samuel M. Dlamini* (4339/09)
[2013] SZHC 16 (08 February 2013)

Coram: Mamba J

Heard: 08 February, 2013

Delivered: 08 February, 2013

Civil Law and Procedure – in an unopposed action Plaintiff failing to make out a cause of action – claim cannot succeed – leave to amend granted.

[1] The Plaintiff seeks judgment in the sum of E44785.27 which is made up as follows: E19229.50 in respect of arrear rentals and E25555.77 in respect of damages for repairs to the house that had been leased by the Defendant. This action is not opposed.

[2] I have no difficulty with the claim in respect of arrear rentals and it is hereby granted without any further ado. However, the same may not be said in respect of the balance of the Plaintiff's claim. In support of that claim the Plaintiff states as follows in his particulars of claim:

“8. At the time the Defendant vacated the premises in August 2009, he was owing arrear rentals in the sum of E19, 229.50 for the period between April 2009 and August 2009. A copy of the statement of account for the Defendant is annexed hereto marked “B”.

9. The Landlord had to pay the sum of E25 555.77 being in respect of necessary costs for restoring the property into the condition it was when the Defendant took occupation thereof. It is stated that the premises were damaged at the time the Defendant vacated same.

10. Therefore, the Defendant is now liable to pay to Plaintiff the sum of E44 785.27 made up as follows:

Arrear rentals	E19, 229.50
Costs of repairing damages	<u>E25, 555.77</u>
	<u>E44, 785.27”</u>

- [3] The above allegations by the Plaintiff are in my judgment insufficient to ground a claim or as a cause of action in respect of damages. The Defendant may only be held liable for such costs of repair to the premises if ex contractu, he has specifically agreed to be so held or he has, through an unlawful act of commission or omission caused the damage complained of. No such allegation has been made by the Plaintiff.
- [4] When these deficiencies were put to Counsel for the Plaintiff, he insisted on his client's claim saying: first, that the Defendant had not opposed or challenged this claim and Defendant would therefore not be prejudiced by an order that he should pay this amount, and secondly, that he (Counsel) had not drafted or drawn Plaintiff's papers. Both these reasons or grounds cannot be a justification or cure for the inadequacies herein.
- [5] The Plaintiff has failed to establish a cause of action in respect of the costs for the repairs to the premises. Consequently I cannot award such a claim. The Plaintiff is at liberty to amend his papers accordingly and then resurrect his claim.

[6] For the foregoing reasons I issue the following order:

- (a) Judgment is granted to the Plaintiff in the sum of E19 229.50 in respect of arrear rentals plus interest thereon at the rate of 9% per annum a tempore morae
- (b) The Plaintiff is granted leave to amend his papers in respect of the balance of his claim.

MAMBA J

For Plaintiff : Mr. N. Sithole

For Defendant : No appearance