



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case No: 1204/2012

In the matter between

MBUSO BUILDING CONSTRUCTION (PTY) LTD PLAINTIFF

And

WORLD MISSION AGENCY ALIAS DEFENDANT
WINNERS'CHAPEL INTERNATIONAL

Neutral citation: *Mbuso Building Construction (Pty) Ltd v World Mission Agency Alias* (1204/2012) 2014 [SZHC] 155 (17 July 2014)

Coram: M. S. SIMELANE J

Heard: 7 March 2014

Delivered: 17 July 2014

Summary: Civil Procedure – claim for damages – Application in terms of Rule 30 (1) of the High Court Rules – application dismissed.

Judgment

SIMELANE J

- [1] The genesis of this application is that on the allegation or about 13th June 2011 the parties' entered into a verbal agreement in terms of which the plaintiff provided labour in order to build a church building for the defendant at Ngwane Park in Manzini. The agreed contract price for the construction of the said building was the sum of (E 575 691 -00). The defendant was to provide building materials for the construction and plaintiff was to provide labour.
- [2] Immediately after the agreement the plaintiff moved in with his labour and working equipments to start the construction works. The plaintiff alleges that he was forced to do some extra works extras which were not part of the initial agreement between the parties. The plaintiff alleges that the extras amounted to E 108 402- 00.
- [3] The plaintiff further contends that on or about 24th November 2011 the Defendant terminated the contract between the parties. It is plaintiff's allegation that the Defendant took the plaintiff's employees to do the job using the plaintiff's working tools and equipments.

[4] The plaintiff then instituted proceeding against the Defendant claiming damages alleging that the Defendant's action was wrongful and unlawful. The plaintiff claimed for the sum of (E 2, 905, 085- 00) calculated as follows :-

“Damages for breach of contract	E 500,000.00
Loss of earnings for 6 (six) months	E 360,000.00 x 6 = 2160 000.00
Market value of tools	E 51 085.00
Money spent on hiring alternative and / or substitute tools	E25 000.00 x 7= 175 000.00
Cost of tool shed kept by Defendant	E 11 000.00
Cost of trustees	E 8 000.00
Total	<u>E 2 905 085.00</u>

”

[5] The plaintiff alleges that despite lawful demand the defendant has failed and / or neglected and or refused to pay the said amount to the plaintiff.

[6] The plaintiff therefore prays for judgement against the defendant in the following terms:-

a) An order against the Defendant immediately to pay the Plaintiff the sum of E 2, 905, 885.00 (Two Million Nine Hundred and Five Thousand Eight Hundred and Eighty Five Emalangeni)

b) Interest thereon at the rate of 9 % per annum *temporae morae*

c) Costs of suit

d) Further and / or alternative relief.

[7] The Defendant moved an application to set aside Plaintiff's particulars of claim as being irregular for noncompliance with the provisions of Rule 18 (6) of the Rules of the High Court.

i) That Plaintiff has proceeded to file its amended particulars of claim notwithstanding that there was a notice in terms of Rule 30 (1) application pending before the court.

ii) Plaintiff in non-compliance whatever, with Rule 28(1) and (2) has proceed to file its Amended Particulars of claim, without giving notice of its intend to do so to the Defendant , and without also affording the Defendant the opportunity to raise objections thereto if it so desired.

[8] The defendant wherefore prays as follows:-

a) That plaintiff's Amended Particulars of claim be set aside

b) Costs of this application

c) Further and / or alternate relief.

[9] It is the forecoming Rule 30 application that presently vexes from court. The parties have filed their heads of argument for which I am very grateful. When this matter appears before me for oral argument on Friday the 28th March 2014, the plaintiff was represented by Mr L. Malinga and the defendant was represented by Mr. W. Mkhashwa. I have carefully

considered the totality of counsel's submissions for and against this application as contained in the heads of argument filed as well as the oral arguments tendered.

[10] Rule 30 (1) upon which this application is predicated provides thus:-

“A party to a cause in which an irregular step or proceeding has been taken by any other party way within fourteen days after becoming aware of the irregularity, apply to court to set aside the steps or proceeding. Provided that no party who has taken any further step in the cause with knowledge of the irregularity shall be entitled to make such application.”

[11] It is crystal clear from the language of Rule 30 (1) that if a party is aggrieved by an improper and unprocedural step taken by the other party, the aggrieved party can challenge such a step as an irregular step.

[12] It is also the position of the law that an application in terms of R30 (1) can only be successful if the irregularity in the proceedings is much as to work substantial prejudice on the other party.

[13] I am inclined to agree with the Defendant that since there was no agreement between the parties or a Court order for the amendment of the summons, it was unprocedural for the Plaintiff to amend the summons in the manner the plaintiff did. This was an irregular step and same has to be set aside.

[14] I hereby order as follows:-

(1) That the Plaintiff's amended particulars of claim be set aside.

(2) The Plaintiff to pay the costs of this application.

M. S. SIMELANE
JUDGE OF THE HIGH COURT

For the Plaintiff : **MR L. MALINGA**

For the Defendant : **MR W. MKHATSHWA**