



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Civil Case 2121/12

In the matter between:

**SEYLAN TRAVEL AND TOURS (PTY)  
LTD t/a UNIGLOBE SEYLAN TRAVEL**

**Plaintiff**

And

**CHARLES JELE**

**Defendant**

**Neutral citation:** *Seylan Travel and Tours (Pty) Ltd t/a Uniglobe Seylan Travel  
(2121/12) [SZHC 29] 19<sup>th</sup> February 2016)*

**Coram:** **MAPHALALA**

**A PJ**

**Heard:** **21<sup>st</sup> June, 2013**

**Delivered:** **19<sup>th</sup> February 2016**

**For Plaintiff: Advocate L Maziya  
(instructed by Elvis M. Maziya)**

**For Defendant: Mr. J. Mavuso  
(of Justice M. Mavuso Company)**

**Summary:** Civil Procedure – Application for Summary Judgment – Defendant has only raised a point of law – does not answer to the merits of the Application – this court finds against the point of law raised – also rules on the Application for Summary Judgment - in terms of requirements of Rule 18 (5) of the High Court Rules.

## **JUDGMENT**

### **The Application**

[1] On the 21<sup>st</sup> June, 2013 an Application for Summary Judgment appeared before this court for an order in the following terms:

1. **Payment of the sum of E310 000.00 (Three Hundred and Ten Thousand Emalangeni).**
2. **Interest thereon at the rate of 9% per annum *atempore morae* from date when the debt became due being the 10<sup>th</sup> November to date of payment.**
3. **Costs of suit.**
4. **Further and / or alternative relief.**

[2] The Plaintiff has filed an affidavit in support of his Application deposed to one Saman Jayasinghe stating out the following:

**I am an adult Srilanka businessman and the Managing Director of Plaintiff, herein, and I am duly authorised to make this affidavit the facts stated herein being within my personal knowledge and belief true and correct.**

**2**

**I verify and confirm the cause of action and each and every allegation contained in the Particulars of Claim to the Summons issued and served on the Defendant and amount claimed by the Plaintiff against the Defendant as being correct.**

**3**

**I verily believe that and in my humble opinion the Defendant has no bona fide defence to the claim and the Notice of Intention to Defend have been filed solely for purposes of delaying the final outcome of the action and I accordingly humbly pray that Summary Judgment as prayed for in the Notice of Application to which this Affidavit is annexed be granted in terms set out herein.**

[3] The Plaintiff further state the following in its Particulars of Claim:

**Between the 22<sup>nd</sup> of September 2010 and the 29<sup>th</sup> of October 2010 Plaintiff lent and advanced Defendant various amounts of money by cheques totalling the sum of E310 000.00 (Three Hundred and Ten Thousand Emalangi) at Defendant's special instance and request which total amount Defendant acknowledged by signing an Acknowledgement of Debt, copy of which is attached hereto marked ANNEXURE A.**

**In terms of the aforesaid Acknowledgement of Debt duly signed by the Defendant the Defendant promised to refund Plaintiff the said sum of E310 000.00 (Three Hundred and Ten Thousand Emalangi) on the 10<sup>th</sup> day of November 2010.**

**Despite numerous verbal and written demands by Plaintiff to Defendant for payment since it is now overdue as per the Acknowledgement of Debt ANNEXURE A. Hereto attached Defendant has failed, refused and / or neglected to make payment or any sum at all to date hereto to Plaintiff.**

**WHEREFORE Plaintiff claims against the Defendant for an Order for:**

- a) Payment of the total sum of E310 000.00 (Three Hundred and Ten Thousand Emalangi).**
- b) Interest thereon at the rate of 9% per annum *atempore morae* from date when the debt became due being the 10<sup>th</sup> November 2010 to date of payment.**
- c) Costs of suit.**
- d) Further and / or alternative relief.**

### **The opposition**

[4] The Defendant filed a Notice to Defend on the 18 December, 2013.

[5] When the matter was called on the 21 June, 2013 the Defendant filed a point of law as stated in the Notice to raise Points of Law to the following:

**1**

**Uniglobe Seylan Travel and Tours does not have contractual capacity as it is neither a legal person nor a natural person.**

**Defendant submits that its purported agreement with the above entity can not be said to be lawful.**

**2**

**Plaintiff in the action proceedings is a legal person, the name of SEYAN TRAVEL AND TOURS (PTY) LTD t/a UNGLOBE SEYLAN TRAVEL, whilst in annexure “A” (the acknowledgment Debt) it is Uniglobe Seylan Travel and Tours.**

**Defendant submits that Plaintiff is:**

- a) Enforcing a purported agreement, with which, it has no business.**
- b) Enforcing an agreement which is null and void *ab initio*, for the lack of capacity on the part of Uniglobe Seylan Travel and Tours.**

[6] The arguments of the Defendant are essentially what is stated in the Notice to raise points of law although Mr. Mavuso for the Defendant undertook to file Heads of Arguments in this regard. However, Mr. Mavuso has failed to forward such Heads of Arguments to the court. The court therefore shall give judgment on the arguments advanced on the 21 June, 2013. This fact explains the long delay in giving judgment in this matter.

[7] The attorney for the Applicant Advocate L. Maziya contended that the arguments of the Respondents have no basis in law as to point of law is not properly taken as the Plaintiff “**Seylan Travel and Tours**” is “trading as **Uniglobe Seylan Travel and Tours** “ and there is nothing un towards about that in business.

#### **The Court’s analysis and conclusions thereon**

[8] Having considered the arguments of the attorneys of the parties it would appear to me that the point raised by the Defendant has no substance in law but a mere technicality.

[9] It is without question that the Plaintiff **Seylan Travel and Tours (Pty) Ltd** is trading as **Uniglobe Seylan Travel**. I do not understand the Defendant's argument that **Uniglobe Travel and Tours** is not the same as **Uniglobe Seylan Travel**. On the totality of the Defendant's arguments it appears that the attorney for the Defendant is just clutches at straws in the circumstances of this case. I thus dismiss the preliminary point without any further ado. I now proceed to deal with the merits of the case.

[10] In the present case the Defendant has failed to file an affidavit resisting Summary Judgment as envisaged by the Rules stating the facts upon which he relies for his defence of the Application for Summary Judgment.

[11] In this regard I am in agreement with the Applicant's contention that Defendant does not deny knowledge of the following:

2.1 **He fails to deny knowledge of the Plaintiff.**

2.2 **He fails to deny the transaction.**

2.3 **He fails to deny the amount.**

2.4 **He fails to deny the signature on the Acknowledgement of Debt.**

2.5 **He does not allege that he paid the alleged debt and he fails to provide proof of payment if any.**

2.6 **Defendant fails to deny borrowing the sum due.**

2.7 **He fails to deny that the claimed amount is due.**

[12] In my assessment of the papers before me the Defendant's purported defence is evasive in that it fails to answer the point of substance in complete disregard of the requirements of Rule 18(5), of the High Court Rules.

[13] In the result, for the foregoing reasons Plaintiff is entitled to an order for Summary Judgment with costs.

**STANLEY B. MAPHALALA**

**PRINCIPAL JUDGE**