

**IN THE HIGH COURT OF ESWATINI**  
**JUDGMENT**

**HELD AT MBABANE**

In the matter between:

**Case No.: 1237/2020**

**OUT-THERE t/a TOTAL LUBE SOLUTIONS  
(PTY) LTD**

And

**PRIME LOGISTICS (PTY) LTD**

**Plaintiff**

**Defendant**

**Neutral Citation:** *Out-there t/a Total Lube Solutions (Pty) Ltd vs Prime  
Logistics (Pty) Ltd (12372020) [2023] SZHC 390  
(22/12/2023)*

**Coram:** **K. MANZINI J**

**Date Heard:** 16 October, 2023.

**Date Delivered:** 22 December, 2023.

THE BOARD OF DIRECTORS  
OF THE  
COMPANY

RESOLVED, THAT THE BOARD OF DIRECTORS  
DO hereby approve the

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approved and authorized

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and the same be and they are hereby  
approved and authorized



**SUMMARY:**

*Civil procedure – Goods sold and delivered in terms of an oral agreement – Defendant failed to make payment in terms of the agreement – Plaintiff has successfully discharged its onus in respect of proving its case on a balance of probabilities.*

*Defendant ordered to pay the Plaintiff in terms of the claim with costs.*

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**JUDGMENT**

**22/12/23**

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**K. MANZINI – J:**

- [1] The Plaintiff herein is Out-There t/a Total Lube Solutions (Pty) Ltd, a company duly registered in terms of the laws of Eswatini, and carrying on business at Mahhala shopping complex, Matsapha in the Manzini District.
- [2] The Defendant is Prime Time Logistics (Pty) Ltd, a company duly registered in terms of the laws of Eswatini, and having its principal place of business at the Bhunya area, in the Manzini District.





[3] The Plaintiff herein has instituted the current proceedings for the purpose claiming the recovery of the following:

3.1 Payment of the sum of E83,014.84 (Eighty Three Thousand and Fourteen Emalangen, and Eighty Four Cents).

3.2 Interest at the rate of 9% per annum *a tempore morae* to date.

3.3 Costs of suit.

3.4 Further and/or alternative relief.

[4] In his opening statements, it was submitted by the Attorney for the Plaintiff that this matter relates to a claim emanating from an agreement of sale. In terms of the said sale goods were sold by the Plaintiff to the Defendant, and delivery duly made. According to the Attorney for Plaintiff, the Defendant failed to make the expected payment in terms of their agreement, and within the stipulated thirty-day period, and therefore the agreement ought to be cancelled by the Court in the given circumstances.





## **BACKGROUND**

[5] The background facts of this matter are that the Plaintiff sold certain truck oil products, on credit, to the Defendant, and this was done at the Defendant's special instance and request. The sale was made pursuant to an oral agreement between the parties. These background facts were not disputed at these Court proceedings. The Plaintiff herein was initially represented by the DEMHLETA Legal firm of Attorneys, however they later withdrew as Attorneys of record. The Plaintiff's present Attorneys filed a Notice of Substitution on the 9<sup>th</sup> day of September, 2022. The Defendant was also represented in the initial stages of the proceedings by the office of Manyatsi and Associates. This firm ceased to make appearances on behalf of the Defendant after filing of the plea, and there was no further representation of the Defendant, or efforts by the Defendant to participate in the current proceedings. The matter was as a result heard to proceed as an *ex parte* trial in keeping with the provisions of the High Court Rules, more specifically Rule 16 ( 4) (b). The cited Rule stipulates that a party that was previously represented must within ten (10) days after the withdrawal of his Attorneys, notify all other parties of a new address for service.





### THE PLAINTIFF'S CASE.

[6] The Plaintiff's Managing Director, Mr. Robert, Richard James Kirk, testified at the trial on behalf of the Plaintiff. Mr. Kirk shall hereinafter be referred to as P.W 1. This witness explained that he is a resident of the Matsapha area, more specifically near the Lusushwana River. He explained further that he is a Director of several companies that he manages, the Plaintiff company being one such business. P.W 1 testified under oath that the Plaintiff was originally engaged in purchasing oil from Total Eswatini, and thereafter selling it to members of the general public. The testimony of the Managing Director of the Plaintiff was that the business later diversified, and this saw the Plaintiff now being involved in the sale of cement.

[7] The testimony of P.W 1 was that the Defendant Company was one of the Plaintiff's customers in the earlier days when the Plaintiff Company started selling oil. He explained that as a norm, the Plaintiff would supply its customers with oil, and this was done on credit, and the oil would be supplied on the spot. He stated that despite the oil being supplied on the spot, each customer would be issued with an invoice at the end of the month. He testified that once the invoice was received by the customer, they were then expected to pay for the oil supplied to them within a period





of 30 days. P.W 1 proceeded to refer the Court to page 6 of the Book of Pleadings. He explained that on this page, the Plaintiff had included a statement that contains a summary of all invoices, together with their numbers. He explained that the statement also listed the various dates that the invoices were issued to the Defendant Company, and a total of the amount owed at the end of the page.

[8] Mr. Kirk proceeded to refer the Court to the discovered documents being the actual invoices which were marked P2, P3, P4, P5 and P6. Each of the invoices made up the total of E83,014.84 (Eighty Three Thousand and Fourteen Emalangen, and Eighty Four Cents) which was claimed by the Plaintiff, and which is detailed in the statement. The statement listed the invoices as follows:

- 8.1 17/10/20 INA 10310 Tax Invoice PO2515 – E336 41.23
- 8.2 21/01/20 INA 10321 Tax Invoice MR – E12117.58
- 8.3 30/01/20 INA 10329 Tax Invoice PO2527 – E13 020.96
- 8.4 8/02/20 INA 10334 Tax Invoice PRM – E12117.58
- 8.5 24/02/20 INA 10360 Tax Invoice PO2543 – E12 117.55





[9] The testimony of the Plaintiff's witness was that despite demand, the Defendant had never made any sort of payment towards the settlement of this debt, despite demand. He stated that to this date the invoices remain due and payable, as they are an outstanding debt to the Plaintiff Company. His prayer before Court was that the Court grant the prayers made in the summons.

### **ANALYSIS AND FINDINGS OF THE COURT**

[10] The Plaintiff herein relies on an oral contract, purportedly concluded between the Managing Director of the Plaintiff Company in his representative capacity (P.W1, as well as Mr. Mabila, who represented the Defendant Company in his capacity as the Managing Director of same. The said oral agreements were purportedly concluded, according to the evidence of Mr. Kirk, under oath, on a number of occasions, and at Matsapha. It was testified that the terms of these oral contracts were that the monies owed on the fuel supplied by Plaintiff to the Defendant would be paid off within thirty days of the invoices being issued by Plaintiff to the Defendant. The said invoices according to the evidence of P.W1 were





dated on the 17<sup>th</sup> January, 2020, 21<sup>st</sup> January, 2020, 30<sup>th</sup> January, 2020, 8<sup>th</sup> February, 2020, as well as 24<sup>th</sup> February, 2020.

[11] In terms of Rule 18(6) of the High Court Rules, a party who relies on oral contract in his suit against another must comply with the following:

*“A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded...”*

[12] *In casu* the Plaintiff was able to establish before Court that the said contracts were concluded at Matsapha, at the Plaintiff's principal place of business. P.W 1 also testified that, and this was borne out by the invoices tendered as evidence, that the fuel was supplied to the Defendant Company on various dates, and Mr. Mabila represented the Defendant Company, as well as a Mr. Tawona who is also from the Defendant Company.

[13] In the present circumstance, and according to the uncontroverted evidence of Mr. Kirk, the Defendant Company failed to comply with the terms of





the agreements, and thereby breached the material terms of their contracts by failing to make payments, despite taking delivery of the fuel.

[14] In the premise the Court finds in favour of the Plaintiff as it is clear that the Defendant failed to make payments when they fell due, and also failed to make payments despite demand. The Plaintiff, in the Court's finding, has proven on a balance of probabilities that the Defendant is in breach of the oral agreements herein.

[15] The Court therefore orders the Defendant to pay the Plaintiff the following:

- (i) The sum of E83,014.84 (Eighty Three Thousand and Fourteen Emalangeni, and Eighty Four Cents);
- (ii) Interest at 9% per annum *a tempore morae*;
- (iii) Costs of suit.





**K. MANZINI  
JUDGE OF THE HIGH COURT OF ESWATINI**

**For the Plaintiff:** MR. B.S. MAGAGULA (B.S. MAGAGULA  
ATTORNEYS)

**For the Defendant:** NO APPEARANCE





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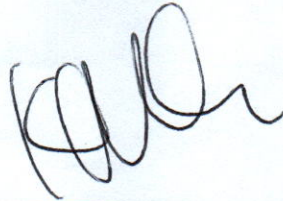
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**K. MANZINI**  
**JUDGE OF THE HIGH COURT OF ESWATINI**

**For the Plaintiff:** MR. B.S. MAGAGULA (B.S. MAGAGULA  
ATTORNEYS)

**For the Defendant:** NO APPEARANCE

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