



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE

Case No. 714/21

In the matter between:

T.T.A CIVILS (PTY) LTD

PLAINTIFF

AND

VICTOR LANGA

DEFENDANT

***Neutral Citation: T.T A Civils (Pty) Ltd v. Victor Langa
(714/21) [2022] SZHC 122 (10th June
2022)***

CORAM : J.S MAGAGULA J

DATES HEARD : 17/09/21 & 01/06/22

DELIVERED : 10th JUNE 2022

[1] This is an application for Summary Judgment in which the Plaintiff seeks an order for:

1. *Payment of the sum of E276 846.65 being in respect of construction works on Plot No.2 of 315, Malagwane Hill, Mbabane*
2. *Interest on the sum of E276 846.65 at the rate of 9% per annum compounded a tempore moraeto date of final payment.*
3. *Costs of suit."*

BACKGROUND

[2] By means of an undated letter attached to the particulars of claim the plaintiff was engaged by the Defendant to execute construction works on certain Plot No.2/315 situate in Malagwane, Mbabane in the Hhohho District. The project Manager was Africa South Architects (Pty) LTD. The project managers were to supervise the construction and issue payment certificates in stages for payment of the contractor by the owner.

[3] The Plaintiff commenced work on the 10th September 2018. As the work progressed Project Manager issued two certificates on the basis of which the Plaintiff was duly paid by the Defendant. Certificate No.2 was in the respect of work done up to early November 2018. The Plaintiff continued with works after payment for this certificate until 12 December 2018.

- [4] Plaintiff alleges that on the 12th December 2018, it was unlawfully stopped from continuing with the Project and it was not given any notice. On the other hand the Defendant maintains that the agreement was that the house would be completed on the 15th December 2018 and within a budget of E860 000-00. However after receipt of the second payment the Plaintiff began to delay the project. When Defendant enquired about the delays the Plaintiff's director said more money was needed to complete the project. The Defendant also alleges that some changes had been done to the project without him being consulted.
- [5] Thereafter a meeting was held by the three parties being the Plaintiff Defendant and the Project Manager. It is at this meeting that it was decided that the Plaintiff should not continue with the works. The Defendant maintains that at this time the Plaintiff had been paid all monies due to it and it removed all materials belonging to it which were on site.
- [6] The Plaintiff however maintains that it left on site materials valued at E29 753.00. A breakdown of the materials left on site is annexed to the Summons and marked "TT3". Plaintiff further maintains that the works done up to 12th December 2018 were valued at E298 885-36. Plaintiff further avers that in the cessation meeting it was agreed that the Project Manager shall issue a certificate for the value of materials left on site and for the value of works done since the second certificate. The Plaintiff states that it issued invoices for both

the value of materials left on site and the value of the works done and handed them to the Project Manager. The Project Manager however did not issue certificate No.3. until the Plaintiff had to approach the court for an order compelling it to issue such certificate.

[7] The application to compel was not challenged and it was duly granted by the court. The Project Manager then issued certificate No.3. This certificate remains unpaid and by these proceedings the Applicant seeks payment of same.

OBSERVATIONS AND CONCLUSIONS

[10] I observe that although the Defendant maintains that the Plaintiff was paid for work done after the second certificate he does not state how much was paid. Also, payments were to be made on the basis of a certificate issued by the Project Manager, he does not produce any certificate issued by the Project Manager on the basis of which he paid. The only certificate available is certificate No.3 which remains unpaid. Further, if the Defendant had paid the Plaintiff for works done after the issuing of the 2nd certificate he would have opposed the granting an order compelling the issuance of certificate No.3.

[11] Regarding the cost of materials left on site, the cost of materials is included in certificate No.3. Again the Defendant had an opportunity to oppose the issuance of such certificate and he did not. He cannot now maintain that the certificate

should not have been issued by the project manager or that it was improperly issued.

[12] For the foregoing reasons the following order is made;

12.1 Summary Judgment is granted.

12.2 The Defendant is hereby ordered to pay the Plaintiff the sum of E276 846 - 65.

12.3 Interest on the said amount at the rate of 9% per annum calculated from the date of issue of summons to date of final payment.

12.4 Costs of suit are awarded to the Plaintiff.

MAGAGULA J
JUDGE OF THE HIGH COURT

For the Plaintiff : K. Simelane

For the Defendant : B. Gamedze