# IN THE HIGH COURT OF ESWATINI

**CASE NO. 577/2022**

**HELD AT MBABANE**

In the matter between:

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| **ESW INVESTMENT GROUP LTD** | |
| **(FORMELY ECSPONENT SWAZILAND)** | **APPLICANT** |
| **And** | |
| **SHARON HLEZIPHI JELE** | **RESPONDENT** |
| **In re:** | |
| **SHARON HLEZIPHI JELE** | **PLAINTIFF** |
| **And** | |
| **ESW INVESTMENT GROUP LTD** | |
| **(FORMERLY ECSPONENT SWAZILAND)** | **DEFENDANT** |

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| **NEUTRAL CITATION:** | *ESW INVESTMETN GROUP LTD VS SHARON HLEZIPHI JELE (577/2022) [2023] SZHC – 223 (22/08/2023)* |
| **CORAM:** | **BW MAGAGULA J** |
| **HEARD:** | **29/05/2023** |
| **DELIVERED:** | **22/08/2023** |

*SUMMARY:* *Civil Law and Procedure – Application for rescission of judgment premised on the common law and on Rule 42 – Notice of Intention to Defend not filed in the Judges file.*

*HELD:* *In as much as the Defendant's failure to file a Notice of Intention to Defend was reckless, but it was not wilful. The Applicant has outlined sufficient facts that demonstrates that it has a bona fide defence to the action.*

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**JUDGMENT**

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**BW MAGAGULA J**

**BACKGROUND FACTS**

[1] This is an application instituted for rescission of judgment granted against the Respondent on the 28th April 2022. It is premised on the common law and on Rule 42.

[2] The Respondent, who is the Plaintiff in the main action, is strenuously opposed to the granting of the rescission.

[3] The cause of action emanates from the Respondent's closing value of her shares, which she subscribed with the Applicant. In what she describes as the

"maturity of the investment", [1] she requested for the payment of her investment and the Applicant is said to have failed to pay the amount of E210 723-35.

[4] It is this alleged failure by the Applicant that prompted the Respondent to institute summons. According to the return of service, the Deputy Sheriff served the legal process on the Defendant (now Applicant) in line with Rule 4 (2) (e) of the Uniform Rules of Court.

[5] The Applicant was expected to file a notice of intention to defend by the 20th April 2023, if it was desirous of defending the action. By the time the matter appeared on the roll for default judgments on the 28th April 2022, there was no notice of intention filed in court. Default judgment was granted accordingly as expected.

## THE APPLICANT'S BASIS FOR THE RESCISION

[6] The Applicant, through a supporting affidavit deposed to by it's managing director, Max Bonginkhosi Mkhonta, premises the application largely on the following grounds:-

6.1 The Notice of intention to defend, despite being served on the Respondents Attorneys and filed at the above Honourable Courts civil registry, was not filed in the Court file by the clerks at the

[1] See paragraph 7 of the particulars of claim at page 28 of the book of pleadings.

civil registry nor was the Honourable Justice B. Magagula informed of same:

6.2 The Applicant's Attorney on the date of hearing of the matter informed the Honourable Justice B Magagula of the said Notice of Intention to Defend, however despite this, Default Judgment was granted in favour of the Respondent.

[7] The Applicant belatedly filed its Notice of Intention to defend after ten (10) days had lapsed, pursuant to being served with the summons. The Notice of Intention to defend was filed at the Courts civil registry and served on the Respondent's Attorneys, a day before the default judgment was granted.

[8] The Applicant further avers that the summons had been served on the Applicant's Secretary/Receptionist, who had no knowledge of the nature and exigency of the court document.

[9] It has also been submitted that the Applicant's management was not aware of the summons up until the 26th April 2022.

[10] The Applicant further avows that the said judgment was granted despite the Applicant having filed a Notice of Intention to defend, a day before the granting of the said Judgment and with the Court having been informed of such a fact. The Applicant asserts that had the above Honourable Court been aware that the Applicant had not been aware of the summons up until **26th**

**April 2022**, then the above Honourable Court would not have granted default judgment. The Applicant further state that had the above Honourable Court taken into consideration that the Applicant had filed its Notice of Intention to defend a day before judgment was granted, then the above Honourable Court would have realized that the Applicant had a clear intention of defending the matter and would not have granted default Judgment[2].

[11] It is argued that the Respondents had served the summons upon a person that is not regarded as responsible[3]

**See: President Street Properties (Pty) Ltd V Maxwell Uchechukwu and Another (11/2014) [2014] SZSC 54 (3rd December 2014), Master Garments (Pty) Limited V Petros Mavimbela and The Commissioner of Conciliation Mediation & Arbitration Commission (N.O) (91/08),**

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[2] See also the case of Saraiva Construction (Pty) Ltd v Zululand and Electrical and Engineering wholesalers (Pty) Ltd 1975 (1) SA D

[3] See Rule 4 (1) (e) of the High Court Rules, which reads as follows: 4 (1) Service on the person to be served of any process of the Court directed to the Sherriff and any documents instituting application proceedings shall be effected by the Sherriff or Deputy Sherriff or in the case of a document instituting application proceedings by any attorney or any person in his employ: Provided that where the Registrar is satisfied that the Sherriff or Deputy Sherriff has failed to effect service within twenty-one days from receipt by him of such process or document he authorize in writing any person to effect service.

a) .....
b) .....
c) .....
d) .....

1. ( e) in the case of a corporation company, by delivering a copy to a responsible person at its registered office or a responsible employee thereof at its principle place of business within Swaziland, or if there is no such person willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law. See also the cases of Cargo Carries Swaziland (Pty) v Luis Trigo De Morias and Bongani J.B. Mamba N.O (1799/05), Regent Project (Pty) Ltd v Steel & Wire International (Pty) Ltd and Two Others (4660/08) 18th October 2012 [SZHC] 249

[12] The Applicant also contends that in view of the Constitutional imperatives found in Section 21 (1) of the Constitution, which guarantees the right to a fair hearing. A party who was not aware of the said action and who approaches the Courts seeking to be heard, cannot be ignored, mainly because it had no wilful default, but lacked awareness.

[13] The Applicant insists that it has sufficiently shown that it has "*bona fide*" defence to the action sought by the Respondents, in that the Applicant has shown that there was no breach of the contracted agreement between the parties.

[14] The Applicant has further argued that it has prospects of success to the claim in the following respects:-

14.1 The sum claimed by the Respondents is not yet due and payable as Redemptions as per the investment agreement can only be redeemable from profits in the Applicant company in line with Section 82 of the Companies Act.

14.2 In the event the Applicant defaults in making payment after the said period, Clause 1.5.5 would then be triggered until the Applicant passes the liquidity and solvency test a process that is further in line with Section 82 of the Companies Act, 2009.

[15] The Applicant therefore contends that is has a *bona fide* defence, which if proved at trial, would constitute a *bona fide* defence to the First and Second Respondent's claim.

[16] The Applicant also contends and submits further that it has never acquiesced to the Respondent's claim and as such is entitled to rescission as prayed for.

**THE RESPONDENT'S CASE**

[17] The Respondent opposes the rescission application and argues that it is unjustified and intended to frustrate the Respondent from enjoying the fruits of a lawfully obtained judgment.

[18] The Respondent cites Rule 31 (3) (b) of the High Court Rules which states that an application for rescission of a judgment entered in default of a notice of intention to defend must be made within twenty-one (21) days after the Applicant has knowledge of the default judgment and on notice to the other party. The Rule also provides that the Applicant must furnish security to the Respondent for the payment of the costs of the default judgment and the application for rescission of such judgment to the maximum of E200-00.

[19] The Respondent further submits that the application for rescission was not instituted within the prescribed number of days nor has same been supported

by an application for condonation for the non-compliance with the prescriptive rules, nor has security been furnished. Furthermore, there are no reasons furnished to the Honourable Court or to the other party for the omission. The Honourable Court is no-less wiser pertaining to the reason(s) for the omission.

[20] The Respondent argues further that the term "good cause" was defined by the then Court of Appeal, in the matter between **Mbukeni Maziya v The Motor Vehicle Accident Fund, Civil Appeal Case No. 18/13** where Justice Ibrahim J.A. citing from the head note of Smith's case **(Smith N.O. vs Brummer N.O. and Another 1954 (3) SA 352 (O)** recorded the following:

> ***"In an application for removal of bar (and same principles apply in applications for rescission of judgments) the Court has a wide discretion which it will exercise in accordance with the circumstances of each case. The tendency of the Court is to grant such application where:***
>
> ***a) The Applicant has given a reasonable explanation of his delay;***
> ***b) The application is bona fide and not made with the object of delaying the opposing party's claim;***
> ***c) There has not been reckless or intentional disregard of the Rules of Court;***
> ***d) The Applicant's action is clearly not ill-founded and;***
> ***e) Any prejudice to the opposite party could be compensated for by an appropriate order as to costs. The absence of one or more***

***of these circumstances might result in the application being refused."***

[21] The Respondent further contends that the requirements for rescission are trite and the requirements are as follows;

21.1 The application for rescission must be *bona fide*;

21.2 The Applicant must have a bona fide defence to the Respondent's claim which *prima facie* carries some prospects of success on the merits;

21.3 The Applicant must give a reasonable explanation of his default and if it appears that his default was wilful or was due to gross negligence, the court should not come to his assistance.

[22] The Rules are clear in that, on the requirements, a litigant desirous of defending same has to have filed opposing papers on or before the lapse of ten (10) days of service upon it[4]. In the instant case, the Applicant filed its Notice of Intention to Defend well after the lapse of the stipulated period, which was exacerbated by the allocation of the process to an attorney that was not even referred to in the summons commencing action.

[23] The Respondent submits that the conduct of the Applicant falls inexactitude of the Rules, having been timeously served with Court process. The Applicant only jumped to action once the period within which it should have filed its

[4] See page 24 of the Book of Pleadings.

opposing papers had long since lapsed (20th April) and the Applicant pursuing judgment by default.

[24] The Respondent further argues that the Applicant's defence is not *bona fide* as it in essence calls for the Honourable Court to condone the Applicant's material breach of the contractual agreement concluded between the parties. No explanation is proffered for the failure to file the Notice of Intention to Defend within time and having been informed that the failure to do so would empower the Respondent to seek judgment by default.

[25] It is also the Respondent's contention that the period between which the Applicant was served with Court process and the Notice of Intention to Defend was finally entered has been unaccounted for by their legal representatives. In *casu* this has been to the measure that the neglect of action constitutes wilful default on the part of the Applicant.

[26] The Applicant has not denied the fact that on the 14th April 2016, the Respondent subscribed for Class E preference shares, valued at **E1 000-00** (One Thousand Emalangeni). Further there has been no material denial that one of the material terms of the investment agreement was that subsequent to the lapse of the five (5) year period she would be entitled to the projected return which was in excess of **E200 000-00** (Two Hundred Thousand Emalangeni).

[27] In its papers, the Applicant cannot be said to have demonstrated a defence to the Respondent's claim. What does appear is the Applicant's desire to be granted a moratorium so as to enable it to raise the required funds. Under this rubric, the Applicant would then have been well advised to institute variation proceedings instead of the present motion for rescission. The application is most prejudicial to the Respondents claim n as much as it seeks to delay the execution, of its good and valid judgment.

**THE LAW**

[28] In terms of the common law, the following requirements must be advanced by an Applicant in a rescission application:-

28.1 A reasonable explanation.

28.2 The application must brought *bona fide*.

28.3 A bona fide defence(s) to the Second Respondent's claim, which *prima facie*, has prospects of success.

[29] In **Saraiva Construction (Pty) Ltd vs Zululand Electrical and Engineering Wholesalers (Pty) Ltd 1975 (1) SA 612 (D)** Howard J held as follows;

***"It is clearly necessary for the Applicant to furnish an explanation for his default, and if it is to be of any assistance to the Court in deciding whether "good cause" has been shown the explanation must show how and why the default occurred. If such an explanation is furnished, the correct approach I think, is to consider all of the circumstances of the case, including the explanation, for the purpose of deciding whether it is a proper case for the***

*grant of relief. If it appears that the default was wilful or was due to gross negligence on the part of the Applicant the Court may well decline, on that ground alone, to grant the indulgence sought."*

[30] In the case of **Chetty vs Law Society, Transvaal 1985 (2) SA 780 Muller JA** stated as follows;

> *"It is not sufficient if only one of these two (2) requirements is met; for obvious reasons a party showing no prospect of success on the merits will fail... no matter how reasonable and convincing the explanation of his default. An ordered judicial process would be neglected if, on the other hand a party who would offer no explanation for his default was never the less permitted to have a judgment against him rescinded on the ground that he had reasonable prospects of success."*

[31] In the case of **Eugene Rochart vs Fernando Julius Majela (1734/16 [2018] SZHC (184)** at paragraph 14, Mlangeni J held as follows;

> *"The Applicant does not need to establish its defence in an exhaustive manner. It is sufficient to allege facts which if proved at trial, would constitute a defence..."*

[32] In the case of **De Wet and Others vs Western Bank Ltd 1979 (2) SA 1031, AT 1042 F: Tengrave AJA** held as follows;

*"This under common law the Courts of Holland case, generally speaking, empowered to rescind judgment obtained on default of appearance, on sufficient cause shown. This power was entrusted to the discretion of the Courts. Although no..limits were set as to the circumstances which constituted sufficient case... the Courts nevertheless laid down certain general principles, for themselves, to guide them in the exercise of their discretion. Broadly speaking, the exercise of the Courts discretionary powers appears to have been influenced by considerations of justice and fairness, having regard to all the facts and circumstances of the particular case. The onus of showing the existence cause for the relief was on the Applicant in each case, and he had to satisfy the Court, inter alia, that there was some reasonably satisfactory explanation why the judgment was allowed to go by default."*

[33] On the meaning of a reasonable explanation in this context, **De Witts Auto Body (Pty) Ltd v Fegden Insurance Co Ltd**[5] is instructive. Here, the court stated as follows;

*"An application for rescission is never simply an enquiry whether or not to penalize a party for his failure to follow the Rules and Procedures laid down for civil proceedings in our Courts. The question is, rather, whether or not the explanation for the default and any accompanying conduct by the defaulter, be it willful or negligent or otherwise, gives rise to the probable inference that there is no bona*

[5] 1994 (4) SA 705 (E) at 711E

*fide defence, and hence the application for rescission is not bona fide."*

[34] In terms of Rule 42 (1) (a) of the Rules of the High Court rescission may also be granted as per the Rule which reads as follows;

> ***"The Court may, in addition to other powers it may have, mero motu or upon application of any party rescind or vary an order or judgment erroneously granted in the absence of any party affected thereby."***

[35] In terms of Rule 31 (b) of the High Court Rules an application for rescission of a judgment entered in default of a Notice of Intention to Defend must be made within twenty-one (21) days after the Applicant has knowledge of the default judgment and on notice to the other party. The Rule also provides that the Applicant must furnish security to the Respondent for the payment of the costs of the default judgment and the application for rescission of such judgment to the maximum of E200-00.

[36] The term "good cause" was defined by the then Court of Appeal, in the matter between **Mbukeni Maziya v The Motor Vehicle Accident Fund, Civil Appeal Case No. 18/13** where Justice Ibrahim J.A. citing from the head note of Smith's case **(Smith N.O. vs Brummer N.O. and Another 1954 (3) SA 352 (O)** recorded the following:

> ***"In an application for removal of bar (and same principles apply in applications for rescission of judgments) the Court has a wide***

*discretion which it will exercise in accordance with the circumstances of each case. The tendency of the Court is to grant such application where:*

*a) The Applicant has given a reasonable explanation of his delay;*

*b) The application is bona fide and not made with the object of delaying the opposing party's claim;*

*c) There has not been reckless or intentional disregard of the Rules of Court;*

*d) The Applicant's action is clearly not ill-founded and;*

*e) Any prejudice to the opposite party could be compensated for by an appropriate order as to costs. The absence of one or more of these circumstances might result in the application being refused."*

[37] His Lordship King J in the case of **Maujean t/a Audio Video vs Standard Bank of South Africa Ltd** (at page 804 paragraph 18.B), stated as follows;

*"It is clear on authority that a Defendant who knows that default judgment is to be taken against him and does not demur but allows the Plaintiff to take his course, is prescribed to be in wilful and is not entitled to rescission of the judgment."*

[38] On the meaning of a reasonable explanation in this context, **De Witts Auto Body (Pty) Ltd v Fegden Insurance Co Ltd**[6] is instructive. Here, the court stated as follows;

[6] 1994 (4) SA 705 (E) at 711E

*"An application for rescission is never simply an enquiry whether or not to penalize a party for his failure to follow the Rules and Procedures laid down for civil proceedings in our Courts. The question is, rather, whether or not the explanation for the default and any accompanying conduct by the defaulter, be it willful or negligent or otherwise, gives rise to the probable inference that there is no bona fide defence, and hence the application for rescission is not bona fide."*

[39] In **Hendricks vs Allen 1928 CPD 519** at 521, faced with similar facts, Gardiner J, stated as follows;

*"If he knows that a case is coming on and whatever his motive, deliberately refrains from entering an appearance then it seems to be there is wilful default. His reason need not be, to my mind, that he knows he has no defence; he may have some other motive, but, knowing that he is summoned to appear, if he deliberately fails to enter an appearance, from whatever motive, it seems to me there is wilful default. As my brother Watermayer points out to me, to quote the words of Bowen CJ, if he knows what he is doing, and intends what he is doing, and is a free agent, if he knows he is neglecting the summons, then there is wilful default."*

**ADJUDICATION**

[40] The basis of the Applicant's rescission application is on Rule 42 (1) (a) of the High Court Rules and the common law. [7] Rule 42 (1) (a), requires that a party

[7] Reference is made to the heading of the Notice of application.

be absent. In the matter at hand, when the default judgment was granted on the 28th April 2022, the Applicant (who is the Defendant in the main claim) was represented. In effect meaning the party was present in court. The Applicant was heard, but faced the impediment than the *dies* within which it could have filed a Notice of Intention to Defend had lapsed. The Plaintiff objected to the Notice of Intention to Defend being filed out of the time frames set out in the Rules. The ten (10) day period lapsed on the 20th April 2022. Therefore, the court was not in error when it granted the default judgment, nor was the Defendant absent. It then follows that the Applicant does not qualify to be granted default judgment under Rule 42 (1) (a).

[41] The Court will now proceed and determine whether the Applicant can be afforded relief under the common law. In terms of the common law, the following requirements must be advanced by an Applicant seeking a rescission of judgment;

41.1 A reasonable explanation.

41.2 The application is brought *bona fide*.

41.3 A bona fide defence(s) to the First and Second Respondent's claim, which *prima facie*, has prospects of success.

**REASONABLE EXPLANATION**

[42] The Applicant deals with the reasonable explanation in paragraph 6 of the founding affidavit. In a nutshell, the explanation proffered by the Applicant for the failure to file the Notice of Intention to Defend timeously, is that the

summons were served on the Applicant (Miss Khanyisile Mavuso) on the 1st April 2022. The blame is attributed to Miss Mavuso's failure to understand the nature and exigency of the document and by so doing, she did not immediately inform the Applicant's managerial staff about the court document. Hence, according to the founding affidavit the summons were only discovered by the company's secretary on the 26th April 2022, who after discovering same then immediately transmitted the summons to the Applicant's attorneys.

[43] Rule 4 (2) (e) stipulate that when a legal processes served on a company must be served on a responsible person in the company premises. It is not alleged in the founding affidavit of the Applicant that Miss Khanyisile Mavuso is not a responsible person.

1. She is a Secretary of the organization.
2. It has not been alleged that she was not authorized by the company to receive court documents and she did so.

[44] The Applicant cannot now turn around and give an impression that an employee who is employed by it, placed at the work station at the sole discretion of the Applicant, who received documents in the course of her employment and duties on behalf of the company, can be said not to have understood the exigency of the court document. What is more disturbing is that there is no affidavit of the said Miss Mavuso that has been filed before court, where she confirms that indeed she did not understand the exigency of

the document and also that she deliberately sat on the document and did not transmit it to whoever managerial staff is.

[45] The other disturbing issue is that, the alleged managerial staff, which the said Miss Mavuso was supposed to transmit the document to, is not mentioned. Neither the company Secretary is mentioned. There is just insufficient facts to give credence to the allegation that Miss Mavuso is not a responsible person. It appears she is being made a scapegoat.

[46] The processes of receiving documents on behalf of the Applicant was put in place by the Applicant itself, as part of it's internal processes and controls. If those systems that were put in place by the Applicant are failing, it is no justification to say the employee is not a responsible person in terms of Rule 4 (2) (e). If the employee entrusted with such responsibilities decides to drop the ball, such ineptitude cannot be said to be a reasonable explanation that meets the legal muster. Having said so, the court takes judicial notice of the fact that, there are other shareholders other than the Respondent that invested in the Applicant who do not necessarily form part of the management of the Applicant. They may be prejudiced if the default judgment is sustained, yet for all intents and purposes the Applicant intended to defend it.

[47] The Applicant also deals with the issue of the failure to transmit the Notice of Intention to Defend to the court file by the Civil Registry at length in paragraph 6.3 of the founding affidavit. In as much as the court notes that probably the Notice of Intention was not transmitted to the court file.

However, at that time the Notice of Intention to Defend was filed, the Applicant was already out of time. I doubt if it would have made any difference that the Notice of Intention to Defend was in the court file, if the Plaintiff was insisting that she be granted a default judgment. Which she was entitled to by the way, because the Notice of Intention had not been filed within the time frame stipulated in the Rules.

**Bona fide defence/prospects of success**

[48] The Applicant deals with this requirement at paragraph 7.9 of the founding affidavit. The Applicant argues that the Ecsponent Swaziland, the previous company, under which the Applicant traded, entered into a valid investor agreement with the Respondent.

[49] The Respondent agreed to be bound by the terms and conditions thereof, and in particular the Respondent confirmed her intention to participate in the share capital of the Applicant's company by purchasing linked loan units in the Applicant's company, in accordance with the invitation extended by the Applicant in the prospectus.

[50] Through the purchase, the Respondent assumed ownership of the linked loan units which made her to eventually own preference shares in the Applicant's company. It is also argued by the Applicant that it is a term of the valid agreement entered into by the parties that in the event there is a default on the part of the Applicant in paying out dividends and or redemptions, such an

event triggers clause 1.55 of the prospectus as a safety net for the investor. When that event happens, the preference shares that the Respondent owns in the Applicant's company, are then converted into ordinary shares. As an owner of ordinary shares, the Respondent was then eligible to receive 12% dividends per annum.

[51] It appears that a voting process took place on the 25th August 2021 where Respondent participated though a proxy and placed a vote. Consensus of that voting process was that the full redemptions should not be paid.

[52] It appears to me, that the Applicant has alleged sufficient facts, which if proved at trial would constitute a defence to the merits. If the Respondent participated in a voting process and agreed that shareholders should not be paid, she cannot then turn around and claim the initial investments as if she did not participate in the process.

[53] Obviously at this stage, it is not my call to adjudicate on the merits or demerits of that defence. As was stated in the matter of **Eugene Rochart vs Fernando Julius Majela (1734/16) [2018] SZHC (184)**, where the court stated that the Applicant does not need to establish its defence in an exhaustive manner. In my view, the Applicant has met the requirements for a *bona fide* defence. It then follows that if this defence is advanced at a trial, the Applicant has prospects of success.

## CONCLUSION

[54] The court accepts that the Applicant has sufficiently shown that it has *bona fide* defence to the action sought by the Respondent. In that the Applicant has *prima facie* demonstrated that the Respondent participated in a voting process through a proxy and the outcome was that full redemptions should not be paid. If this allegation will be proved by the Applicant during the trial, it may constitute a valid defence to the Respondent's claim.

[55] The court accepts that the Applicant has made a plausible argument pertaining to the fact that if it is true that it was agreed that redemptions should not be paid, the Respondent's claim may not be yet due and payable. Redemptions in line with the investment agreement can only be redeemable from profits. This is in line with Section 82 of the Companies Act.

[56] In the Court's view, there is likelihood that a trial court may find in favour of the Applicant. It will therefore not be in the interest of justice to sustain the default judgment for those reasons. Otherwise, the court maintains that the Applicant's conduct of neglecting to take proper steps to defend the proceedings was reckless. However, the court will condone that conduct due to the fact that on the merit of the claim, it appears that the Applicant has a strong case to defend the matter. As such, it has prospects of success which is an acceptable ground under which a court may grant a rescission of judgment.

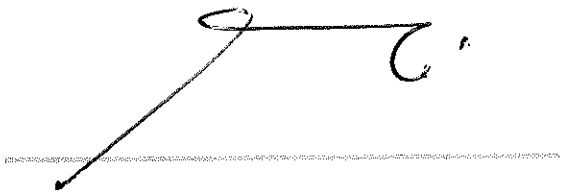
[57] It is on that basis that the court will allow the rescission of judgment as prayed for in the Notice of Motion. On the issue of costs, the court takes a dim view of the Applicant's conduct in the manner in which it structured its internal processes, especially those of receiving court documents. As such, the Respondent has been prejudiced in the costs that she has incurred in this matter.

[59] Due to the aforegoing reasons, the court exercising it's discretion, will grant the rescission of Application. However, the court will award the Respondent costs of the Application.

**ORDER**

a) The default judgment granted on the 28th April 2022 is hereby rescinded. The Applicant is granted leave to defend the action.

b) The Applicant is ordered to pay costs of suit to the Respondent at the ordinary scale.



**BW MAGAGULA**

**JUDGE OF THE HIGH COURT OF ESWATINI**

For the Applicant: P. Maphalala (S. V. Mdladla Attorneys)

For the Respondent: J Dlamini (Robinson Bertram)