



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 2026/22

In the matter between:

ZINHLE MATSEBULA

PLAINTIFF

AND

ZIMPA INVESTMENT (Pty) Ltd

DEFENDANT

Neutral citation: *Zinhle Matsebula vs Zimpa Investment [2026/22] [2023] SZHC
135 (2 June 2023)*

Coram: FAKUDZE, J

Heard: 14 April 2023

Delivered: 2 June 2023

JUDGMENT

Summary: *Civil Procedure – Summary Judgment – application for
summary judgment vigorously opposed – ground for
opposition that the Defendant’s Managing
Director has not made or proposed the terms for settling the
loan – summary judgment application dismissed on the
grounds that the Defendant has raised a triable issue.*

INTRODUCTION

[1] The Plaintiff instituted proceedings against the Defendant wherein it sought payment of E1,497.000.00. The Defendant filed its Notice of Intention to Defend, prompting the Plaintiff to move an Application for Summary Judgment. This Application is opposed by the Defendant.

[2] The contentious provisions are clause 5 and 6 of an Agreement that was entered into between the Plaintiff and the Defendant. Clause 5 and 6 provide as follows:

“5 That the immovable property, being Lot 563, Matsapha shall be sold and proceeds shall first be used to settle the mortgage bond with Standard Bank and then pay the other debtors, beginning with the Directors’ loans to the company, and whatever is left shall then be shared by Mpendulo and Zinhle in equal shares.

6. That the loans advanced to the company by Zinhle amounting to the sum of E1,497.000.00 (One Million Four Hundred and Ninety Seven Thousand Emalangeni) shall be settled by the company and Mpendulo shall propose the terms for settling the payment.”

The Parties’ contention

The Plaintiff

[3] The Plaintiff contends that the Applicant and one Mpendulo Myeni, were the only Directors and shareholders of Zimpa Investments (Pty) Ltd, the Defendant. In 2021, the Directors resolved to separate their business interests, so that each one of them would focus on his or her own business. The Directors then drew up the resolution (ZMI) to regulate the termination

of their business association. In the resolution the Directors acknowledged that the Plaintiff had loaned the Defendant the amount which is the subject matter of the Summary Judgment Application.

- [4] The Directors further agreed that the immovable property owned by the Defendant should be sold and the proceeds be used to settle the mortgage bond and the residue be used to pay other debtors, beginning with the Director's loans. Whatever remains would be shared equally between the Directors. The property was sold by public auction at the instance of the mortgage bond holder, Standard Bank.
- [5] The Plaintiff demanded payment of the amount owed by the Defendant by means of a letter of demand. The Defendant refused to pay leading to the institution of these proceedings.

The Defendant

- [6] In resisting summary judgment, the Defendant has raised four issues which it considers are sufficient grounds for resisting summary judgment. These are:
- (a) That the Respondent does not owe the Applicant any money;
 - (b) That the proceedings before court were prematurely instituted because clause 6 of the resolution provides that the remaining Director, Mr. Mpendulo Myeni, was to propose the terms for settling the loan;
 - (c) That there are pending legal proceedings between the same parties and on the same subject matter; and

(d) That there is a dispute on the capital liability. The capital liability has not been verified by the Respondent's accounts officer.

[7] In Reply, the Plaintiff disputed the allegations by the Defendant relating to the amount of the claim not being verified by the Accounts Officer and that the Defendant had paid substantial sums of money to the Plaintiff which ought to have been deducted. The Plaintiff failed to put up any evidence or at least an Affidavit from the Accounts Officer to confirm the allegations relating to her.

The law

[8] Rule 32 of the High Court Rules provides for a mechanism for Summary Judgment. The Rule states as follows:

“(1) Where in an action to which this Rule applies and a combined summons has been served on a defendant or a declaration has been delivered to him and that defendant has delivered Notice of Intention to Defend, the Plaintiff may on grounds that the Defendant has no defence to a claim included in the summons, or to a particular part of such a claim, apply to the court for a Summary Judgment against that Defendant.

(2) This Rule applies to such claims in the summons as in only:-

- (a) On a liquid document;*
- (b) For a liquid dated amount of money;*
- (c) For delivery of specified movable property; and*
- (d) Ejectment.”*

[9] The application of Rule 32 was clarified by His Lordship Mamba J. (as He then was) in the case of **Sinkwa Semaswati Ltd t/a Mister Bread v P.S.B Enterprises, Civil Case No. 398/09** as follows:

“[8] The rule relating to Summary Judgment..... has been designed to prevent a plaintiff’s claim based upon certain causes of action from being delayed by what amount to an abuse of the process of the court. In certain circumstances therefore, the law allows a plaintiff after the defendant has entered appearance, to apply to court for judgment to be entered summarily against the defendant, thus disposing of the matter without putting the plaintiff to the expense of trial. The procedure is not intended to shut out a defendant who can show that there is a triable issue applicable to the claim as a whole, from laying his defence before the court.”

[10] In **C.S. Group of Companies v Construction Associates (Pty) Ltd, Civil Case No. 41/2008**, the Learned Chief Justice Banda, as He then was, equally observed at page 14 that:-

“It has also been held that courts should be slow to close the door to the defendant if a reasonable possibility of a defence exists to avoid an injustice.”

Court’s observation and conclusion

[11] In resisting Summary Judgment, the Defendant has raised the issue that the Application for Summary Judgment has been prematurely filed because there was no compliance with clause 6 of the Directors’ Resolution. This relates to the issue that the terms for settling the payment to the Applicant have not been proposed by Mpendulo, the remaining Director.

[12] It is this court's humble view that the Respondent has made a case for resisting Summary Judgment. There is no way you can read Article 5 to the exclusion of Article 6. It is this court's further observation that there is a triable issue it being whether the amount to be paid to the plaintiff is due and payable at the termination of the agreement or on condition that the terms of payment have been proposed by the remaining Director. This is the question that should be answered during trial. This court cannot give an answer and interpret the contentious clauses because it has only been called upon to decide the existence or non-existence of any triable issue. The Application for Summary Judgment is therefore dismissed with costs.

FAKUDZE J.

JUDGE OF THE HIGH COURT

Applicant: N. Manzini

Respondent: S. Dlamini