



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

**HELD AT MBABANE**

**Case No.: 1670/2021**

In the matter between:

**BEATRICE DJENI EHOUMAN**

**1<sup>st</sup> Plaintiff**

**EHOUMAN INVESTMENTS (PTY) Ltd**

**2<sup>nd</sup> Plaintiff**

And

**NANA MDLULI**

**1<sup>st</sup> Defendant**

**MCINISELI BHEMBE**

**2<sup>nd</sup> Defendant**

**Neutral Citation:** *Beatrice Djeni Ehouman and Another vs Nana Mdluli and*

*Another* (1670/2021) [2023] SZHC 280 (10/10/2023)

**Coram:**

**K. MANZINI J**

**SUMMARY:** *Exception – Summons allegedly not in compliance with Rule 18 High Court Rule – Proper procedure for objection should have been in terms of Rule 30 – Particulars comply with Rule 18 – Exception dismissed with costs.*

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**RULING ON EXCEPTION**

**10 OCTOBER 2023**

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**K. MANZINI – J:**

- [1] The 1<sup>st</sup> Plaintiff herein is Beatrice Djeni Ehouman, an adult female resident of Siteki in the Lubombo District who is employed by the Teaching Service Commission as a teacher at Siteki Nazarene School.
- [2] The 2<sup>nd</sup> Plaintiff is Ehouman Investments (Pty) Ltd, a corporate body established in terms of the company laws of the Kingdom of Eswatini, carrying on business at Siteki, Lubombo District. The 1<sup>st</sup> Plaintiff and her husband Jules Ehouman are the Co-Directors of the 2<sup>nd</sup> Plaintiff.
- [3] The 1<sup>st</sup> Defendant is Ms. Nana Mdluli, an adult LiSwati female, a resident of Nkoyoyo, within the Hhohho District.

[4] The 2<sup>nd</sup> Defendant is Mciniseli Bhembe, an adult LiSwati male of Lubombo District, and cited herein in his official capacity as the Deputy Sheriff of the Lubombo District.

[5] The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have brought the present proceedings before Court, wherein they raise an exception against the Particulars of Claim filed by the Plaintiffs herein. The basis of their exception is that the Particulars of Claim do not disclose a cause of action against the 1<sup>st</sup> Defendant. It is common cause that the Plaintiffs instituted action against the Defendants claiming damages for financial loss amounting to E265, 199.50 (Two Hundred and Sixty Five Thousand, One Hundred and Ninety Nine Emalangeneni and Fifty Cents). In addition the Plaintiffs claim for loss of business and profits valued at E2, 400, 000.00 (Two Million Four Hundred Thousand Emalangeneni) which they attribute to the 2<sup>nd</sup> Defendant's conduct of unlawfully attaching the Plaintiffs' property, which related to alleged arrear rentals. The 1<sup>st</sup> Defendant herein has raised an exception against the Plaintiffs' particulars of claim on the basis that these papers fail to disclose a cognizable cause of action against the 1<sup>st</sup> Defendant, and/or alternatively that the particulars of claim lack the necessary averments to sustain a cause of action against the 1<sup>st</sup> Defendant.

**1<sup>ST</sup> DEFENDANT'S GROUNDS OF EXCEPTION**

[6] **FAILURE TO ALLEGE THE ELEMENT OF INTENTION OR NEGLIGENCE ON THE 1<sup>ST</sup> DEFENDANT'S PART.**

6.1 The Plaintiffs herein have failed in their particulars of claim to make any averments relating to intention or negligence on the part of the 1<sup>st</sup> Defendant, thereby rendering these papers defective. It was submitted by the 1<sup>st</sup> Defendant's Counsel that in terms of the High Court Rules a Plaintiff, in order to be successful in delictual claim, is under an obligation to make the necessary averments to sustain the cause of action, the argument here being that in the absence of averments that speak to the culpability of the 1<sup>st</sup> Defendant, this party is unable to plead as there has not been such averment as to intention or culpability on her part.

[7] **LACK OF SPECIFICITY ON THE LIST OF ITEMS ALLEGEDLY NOT RELEASED, AND THE VALUES ATTRIBUTED TO EACH ITEM.**

7.1 It was the contention of the 1<sup>st</sup> Defendant's Attorney that it is trite that the 1<sup>st</sup> Defendant must be able to plead in an effective manner.

She contended that the 1<sup>st</sup> Defendant was not placed in a position where they are aware of the damages suffered due to the absence of a list, which is accompanied by the value of each item which was allegedly not released.

[8] **LACK OF SPECIFICITY ON THE PROFIT ALLEGEDLY LOST BY EACH BUSINESS.**

8.1 The Attorney for 1<sup>st</sup> Defendant in her submissions stated that the 1<sup>st</sup> Defendant cannot be expected to plead to the particulars of claim without a proper breakdown of how the profit of the business is made up. The absence of documents annexed to summons, or any other supporting documents hampers the 1<sup>st</sup> Defendant's ability to appreciate how the total figure of E265, 199.50 (Two Hundred and Sixty Five Thousand, One Hundred and Ninety Nine Emalangeni and Fifty Cents) was arrived at. It was argued by Counsel that the 1<sup>st</sup> Defendant cannot be expected to enrich the Plaintiffs by being made to pay for an amount that the Plaintiffs have conjured up about the worth of their business, which may not even be the true extent of the loss allegedly suffered.

[9] NON-JOINDER OF THE 1<sup>ST</sup> DEFENDANT'S ERSTWHILE ATTORNEYS.

9.1 The 2<sup>nd</sup> Defendant, who is a Deputy Sheriff acted independently from the 1<sup>st</sup> Defendant and is liable for his own misconduct. The fact that there is no proof that the 1<sup>st</sup> Defendant had knowledge of the Rescission Application and the Order that followed ought to be taken into account. It was contended that the Erstwhile Attorneys of the 1<sup>st</sup> Defendant are the ones with whom the 2<sup>nd</sup> Defendant had direct contact, and from whom the instruction to attach, and also to return the goods was obtained.

9.2 It was contended further that in the absence of proof or an allegation that the 1<sup>st</sup> Defendant knew of, or was aware of the rescission application and the order at the time, then there is no cause of action against this party. It was argued also that the 2<sup>nd</sup> Defendant herein is totally independent of the 1<sup>st</sup> Defendant, and is liable for his own misconduct and/or omission.

- 9.3 It was further submitted by Counsel herein that the issue of non-joinder of the Erstwhile Attorney was a factor that renders the particulars of claim excipiable because they had a direct and substantial interest in the subject matter of the litigation at hand. She cited **Gordon v Department of Health KwaZulu-Natal [2008] ZA SCA 99, 2008 (6) S.A. 522 (SCA)** as authority for the proposition that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined. She stated that in such a case, those third parties have a legal interest in the matter and must be joined.
- 9.4 It was further contended by Counsel that the failure of the Plaintiffs in joining the Erstwhile Attorneys makes their claim fatally defective. She stated that the 1<sup>st</sup> Defendant cannot be held responsible for the 2<sup>nd</sup> Defendant's negligence in in the circumstances. She stated that it is widely understood that in order to legally impute liability on a defendant, the alleged wrongful act ought to be linked to the defendant. She stated that there was no causal link between the 2<sup>nd</sup> Defendant's actions and the 1<sup>st</sup> Defendant. She cited the case of **Umbutfo Swaziland Defence**

Force and Another v Themba Maziya (11/2019) [2022] to buttress her position.

[10] **LACK OF COMPLIANCE WITH RULE 18 (10) OF THE HIGH COURT RULES.**

10.1 Counsel for 1<sup>st</sup> Defendant argued that the Plaintiff failed to comply with this Rule of Court due to their inability to particularize the damages as envisaged in the Rule.

[11] According to the 1<sup>st</sup> Defendant's Counsel, Rule 23(1) of the High Court Rules governs the issue at hand herein, and cited it as follows:

*“where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period provided for Filing any subsequent pleading, deliver an exception thereto and set it down for hearing in terms of Rule 6(14);*



*Provided that where a party intends to take on exception that a pleading is vague and embarrassing he shall, within the period allowed under this sub-rule, by notice afford his opponent an opportunity of removing the cause of complaint within fourteen days;*

*Provided further that the party excepting shall within seven (7) days from the date on which a reply to such notice is received or from the date on which such reply is due deliver his exception.”*

[12] According to the submissions of Counsel herein that the Plaintiffs particulars of claim herein clearly lack the necessary averments to sustain the cause of action due to the submissions already made. Further submissions were made relating to the 1<sup>st</sup> Defendant's inability to plead to the said pleadings as they currently stand. Counsel for 1<sup>st</sup> Defendant went on to submit that the legal test used by Courts to determine whether a cause of action has been duly disclosed is to consider all pleadings and documents upon which the pleading is based. The Court then has to decide whether it may be inferred from the particulars of claim that a cause of action does exist.

[13] It was argued by Counsel that in order to make this finding, the Court takes into account the facts alleged in the pleadings as being correct, and then goes on to decide if the facts do sustain a cause of action. To buttress her submission the Attorney herein relied on the following legal authorities:

- Phillip Fanelo Dlamini v Frede Hewley (High Court) Case No. 1494/11 (5/12/11) page 5 and 8.
- Dan Langwenya v Nedbank and Others (High Court) Case No. 1752/06 (25/07/07) page 4 and 7

### **THE PLAINTIFFS' RESPONSE**

[14] In *replicando*, the Plaintiff's Attorney chose to respond in the following manner:

14.1 The element of intention in negligence on the part of 1<sup>st</sup> Defendant; and the alleged failure on the part of the Plaintiffs to allege fault in the particulars of claim. The Plaintiffs' Attorney submitted that in order to prove "*negligence*" in a case, the Plaintiff must prove the following few elements to show that the Defendant acted negligently:

14.1.1 Duty – The Defendant owed a legal duty to the Plaintiff under the circumstances;

14.1.2 Breach – The Defendant breached that legal duty by acting or failing to act in a certain way;

14.1.3 Causation – It was the Defendant's actions (or inaction) that actually caused the Plaintiffs' injury or loss; and

14.1.4 Damages – that Plaintiff was harmed or injured as a result of the Defendant's actions.

14.2 It was submitted by Counsel that it is evident that the negligence on the part of 1<sup>st</sup> Defendant is to found, and is in fact, proven in the fact that had she not erroneously taken the Plaintiffs' to Court for arrear rentals, and further refused to comply with the rescission Court Order, in relation to the return of the attached goods, then the Plaintiffs would not have suffered the damages that they seek to

claim in the issued summons. It was also submitted that the 1<sup>st</sup> Defendant further led oral evidence in rescission application when the matter was heard in Court. It was further submitted that a contempt of Court Order was granted against the 1<sup>st</sup> Defendant for her failure to comply (eight (8) months later) with the rescission order. This contempt related to her failure to comply with the order to return the Plaintiff's goods which had been attached by the 2<sup>nd</sup> Defendant. It was argued that the Plaintiff would not have suffered loss or damages in stock and loss of business, but for the action of the 1<sup>st</sup> Defendant. It was argued that the 1<sup>st</sup> Defendant cannot deny that she was negligent, or that she had no intent relating to what transpired, being the loss of business and goods due to her act of erroneously taking the Plaintiffs to Court.

[15] Pertaining to the allegation by 1<sup>st</sup> Defendant that the Plaintiffs have failed to provide in the particulars of claim the specific items, in list form, that were not released by 2<sup>nd</sup> Defendant, and how the Plaintiffs have not stated how the globular figure of a loss of E265, 199.50 (Two Hundred and Sixty Five Thousand, One Hundred and Ninety Nine Emalangeni and Fifty Cents) it was the submission of Counsel herein that this is dealt with in paragraph 11 of the particulars of claim. According to Counsel this

paragraph contains the averment that not all goods were returned to the Plaintiffs, and there is also an allegation that the 2<sup>nd</sup> Defendant had informed the Plaintiffs that the 1<sup>st</sup> Defendant had sold said items. The Attorney herein submitted that an inventory of all the movable items received by the Plaintiffs was prepared by the 2<sup>nd</sup> Defendant.

[16] It was contended that the issue of the loss of profit and how the profit was made up, or calculated is properly dealt with in paragraph 12 of the Particulars of Claim, as well as paragraph 6 of the Heads of Argument. She stated that this issue would be dealt with at a later stage of the proceedings and further confirmed during trial. According to the Attorney herein that the 2<sup>nd</sup> Defendant had also prepared an inventory of the movable items that were received by the Plaintiffs after the rescission Order.

[17] It was also the submission of the Plaintiffs' Attorney that it is not true that the 1<sup>st</sup> Defendant had no knowledge of the rescission order because she and the 2<sup>nd</sup> Defendant had been served with the rescission Court Order on the 4<sup>th</sup> of February, 2017, and the 2<sup>nd</sup> Defendant had consequently cancelled the scheduled auction sale. It was also submitted that the 2<sup>nd</sup> Defendant, presumably acting under the instructions of the 1<sup>st</sup> Defendant. It was the

submission of Counsel that the 2<sup>nd</sup> Defendant refused, failed and/or neglected to return the attached movable items to the Plaintiffs as directed by the Court Order. It was further submitted that the movables were kept at the 1<sup>st</sup> Defendant's premises until contempt of Court proceedings were instituted against the Defendants eight (8) months after the rescission order was served upon the Defendants.

[18] It was further submitted by Counsel herein that in terms of the last ground of exception by the 1<sup>st</sup> Defendant, which relates to the Particulars of Claim not being in compliance with Rule 18(10) of the High Court Rules, it was contended that the Defendant could request the Plaintiff to file further Particulars of Claim, as opposed to an exception as stipulated in Rule 18(2), as read together with Rule 30(1) to (3) is entitled to be afforded an opportunity to file further Particulars of Claim, and there was no need for the 1<sup>st</sup> Defendant to rush to apply to Court for an exception. The Counsel for the Plaintiffs further reiterated that had the 1<sup>st</sup> Defendant complied with the rescission Court Order, and ensured timeous return of the attached goods, the present matter, wherein damages were being claimed would not be before Court.

[19] The Plaintiffs 'Attorney further led the Siteki Magistrates Court Clerk, by the name of Ms. Gcinaphi Dlamini in testimony. She testified that she is currently employed at the Siteki Magistrates Court where she was at the Civil Registry. She explained that she has been working as a Court Clerk since 2010, and was based in the Criminal Department, but in 2021 she assumed duties at the Civil Registry in July 2021. The witness herein testified that she knows the 1<sup>st</sup> Defendant as a litigant in one of the matters enrolled at the Siteki Magistrates Court.

[20] The witness herein testified that the 1<sup>st</sup> Defendant did attend Court to testify in a rescission application involving the same parties as the case presently before Court herein under cases numbers 515/2016, 516/2016 and 517/2016. She testify that while she is not well versed with the contents the Court records, but she could recall that on the 14<sup>th</sup> of December, 2017 the 1<sup>st</sup> Defendant was called by her erstwhile Attorney, Mr. Madzinane to give evidence, and she was cross-examined by Mr. Mzwandile Dlamini who represented the other side (Plaintiffs in casu). She stated that she is aware that the 1<sup>st</sup> Defendant, or her Attorney was at all times present at the Court proceedings. Even during cross-examination, the witness maintained that the 1<sup>st</sup> Defendant was present at the proceedings, but failed to appear in Court when the matter continued on subsequent days, despite

being warned by the Court to do so for the continuation of the matter. She insisted that despite this, the 1<sup>st</sup> Defendant's Attorney was present in Court during all the days that the matter continued in Court.

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

[21] The 1<sup>st</sup> Defendant's case herein is founded on a Notice of Exception wherein the Court is being entreated by the 1<sup>st</sup> Defendant's Counsel to uphold the exception on a number of grounds are dealt with herein below:

- (i) Failure to allege the element of intention or negligence on the part of the 1<sup>st</sup> Defendant.**

21.1 It was the argument of 1<sup>st</sup> Defendant that there had been an allegation of culpa on the part of the 1<sup>st</sup> Defendant herein. In essence the 1<sup>st</sup> Defendant's Counsel submitted that the particulars of claim as they stand do not contain any averments to sustain a cause of action, and also hinders the ability of the 1<sup>st</sup> Defendant to plead to the summons as they stand. In response to this allegation or submission by Counsel, the Plaintiffs' Counsel submitted that Particulars of Claim adequately covers the issue of culpa on the part of the 1<sup>st</sup> Defendant.



It was stated in the arguments before Court that the fault of the 1<sup>st</sup> Defendant actually lies in the fact that this party had erroneously obtained a Court Order perfecting a Landlord's hypothec against the Plaintiffs. She stated that the 1<sup>st</sup> Defendant's negligence can be located in the fact that had the 1<sup>st</sup> Defendant not taken the Plaintiffs to Court for arrear rentals when no rentals were owed, and had also no failed to comply with the Rescission Order, there would have been no need for the Plaintiffs to issue the summons against the 1<sup>st</sup> Defendant herein. The Plaintiffs' Counsel further expressed that this issue would be more fully canvassed at trial when evidence would be led to establish the four elements proving negligence, these being:

- (i) Duty
- (ii) Breach
- (iii) Causation
- (iv) Damages

[22] It is trite that the issue of exceptions is legally provided for in Rule 23. The relevant portion of the Rule reads as follows:

*“23 (1) where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period provided for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of Rule 6(14);*

*Provided that where a party intends to take an exception that a pleading is vague and embarrassing he shall, within the period allowed under this sub-rule, by notice afford his opponent an opportunity of removing the cause of complaint within fourteen days.”*

[23] Rule 18(4) of the High Court rule succinctly provides that:

*“(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.”*

[24] The 1<sup>st</sup> Defendant Counsel herein decries the alleged inability of the Plaintiffs in their Particulars of Claim to demonstrate the element of intention or negligence. This point is in the Court's view, linked to the point wherein the 1<sup>st</sup> Defendant's Counsel alleges that there is a failure on the part of the Plaintiffs in the Particulars of Claim to join the Erstwhile Attorneys of the 1<sup>st</sup> Defendant as the 1<sup>st</sup> Defendant was supposedly not made aware of the existence of the Rescission Order, as well as the Contempt of Court Order. It is clearly the case of the 1<sup>st</sup> Defendant that there is no proof that she was made aware of the existence of these orders, hence culpability cannot be imputed to her (be it intention or negligence).

[25] The 1<sup>st</sup> Defendant argued that the Plaintiffs' Particulars of Claim lacked the necessary averments to sustain the cause of action, and a failure to comply with Rule 18 also in that the claimed globular figure of E265, 199.50 (Two Hundred and Sixty Five Thousand, One Hundred and Ninety Nine Emalangeni and Fifty Cents), and also how the loss of profit claimed for each business was calculated. It was contended that the Defendant cannot be expected to plead to the particulars of claim without a breakdown of how the profit of the business is made up.

[26] It is the view of this Court that as these are action proceedings, a litigant should not plead evidence in their particulars of claim. The following statement by Barry J in Jones v Hamilton and How (1886) 5 EDC at 228 explains this position in the following manner:

*“There is a distinction between giving evidence of a fact and stating that fact.... stating that a thing was done is stating a fact .... giving the details of how it was done would amount to fiving evidence of it.”*

[27] It is also noted that the 1<sup>st</sup> Defendant herein complains that the Plaintiffs have failed to comply with Rule 18 (10). The pertinent portion of Rule 18 reads thus:

*“ (10) A plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof...”*

It must be borne in mind that Rule 18 has a self-regulatory mechanism in a situation where there has been no compliance with it. This one is to be located in Rule 18(12) which rule provides the following:

*“If a party fails to comply with any of the provisions of this Rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.”*

(underlining my emphasis)

[28] On this point alone, the exception herein ought to fail. The exception also fails because exception seems to require the Plaintiff to plead evidence in terms of Civil Procedure would be most embarrassing (**Cumes v Cumes and Others 1950 (2) SA 15 (c)**). The facts pleaded must of necessity be material facts. The pleading of the material facts of the case therefore constitutes the necessary averments; anything else would constitute unnecessary averments and may be liable to be struck out. (see also : **Sikhumbuzo Makhaza Maziya v Swaziland Electricity Company and another Civil Case no. 1238/2012**), and **Phila Buthelezi and Another v Mbongeni Ndlela and Another Civil Case no. 1737/15**)

[29] The Plaintiffs herein claim general damages. The Particulars of Claim of the Plaintiffs, particularly paragraphs 8, 9, 10, 11 and 12 appear to contain the gist of what the Plaintiffs allege is the negligence that was committed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in that despite being served with the

Rescission and Contempt of Court Orders, they refused, failed and/or neglected to return the attached movable items. They pleaded that some of the goods were perishable, and others were not returned because they were allegedly sold by the 1<sup>st</sup> Defendant (see paragraph 11). The Plaintiffs also attached an inventory of items received back from the 2<sup>nd</sup> Defendant as attached to the Particulars of Claim. The Plaintiff is claiming damages totaling an amount of E265, 199.50 (Two Hundred and Sixty Five Thousand, One Hundred and Ninety Nine Emalangi and Fifty Cents) in relation to those items that were not returned, and were allegedly taken and sold by the 1<sup>st</sup> Defendant.

[30] The Plaintiffs further claim loss of profit totaling an amount of E2, 400.000.00 (Two Million, Four Hundred Thousand Emalangi). The Plaintiffs it would appear, seek general damages which are presumed, and it is therefore in essence, not entirely necessary to do more than allege this in general terms. There is no need for particularity in this regard, and neither is the Defendant entitled to same, as the matter is still going to trial, where evidence will be led before a competent Court, and duly tested by such Court. (see : Reid N.O. v Royal Insurance Co. Ltd 1951 (1) SA 713 (T)).

[31] Regarding the issue of the non-joinder of the 1st Defendant's erstwhile attorneys does not in this Court's considered opinion, render the Particulars of claim irredeemably defective. In considering the submissions of the 1st Defendant's Counsel, and also in terms of the legal authority cited, being the **Gordon v Department of Health KwaZulu Natal case (Supra)**, the Plaintiffs herein seek relief by way of compensation for damages allegedly suffered at the hands of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The judgement, if it is obtained can be sustained, without bringing any kind of prejudice to the erstwhile attorneys of the 1<sup>st</sup> Defendant. The Plaintiffs, do not after all, seek payment in damages from the said attorneys, nor do they make any allegations against them.

[32] The 1<sup>st</sup> Defendant seems not to object to any particular paragraphs, but to the particulars of claim as a whole. I therefore hold that there has been compliance with Rule 18. For an excipient to succeed, he must prove that whichever way the contents of the pleadings are interpreted they would be excipiable. This cannot be said in the present case. It is against this background that the 1<sup>st</sup> Defendant's exception has to be evaluated in order to chart a way forward. Is this matter to proceed to trial where all issues will be canvassed, and where the Plaintiff bears the onus of proving the allegations it makes in the Particulars of Claim contained in the combined

summons, or should this matter be dealt a deathly strike, by terminating any further proceedings based on the Particulars of Claim as they stand now?

[33] Having heard arguments and submissions of both Counsel, as well as the testimony of the witness led by the Plaintiffs, and having regard to the authorities advanced before Court, I have come to the considered conclusion that the Defendant should not be allowed to exit the stage, as set by the Plaintiffs in their combined summons. The 1<sup>st</sup> Defendant should file a plea, or if need be, request further particulars, in order to file the plea. The 1<sup>st</sup> Defendant is now primed to rise to the occasion, and to accept the challenge that the Plaintiffs have made. The Defendants ought to allow the full merits of the case to be decided by the Court at the conclusion of a trial.

[34] It is quite conceivable that the Plaintiff may be in position to prove its case against the Defendant. The Particulars of Claim are not as they stand, so vague and embarrassing, or lacking in the necessary averments to sustain a cause of action that the Defendant cannot plead. Furthermore there is nothing that convinces the Court, at present, that there is no *prima facie*



cause of action raised in the particulars of claim against the Defendant. This is of course not to say that the Plaintiffs will succeed at trial, however there are some triable issues that require ventilation, and proper evaluation by the Court. It is trite that the 1<sup>st</sup> Defendant may also be in a position to win the day, and successfully defend herself against the claims made against her at trial. (see in this regard Essor Limited v First National Bank Swaziland Ltd (unreported) Case No. 43/06).

[35] Wherefore the exception is dismissed with costs.



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

**For the Plaintiffs:** Ms. S. Mdziniso- Dlamini ( Thwala & Associates)

**For the Defendants:** Ms. S. Fakudze ( Waring Attorneys)