



The application was opposed by the Applicant's attorney who argued to the contrary and said the Applicant had made out its case requiring the Respondent to answer.

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The question as to when may the court grant an application for absolution from the instance is addressed by the learned authors: Herbstein and Van Winsen in "The Civil Practice of the Supreme Court of South Africa" (1997) 4th edition pages 681-685. The learned authors on page 681 refer to the case of *Gascoyne v Paul & Hunter* 1917 TPD170 at page 173 where there is the following formulation:

"At the close of the case for the plaintiff, therefore, the question which arises for the consideration of the Court is, is there evidence upon which a reasonable man might find for the plaintiff?.. The question therefore is, at the close of the case for the plaintiff was there a prima facie case against the defendant Hunter; in other words, was there such evidence before the Court upon which a reasonable man might, not should, give judgment against Hunter?"

The evidence before the court revealed that the Applicant after having reported the loss of the tyre, he was told to go and look for it .He went to look for the tyre but he did not find it. He came back to report that he had failed to find the tyre, and it was then that he was dismissed.

The Applicant did not abscond when told to go and look for the tyre. He came back to his employer. The employer however told him to go away and not come back to the place of employment.

The court will therefore answer the question raised in the above captioned formulation in the affirmative, and find that there is evidence in this case upon which a reasonable man might find for the Applicant.

From the foregoing observations, it follows that the application was ill-founded and it will have to be dismissed.

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The court will accordingly dismiss the application. No order for costs is made. The members agree.

NKOSINATHI NKONYANE AJ.

INDUSTRIAL COURT OF SWAZILAND

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