



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Civil case No: 43/2014

In the matter between:

**SWAZILAND NATIONAL ASSOCIATION
OF TEACHERS**

APPELLANT

AND

EXPROP INVESTMENTS (PTY) LTD

RESPONDENT

In re:

EXPROP INVESTMENTS (PTY) LTD

PLAINTIFF

AND

THE TRADE UNION CONGRESS OF SWAZILAND

FIRST DEFENDANT

**SWAZILAND NATIONAL ASSOCIATION
OF TEACHERS**

SECOND DEFENDANT

**SWAZILAND NATIONAL ASSOCIATION
OF CIVIL SERVANTS**

THIRD DEFENDANT

**NATIONAL ASSOCIATION OF PUBLIC
SERVANTS AND ALLIED WORKERS UNION**

FOURTH DEFENDANT

**SWAZILAND HEALTH INSTITUTIONS
AND ALLIED UNION**

FIFTH DEFENDANT

**SWAZILAND COMMERCIAL AND
ALLIED WORKERS UNION**

SIXTH DEFENDANT

MEDIA WORKERS UNION OF SWAZILAND

SEVENTH DEFENDANT

INSURANCE AND ALLIED UNDERTAKINGS WORKERS UNION	EIGHTH DEFENDANT
SWAZILAND UNION OF FINANCIAL INSTITUTIONS AND ALLIED WORKERS	NINTH DEFENDANT
SWAZILAND MANUFACTURING AND ALLIED WORKERS UNION	TENTH DEFENDANT
SWAZILAND CONVERSATION WORKERS UNION	ELEVENTH DEFENDANT
SWAZILAND TRANSPORT AND ALLIED WORKERS UNION	TWELFTH DEFENDANT
SWAZILAND ALMAGATED TRADE UNIONS	THIRTEENTH DEFENDANT
SWAZILAND WATERS SERVICES AND ALLIED WORKERS UNION	FOURTEENTH DEFENDANT
SWAZILAND ELECTRICITY SUPPLY MAINTENANCE AND ALLIED WORKERS UNION	SIXTEENTH DEFENDANT
SWAZILAND AGRICULTURAL PLANTATION AND ALLIED WORKERS UNION	SEVENTEENTH DEFENDANT
SWAZILAND HOTEL AND CATERING ALLIED WORKERS UNION	EIGHTEENTH DEFENDANT
SWAZILAND DEMOCRATIC NURSES UNION	NINETEENTH DEFENDANT
MINE WORKERS UNION OF SWAZILAND	TWENTIETH DEFENDANT

Neutral citation: *Swaziland National Association of Teachers v Exprop Investments (Pty) Ltd (43/2014) [2014] SZSC79 (03 December 2014)*

Coram: **M.M. RAMODIBEDI CJ**
DR. S. TWUM JA
M.C.B. MAPHALALA JA

HEARD : 19 NOVEMBER 2014
DELIVERED : 03 DECEMBER 2014

Summary

Civil Appeal – Summary Judgment application – essential requirements of the remedy considered – cross-appeal against the granting of summary judgment for part of the claim as well as the finding that there is a triable issue with regard to the balance of the claim – held that the plaintiff is entitled to judgment for the full amount of the claim against all defendants – held further that there are no triable issues requiring the matter to be referred to trial – appeal dismissed with costs – the cross-appeal succeeds for the full amount of the claim.

JUDGMENT

M.C.B. MAPHALALA JA

[1] This is an appeal against the judgment of the court *a quo* delivered on the 8th August 2014. In delivering its judgment, the court *a quo* made the following order at paragraph 26 of the judgment:

“26. Upon considering the foregoing, I hereby make an order as follows:

(a) Summary judgment in the sum of E150 000.00 (one hundred and fifty thousand emalangeni) is granted against the second defendant;

(b) Interest thereon at the rate of 9% per annum;

(c) Costs;

(d) The remaining balance of E700 000.00 (seven hundred thousand emalangeni) is referred to trial for determination;

(e) The second and third defendants are to file their plea within the next fifteen (15) days.”

[2] In order to avoid any confusion to the appellation of the parties, in this judgment, they will be referred to as plaintiff and defendants as in the court *a quo*. The plaintiff, Expro Investments (Pty) Ltd, instituted action proceedings against the first, second and third defendants for payment of E850 000.00 (eight hundred and fifty thousand emalangeni) being the purchase price of goods sold and delivered by the plaintiff to the defendants at their special instance and request. Subsequently, the plaintiff lodged a Notice of Joinder of the fourth to the twentieth defendants on the basis that these defendants, like the second and third defendants, though lawfully registered as trade unions in their own right, they were also affiliates of the first defendant.

[3] The said Notice of Joinder was filed by the plaintiff after counsel for the defendants had raised, *in limine*, the non-joinder of the fourth to the twentieth defendants during the hearing. The court *a quo* held that the first defendant had no *locus standi* to bring the action in court as it did not exist

in law. The court *a quo* based its decision on the judgment of the Industrial Court in the case of the Minister of Labour and the *Attorney General v The Labour Advisory Board and TUCOSWA* case No. 345/12 [2012] SZIC2 decided on the 26th February 2013.

[4] It is common cause that the Industrial Court in the case of *The Minister for Labour and the Attorney General v. The Labour Advisory Board and TUCOSWA* (supra), made an order that TUCOSWA was legally not a workers' federation on the basis that there was no law in this country which Parliament had enacted for the registration of federations save for trade unions. In the premises the court *a quo* made a finding that at the time of hearing of the matter, TUCOSWA did not exist in law, and, that it had no *locus standi* to litigate before the courts in this country. However, the court found that at the time of conclusion of the contract, TUCOSWA did exist in law. I will deal with this issue in the subsequent paragraphs when dealing with the cross-appeal.

[5] It is apparent from the evidence that on the 5th April 2012, the plaintiff concluded an agreement for the sale of goods with the defendants. The material terms of the agreement were that the plaintiff would sell five thousand T-shirts to the defendants at a purchase price of E850 000.00 (eight hundred and fifty thousand emalangeni). These T-shirts were

inscribed in accordance with the defendants' specifications depicting labour related activities; and, they were required for use during the celebration of the workers' day which is held annually on the first day of May. The defendants undertook to pay for the goods jointly and severally. When the contract was concluded, the plaintiff was represented by its Managing Director Mr. Khanya Mabuza, and, the defendants were represented by Mr. Muzi Mhlanga as well as Mduduzi Gina. The first defendant acting on behalf of the defendants acknowledged the existence of the contract in writing in a letter addressed to the plaintiff and dated 5th April 2012; this letter was signed by Mr. Mduduzi Gina, the Secretary General of TUCOSWA on behalf of the defendants. The existence of the contract was further acknowledged and confirmed in writing by Mr. Muzi Mhlanga, the Secretary General of the second defendant. Mr. Mhlanga was also the first Deputy Secretary General of the first defendant when the contract of sale was concluded.

[6] It is common cause that the first and second defendants filed notices to defend the action in the court *a quo*. In return the plaintiff filed an application for summary judgment in accordance with Rule 32 of the High Court Rules on the basis that the defendants had no *bona fide* defence to the action. The affidavit in support of the application for summary judgment was deposed by Iain Binnie, a director and shareholder of the plaintiff who

was lawfully authorised in law to depose to the affidavit. He verified the cause of action and the amount claimed as well as the fact that the defendants had agreed to be bound jointly and severally for payment of the purchase price due to the plaintiff. He also verified the payment arrangement accepted by the defendants as reflected in annexure “A” as well as annexure “B” of the Plaintiff’s Declaration.

[7] Annexure “A” relates to the written acknowledgement of the existence of the contract made by the first defendant on behalf of the other defendants; and, it was addressed to the plaintiff and dated 5th April 2012. The defendants acknowledged the contract to purchase five thousand T-shirts valued at E850 000.00 (eight hundred and fifty thousand emalangen) as well as the payment arrangement of 50% of the purchase price upon delivery of the goods, and, the balance was to be paid thereafter. It was also agreed that delivery of the goods to the defendants would be effected by the 28th April 2012 unless unforeseen problems delayed the delivery of the goods. On the 24th April 2012, the first defendant wrote a letter to the Credit Manager of the Swaziland Development Finance Corporation (FINCORP) in Mbabane on behalf of the defendants. The letter reads in part as follows:

“TO WHOM IT MAY CONCERN

This letter serves to confirm that the Federation agreed to the arrangement to pay EXPROP Investments through Standard Bank Matsapha, all monies due to the company from the T-shirts purchased from them . . .”

- [8] Annexure “B” was an acknowledgement of the existence of the contract written by the second defendant. The letter was addressed to the Swaziland Development Finance Corporation and dated 24th April 2012. The letter was written in the letterheads of the second defendant, and, it states as follows:

“April 24, 2012

**The Manager
FINCORP
P.O. BOX 6099
MBABANE
H100**

Dear Sir/Madam

RE: CONFIRMATION OF ORDER AND CEDING PAYMENT

The above matter refers.

This letter serves to confirm that SNAT has forwarded an order for 5000 T-shirts to EXPROP Investments.

We also confirm that SNAT will pay an amount of E150 000.00 (one hundred and fifty thousand emalangeni) to FINCORP at the end of May 2012.

Thanking you in advance for your assistance in this regard.”

[9] Annexure “B” was signed by Mr. Muzi Mhlanga, the Secretary General of the second defendant. It is further apparent from the evidence that Mr. Mhlanga was also the first deputy Secretary General of the first defendant at the time of conclusion of the contract. In the said letter, the second defendant undertook to pay the purchase price of the goods to the plaintiff through a loan facility solicited from the Swaziland Development Finance Corporation (FINCORP). The plaintiff complied with all its obligations in terms of the contract and delivered the goods sold to the defendants as agreed in April 2012; hence, the defendants became indebted to the plaintiff in the sum of E850 000.00 (eight hundred and fifty thousand emalangeni) in accordance with the provisions of the contract.

[10] A demand was delivered to the defendants by letter dated the 15th July, 2013, which appears as annexure “C” to the Plaintiff’s Declaration. The defendants subsequently acknowledged liability for the debt on the 15th July 2013 as appears in annexure “D” of the Plaintiff’s Declaration. The defendants did not comply with the demand; hence, the plaintiff instituted

the present action proceedings before the court *a quo*. The fourth to the twentieth defendants did not file papers to defend the action.

[11] In its application for summary judgment, the plaintiff stated that the defendant had no *bona fide* defence to the claim, and, that the notice of intention to defend had been filed solely for purposes of delaying the final outcome of the action. It is fundamental in such applications that a defendant, when opposing the application, should file an affidavit resisting summary judgment showing that he has a *bona fide* defence to the claim or that there are trial issues requiring the matter to be referred to trial.

[12] Rule 32 of the High Court Rules deals with applications for summary judgment, and, it provides the following:

“32. (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 the ground 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 summary judgment against that defendant.

(2) This rule applies to such claims in the summons as is only -

(a) on a liquid document;

- (b) for a liquidated amount in money;**
- (c) for delivery of specified movable property; or**
- (d) ejectment;**

(3) (a) An application under sub-rule (1) shall be made on notice to the defendant accompanied by an affidavit verifying the facts on which the claim, or the part of the claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, and such affidavit may in addition set out any evidence material to the claim."

[13] In the present matter the summons and declaration do disclose a cause of action. The claim is based on an oral contract for the sale of goods concluded between the parties on the 5th April 2012 in Manzini. The nature of the goods sold and delivered to the defendants is fully described together with the purchase price of the goods. During the conclusion of the contract, the defendants undertook to be bound jointly and severally for payment of the purchase price to the plaintiff. The defendants further accepted an arrangement for the payment of the purchase price. The defendants have acknowledged the existence of the contract as evidenced by annexures "A", "B", "C", and "D" attached to the Plaintiff's Declaration. Delivery of the goods was effected in April 2012 from which date the amount of E850 000.00 (eight hundred and fifty thousand emalangeni) became due, owing and payable. The Plaintiff's Declaration

also shows that a demand was made but the defendants failed to pay the purchase price.

[14] The claim is for a liquidated amount in money as required by Rule 32 (2) (b) of the High Court Rules. It is well-settled that a liquidated amount in money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment¹. A liquidated amount in money has also been defined as an amount based on an obligation to pay an agreed sum of money or which is so expressed that the ascertainment of the amount is a matter of mere calculation². It is apparent from the Declaration as well as annexures “A”, “B”, “C”, and “D” attached thereto that the amount claimed was agreed upon between the parties.

[15] In order for a defendant to defeat an application for summary judgment, he has to file an affidavit resisting summary judgment showing that he has a *bona fide* defence to the claim or that there is a triable issue to be determined by the court by leading oral evidence. Rule 32 (4) (a) and (5) provides the following:

“(4) (a) Unless on the hearing of an application under sub-rule (1) either the court dismisses the application or the defendant satisfies the

¹ Superior Court Practice B1-210; Harms, The Civil Procedure in the Supreme Court p.135.

² Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th edition, Van Winsen *et al*, Juta Publishers, 1997 at pp 435-436.

court with respect to the claim, or the part of the claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

...

(5) (a) A defendant may show cause against an application under sub-rule (1) by affidavit or otherwise to the satisfaction of the court and, with the leave of the court, the plaintiff may deliver an affidavit in reply.

...

(c) The court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.”

[16] In the case of *Dulux Printers (Pty) Ltd v Appollo Services (Pty) Ltd*, Civil Appeal No. 72/2012 at para 11, I had occasion to deal with an application for summary judgment, and, I had this to say:

“[11] The purpose of the summary judgment procedure is to enable a plaintiff with a clear case to obtain swift enforcement of his claim against a defendant who has no real defence to that claim. See *Herbstein and Winsen* (supra) at pp 435-436. This is understandable because the remedy is final in nature and closes the door to the defendant without trial.”

[17] Ramodibedi JA, as he then was, in the case of *Zanele Zwane v Lewis Stores (Pty) Ltd t/a Best Electric* Civil Appeal No. 22/2007 had this to say at para [8]:

“[8] It is well-recognised that summary judgment is an extra-ordinary remedy. It is a very stringent one for that matter. This is so because it closes the door to the defendant without trial. It has the potential to become a weapon of injustice unless properly handled. It is for these reasons that the Courts have over the years stressed that the remedy must be confined to the clearest of cases where the defendant has no *bona fide* defence and where the appearance to defend has been made solely for the purpose of delay. The true import of the remedy lies in the fact that it is designed to provide a speedy and inexpensive enforcement of a plaintiff’s claim against a defendant to which there is clearly no valid defence. See for example *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A), *David Chester v Central Bank of Swaziland* CA 50/03. Each case must obviously be judged in the light of its own merits, bearing in mind always that the court has a judicial discretion whether or not to grant summary judgment. Such a discretion must be exercised upon a consideration of all the relevant factors. It is as such not an arbitrary discretion.”

[18] Corbett JA in the case of *Maharaj v Barclays National Bank* 1976 (1) SA 418 (A) at 426 A-E had this to say:

“Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the court by affidavit that he has a *bona fide* defence to the claim. Where the

defence is based upon facts, in the sense that material facts alleged by the plaintiff in his Summons or Combined Summons, are disputed or new facts are alleged constituting a defence, the court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the court enquires into is: (a) whether the defendant has fully disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to whether the whole or part of the claim, a defence which is both *bona fide* and good in law. If satisfied on these matters, the court must refuse summary judgement, either wholly or in part, as the case may be. The word “fully” . . . connotes in my view that while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least, disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a *bona fide* defence.”

[19] In the case of *Dulux Printers (Pty) Ltd v Appollo Services (Pty)Ltd* (supra) at para 21, this Court approved and followed the South African Supreme Court of Appeal in the case of *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA (1) SCA:

“[21] *Justice Navsa in Joob Joob Investments (PTY) Ltd v. Stocks Mavundla Zek Joint Venture* 2009 (5) SA (1) SCA at para 32-33 does expostulate the view that this remedy does not close the doors to a defendant with a triable issue and who

can show that he has a bona fide defence to the action. At para 32-33 His Lordship stated the following:

‘The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of his or her day in court. After almost a century of successful applications in our courts, summary judgement proceedings can hardly continue to be described as extraordinary. Our courts, both first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out....

Having regard to its purpose and its proper application, summary judgment proceedings only hold terror and are drastic for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425-426 E.’ ”

[20] In an attempt to show that the defendants have a *bona fide* defence or a triable issue, they deposed to an affidavit resisting summary judgment. The first defendant at paragraph 5 of its affidavit contends that the agreement between the parties was that “the plaintiff would produce the T-shirts and sell them to recover the costs and profit”; hence, they denied their

indebtedness to the plaintiff. However, at paragraph 8 of its affidavit, the first defendant pleads a different agreement altogether in the following:

“The first defendant acknowledge that they are indebted to the plaintiff only in so far as the sale of T-shirts is concerned. The first defendant received T-shirts from the plaintiff to sell them and money accrued to be returned to plaintiff as per agreement. The said money is available for collection by plaintiff at the first defendant’s office and it is not E850 000.00 (eight hundred and fifty thousand emalangeni).”

[21] The first defendant’s affidavit does not disclose a *bona fide* defence to the claim. Furthermore, this affidavit does not raise triable issues as envisaged by Rule 32 (4) (a). The two attachments marked annexures “A” and “B” written by the first defendant and signed by its first Deputy Secretary General acknowledge and confirm the existence of the contract between the parties as set out in the cause of action. Annexure “A” goes further to acknowledge the payment arrangement accepted by the parties. Despite the contradictions apparent in the first defendant’s affidavit, the essence of the affidavit is the concession made by the first defendant that it received delivery of the goods from the plaintiff. Annexure “D” is also important to the proceedings in so far as the first defendant’s acknowledgement of the contract between the parties; and, the contents thereof have not been disputed.

[22] The second defendant's President, Sibongile Mazibuko, has deposed to an affidavit resisting summary judgment. She attacks the Summons and Declaration that they do not contain necessary averments to sustain the cause of action against the second defendant. I have dealt with this point in the preceding paragraphs. Suffice to say that the Summons and Declaration disclose a good cause of action against the defendants.

[23] The second defendant has set out its defence at paragraph 6 of its affidavit as follows:

“6.1 The plaintiff, in its Summons and Declaration relies on its claim on certain representations made by one Muzi Mhlanga, Secretary General.

6.2 I state that the said Muzi Mhlanga was not acting for and on behalf of the second defendant in the transaction with the plaintiff and was not authorized by and mandated by the second defendant to act on its behalf.

6.3 In fact the said Muzi Mhlanga, is a member of the first defendant which ordered the said goods and to whom the goods were delivered. The goods were not delivered to the second defendant and/or any of its authorised officials.

In this respect I refer to the supporting affidavit of Londiwe Mabila.”

[24] Clearly the second defendant's affidavit does not disclose a *bona fide* defence to the claim as reflected in the plaintiff's cause of action. Furthermore, the affidavit does not raise any triable issues. It is not alleged in the affidavit that Mr. Muzi Mhlanga was no longer the Secretary General of the second defendant at the time of conclusion of the contract. Similarly, it is not denied that Mr. Mhlanga wrote annexure "B" using the letterheads of the second defendant; and, that he signed the letter in his official capacity as its Secretary General.

[25] The second defendant concedes in annexure "B" having concluded the contract of sale with the plaintiff for the purchase of five thousand T-shirts. It further undertakes part-payment of the purchase price in the sum of E150 000.00 (one hundred and fifty thousand emalangeni) to the plaintiff in May 2012. It is apparent from the Declaration and the annexures thereto that the purchase price of five thousand T-shirts was E850 000.00 (eight hundred and fifty thousand emalangeni) and not E150 000.00 (one hundred and fifty thousand emalangeni).

[26] The court *a quo* was correct in rejecting the evidence of Lindiwe Mabuza as being untruthful. She contends that she was a shareholder of the plaintiff, and that the agreement between the parties was that the plaintiff would produce and sell the T-shirts to members of the defendants during the May

Day celebration. She claims to have been instrumental in the negotiations which led to the conclusion of the contract.

[27] Generally, only directors are involved in the daily operations of companies and not shareholders. Notwithstanding, the plaintiff denies that Lindiwe Mabuza is a shareholder or director of the company. The plaintiff has filed a supporting affidavit of Msebe Malinga, the Registrar of Companies who has confirmed that according to their records only Mr. Khanyakwezwe Linda Mabuza and Iain Thomas Binnie appear as the Shareholders and Directors of the plaintiff. Mr. Mabuza has also deposed to an affidavit in which he denied that Lindiwe Mabuza is a shareholder or director of the company; he further denied that she was involved in the conclusion of the contract between the parties.

[28] The plaintiff further filed a replying affidavit to the second defendant's affidavit resisting summary judgment in which it reiterated the existence of the contract between the parties as well as the liability of the defendants to pay the purchase price pursuant to the delivery of the T-shirts. The evidence of Lindiwe Mabuza contradicts the evidence of the first defendant as well as that of the second defendant who confirmed the existence of the contract in terms of annexure "A", "B", "C" and "D"; the defendants further undertook to pay for the goods. The first defendant as well as the

appellant concede that delivery of the goods was effected by the plaintiff to the first defendant.

[29] The learned judge *a quo* was correct in granting summary judgment. However, she misdirected herself in granting judgment for only E150 000.00 (one hundred and fifty thousand emalangeni) against the second defendant. From the evidence it is apparent that the appellant is entitled to the full judgment of E850 000.00 (eight hundred and fifty thousand emalangeni) against all the defendants. To that extent the counter-appeal should succeed for the full amount of the claim against all the defendants.

[30] The plaintiff has filed a cross-appeal on the following grounds: Firstly, that the court *a quo* erred in law and in fact when it held that the first defendant does not exist in law and therefore cannot sue or be sued. Secondly, that the court *a quo* erred in law and in fact when it held that the first defendant has no *locus standi* and thus not recognised as a workers' federation. Thirdly, that the court *a quo* erred in law and in fact when it held that there had been a mis-joinder of the fourth to the twentieth defendants. Fourthly, the court *a quo* erred in law by failing to grant judgment against the first, fourth to the twentieth defendants. Fifthly, the court *a quo* erred in law and in fact by failing to give judgment against the third defendants which did

not oppose the summary judgment application. Lastly, the court *a quo* erred in law and in fact by making a finding that there was a triable issue in relation to the sum of E700 000.00 (seven hundred and fifty thousand emalangeni).

- [31] The first defendant has not opposed the cross-appeal with regard to its legal status to litigate on the basis that it does not exist legally as a federation; hence, the first and second grounds of the cross-appeal are bound to succeed, and, the first defendant is equally liable with all the other defendants jointly and severally.

There is no mis-joinder of the fourth to the twentieth defendants, and, they have been properly joined in the proceedings as the affiliates of the first defendant; the affiliation of the second to the twentieth defendants is not in dispute. In addition, only the first and second defendants opposed the application for summary judgment. The third to the twentieth defendants did not oppose the application for the full amount of E850 000.00 (eight hundred and fifty thousand emalangeni).

- [32] The cross-appeal also challenges the finding by the trial court that judgment should only be granted against the second defendant in the sum of E150 000.00 (one hundred and fifty thousand emalangeni), and, that there

is a triable issue with regard to the balance of E700 000.00 (seven hundred thousand emalangeni). To that extent the court *a quo* misdirected itself. The third to the twentieth defendants did not oppose the application for summary judgment for the full amount of E850 000.00 (eight hundred and fifty thousand emalangeni). Furthermore, the first and second defendants who opposed the application for summary judgment did not establish a *bona fide* defence to the claim or the existence of a triable issue which warranted that the matter be referred to trial. Lastly, all the defendants did not oppose the cross-appeal; hence, it is bound to succeed, and, all the defendants are liable to pay the full amount of the claim jointly and severally.

[33] Accordingly, the following order is made:

- (a) The appeal is dismissed with costs.
- (b) The cross-appeal succeeds, and, the judgment of the court *a quo* is substituted with the following judgment:
 - (i) Summary judgment is granted against the first to the twentieth defendants in the sum of E850 000.00 (eight hundred and fifty thousand emalangeni) jointly and severally the one paying the others to be absolved.

- (ii) Interest thereon at the rate of 9% per annum a *tempore morae*.
- (iii) The first to the twentieth defendants are directed to pay costs of suit jointly and severally the one paying the others to be absolved.

M.C.B. MAPHALALA
JUSTICE OF APPEAL

I agree:

M.M. RAMODIBEDI
CHIEF JUSTICE

I agree:

DR. S. TWUM
JUSTICE OF APPEAL

FOR APPELLANT : Attorney Siphon Madzinane
FOR RESPONDENTS : Attorney S.C. Simelane

DELIVERED IN OPEN COURT ON 3 DECEMBER 2014

