

**BONGI NSINGWANE**

vs

**THOKO SHONGWE**

*CIV. CASE NO. 2129/97*

Coram

Sapire, ACJ

For Applicant

For Respondent

**JUDGMENT**

This is an application for rescission of judgment. An order has already been made pending the outcome of this application execution on this judgment be stayed. ....costs of the argument on the application. It does however appear that the default judgment which was entered on an amended summons has never been served on the applicant.....Although it was argued that the amendment was of no great significance or materiality this cannot justify or eliminate the error. If the amendment was necessary it was material and the applicant should have been given the opportunity to react to the amended summons. In the circumstance the application must succeed and the order made is as follows:-

1. The judgment entered against the applicant in favour of the respondent in this matter on the 24th October 1997 is rescinded and set aside.
2. The costs of this application in so far as the application is unopposed are to be costs in the course but the costs of opposition are to be paid by the respondent/plaintiff.

S.W. SAPIRE  
ACTING CHIEF JUSTICE

