

THE HIGH COURT OF SWAZILAND

SIPHO C. NKONGWANE

Plaintiff

And

SENZO NKONGWANE

1st Defendant

V.F. SHABANGU

2nd Defendant

VIF LIMITED

3rd Defendant

Civil Case No. 1093/2005

Coram: S.B. MAPHALALA - J

For the Plaintiff: MR. D. MADAU

For the Defendants: MR. ZWANE

JUDGMENT

(2^m December 2005)

[1] This is an opposed application for summary judgment where Plaintiff is seeking for the ejection of the 1st

Defendant from Farm SF 70 at Vuvulane in the Lubombo District and all those holding title under him with immediate effect and costs of suit.

[2] The Plaintiff contends that Defendant has no valid or bona fide defence to his claim.

[3] Prior to the application for summary judgment the Defendant had filed a plea dated 13th June 2005, raising a defence therein. The summary judgment has been brought to the court with the full knowledge by Plaintiff of the defence by Defendant but such defence is not mentioned in the said application.

[4] On reading the plea together with the Plaintiffs affidavit in support thereto it becomes apparent that in casu a factual dispute as to the nomination issue with VIF, the 3rd Defendant exists. Clearly, there is a triable issue in this case. It is settled law that the remedy provided by Rule 32 is an extraordinary and a very stringent one in that it permits a judgment to be given without a trial. It closes the doors of the court to the Defendant. Consequently, it should be resorted to and accorded only where the Plaintiff can establish his claim clearly and the Defendant fails to set up a bona fide defence. (See Erasmus, Superior Court Practice, Juta at B1 - 206 and the cases cited thereat). In the instant case that is not the position.

[5] Further, it would appear to me that on the facts Plaintiff should not have proceeded with the application in view of the plea and the Defendant's Notice to discover. The application thus falls foul of the provisions of sub-rule 7 of Rule 32 which provides as follows:

7. If the Plaintiff makes an application under sub-rule (1) where the case is not within this rule or if it appears to the court that the Plaintiff knew that the Defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to any other powers, the court may dismiss the application with costs and may require the Plaintiff to

pay the costs forthwith.

[6] In the result, for the afore-going reasons the application for summary judgment is refused and Plaintiff to pay costs in terms of Rule 32 (7) of the Rules of Court.

S.B. MAPHALALA
JUDGE