

IN THE HIGH COURT OF SWAZILAND

Civil Case No. 3397/2007

WELANJANI (PTY) LTD Applicant

And

POORTZICHT SUPPLY (PTY) LTD Respondent

In Re:

POORTZICHT (PTY) LTD Plaintiff

And

WELANJANI (PTY) LTD Defendant

Coram: S.B. MAPHALALA – J

For the Applicant: MR. NKOMONDE

For the Respondent: MISS P. DLAMINI

JUDGMENT13th December 2007

[1] On the 26th October 2007 in the morning session of the uncontested roll Counsel for the Applicant applied for an order in terms of prayers 1 (i), (ii) and (iii) of the application for summary judgment.

[2] Some minutes after the above-cited order was granted Counsel for the Respondent applied that the matter be recalled and the judgment earlier granted be stayed pending trial of the matter on 2nd November 2007. To this application Counsel for the Applicant opposed the staying of the judgment contending that the Respondents have not used Rule

31 or 42 of the High Court Rules.

[3] The Respondent's Counsel contended that her client relies on Rule 32 (4) (b) of the High Court Rules to seek a stay of the judgment. The said Rule provides that **the court may order, and subject to such conditions, if any, as may be just, stay of execution of any judgment given against a Defendant under this rule until after the trial of any claim in reconvention made or raised by the Defendant in the action.**

[4] Having considered the arguments of the parties I have come to the considered view that the position adopted by the Respondent is correct on the facts of the matter. There is nothing untoward in the application made by the Respondent in terms of Rule 32 (4) (b) of the High Court Rules. The rule speaks for itself as I have outlined above in paragraph [3] of this judgment. This application is clearly not for rescission either in terms of Rule 31 or 42 as contended for the Applicant.

[5] In the result, for the afore-going reasons the order by the court of the 26th October 2007 is stayed until after the trial or any claim in reconvention made or raised by the Respondent in the action. I further rule that costs to be costs in the trial.

S.B. MAPHALALA

JUDGE