

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO. 4051/08

IN THE MATTER BETWEEN:

T.F. MOTORS (PTY) LTD

Plaintiff

AND

LUCKY TSABEDZE t/a LEON'S TRANSPORT

DEFENDANT

Date of hearing: 08 December, 2009

Date of judgment: 08 December, 2009

MR. ATTORNEY MANYATSI FOR THE PLAINTIFF

Mr. Attorney Ntshalintshali for the Defendant

EXTEMPORE
JUDGMENT

MASUKU J.

[1] By a simple summons dated 9 October, 2008 the plaintiff T&F Motors Pty Ltd sued one Lucky Tsabedze-the defendant, trading as Leon's Transport for payment of the sum of E24 880.10. This amount was alleged to be in relation to fuel supplied by plaintiff to the defendant in or about the month of July 2008 at the defendant's special instance and request. It was alleged further that notwithstanding demand the defendant neglects and or refuses to pay the plaintiff the said amount.

[2] The plaintiff further claimed interest at the rate of 9% calculated from date of issue of summons to the date of final payment and costs of suit.

[3] ON THE SAME DATE, WHICH IS 9 DECEMBER, 2008, THE DEFENDANT THROUGH INSTRUMENTALITY OF HIS ATTORNEY FILED A NOTICE OF INTENTION TO DEFEND WHICH THEN NECESSITATED THAT THE PLAINTIFF, FILE A DECLARATION WHICH WAS FILED 28 JANUARY 2009. THE CRUX OF THE PLAINTIFFS CLAIM IS THAT IN/OR ABOUT JULY 2009 THE PARTIES ENTERED INTO A VERBAL CREDIT SALE AGREEMENT IN TERMS OF WHICH THE PLAINTIFF WOULD SUPPLY FUEL ON CREDIT TO THE DEFENDANT AND IT IS ALLEGED THAT THE DEFENDANT DID NOT UPON DEMAND, WHICH WAS TO BE MADE WITHIN 30 DAYS OF THE SUPPLY, PAY THE AMOUNT CLAIMED.

[4] The defendant's defence is a horse of a different color. The defendant claims that there was no agreement in the nature of a credit sale agreement. Its contention is that it was supplied fuel on a cash basis and was not issued with any receipts by the plaintiff in respect of purchases of fuel that it had made. This being a summary judgment application, it is now trite that this application is one which on account of its stringent nature in that it allows the court to grant judgment against the defendant without a full hearing, that the court should therefore tread very carefully.

[5] IN THE CIRCUMSTANCES IT IS CLEAR THAT THERE IS A DISPUTE REGARDING THE TRUE NATURE OF THE AGREEMENT BETWEEN THE PARTIES, THE PLAINTIFF ON THE ONE HAND CLAIMING THERE WAS A CREDIT AGREEMENT AND THE DEFENDANT ON THE OTHER CLAIMING THERE WAS A CASH SALE AGREEMENT. THIS IS AN ISSUE WHICH CAN NOT BE PROPERLY DETERMINED ON THE BASIS OF THE AFFIDAVITS FILED BEFORE COURT.

[6] IN THE PREMISES IT WOULD APPEAR TO ME THAT THE DEFENDANT HAS IN THE CIRCUMSTANCES RAISED A TRIABLE ISSUE WHICH MIGHT REQUIRE THE ADDUCTION OF ORAL EVIDENCE AT THE APPROPRIATE TIME. IN VIEW OF THE FOREGOING I THEREFORE ISSUE THE FOLLOWING ORDER THAT;

1. Claim for summary judgment is hereby dismissed.
2. The defendant is granted leave, then matter takes its normal course in terms of the rules.

2.1. PLEA FILED WILL STAND AS FILED WITH THE PLAINTIFF
file a replication if so advised.

2.2. Costs to be determined by trial court.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS 8TH DAY OF
DECEMBER-2009.**

T.S MASUKU
JUDGE

Messrs. Rodrigues and Associates for the Plaintiff.
Messrs. Madau and Simelane Attorneys for the Defendant.