

IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 800/22

In the matter between:

ESWATINI ELECTRICITY COMPANY

PLAINTIFF

AND

CARSON MOTORS (PTY) Ltd

DEFENDANT

Neutral citation: *Eswatini Electricity Company vs Carson Motors [800/22]*
[2024] SZHC 29 (8 March 2024)

Coram: FAKUDZE, J

Heard: 14/07/2023

Delivered: 8 March 2024

JUDGMENT

BACKGROUND

- [1] The Plaintiff filed simple summons against the Respondent for the sum of E197,812.00 (Emalangeni One Hundred and Ninety Seven Thousand Eight Hundred and Twelve) being in respect of the warranty value of the motor vehicle BSD 361 CM, Ford Ranger 2.2 x XL 4x4, as at 2018; interest at the rate of 9% per annum; and costs of suit.

[2] The Defendant filed a Notice to Defend on 17/05/22 and the Plaintiff subsequently filed a Declaration on 20/07/22. The Defendant was on 30/05/2022 asked to file its Plea within three (3) Days from receipt of the notice failing which it will be *ipso facto* barred from doing so. The Defendant filed a Request For Further Particulars instead of filing a Plea or exception.

[3] The Plaintiff then filed an Application in terms of Rule 30 alleging the Request For Further Particulars is an irregular step.

Parties' contention

The Plaintiff

[4] The Plaintiff contends that a party which fails to deliver a pleading referred to in the Notice of Bar or within the stated time in the Notice of Bar is *ipso facto* barred. The language used in Rule 26 is clear, unambiguous and peremptory. The Defendant was called upon to deliver a Plea. He failed to do so but decided to file a Request For Further Particulars. The latter was an irregular step as it is not a Plea/pleading.

[5] The Plaintiff then contends that since the "Request" is not a Plea/pleading, the Plaintiff was then entitled to move an Application in terms of Rule 30. For purposes of Rule 26 only Pleadings can be filed pursuant to a Notice of Bar because the Notice of Bar is issued for failure to deliver a Pleading. These Pleadings include a Declaration, a Plea or an Exception.

[6] The only remedy available to the Defendant was to apply for extension of time to file a Plea in terms of Rule 27.

The Defendant

- [7] The Defendant argues that the Request For Further Particulars was made before the lapse of the three (3) days envisaged by Rule 26 and at that point the Defendant had not been barred. Within the period availed to it the Defendant made a Request For Further Particulars instead of filing a Plea.
- [8] The Defendant finally argue that the rationale behind Rule 21 (4) Requesting Further Particulars to be made by letter enables the other party to object to the request. The Defendant was therefore entitled to make a Request For Further Particulars.

Issue for determination

- [9] It is not in dispute that the Defendant filed the Request for Further Particulars a day after it had been served with the Notice of Bar. It therefore filed within the prescribed time for filing a subsequent pleading in terms of the Rules of the High Court. The issue for determination is whether a Request For Further Particulars is in order before a subsequent pleading is filed.
- [10] The Plaintiff contends that in terms of Rule 26, a party which fails to deliver the pleading referred to in the Notice of Bar or within the time stated in the Notice of Bar is barred. The Defendant was called upon to deliver a Plea; instead it filed a Request For Further Particulars. The filing of the Request was an irregular step, so says the Plaintiff. In this regard, the Plaintiff made reference to the case of **Advanced Idea Mechanics (Pty) Ltd 195 (4) 444** where the court confirmed the decision in **Schooling v Profile Enterprises Ltd 1971 (1) SA 555 (0)** where it was held as follows:

"Linguistically, it seems to me to be somewhat unnatural to hold that a Request can never be a pleading in the full sense of the word. The function of a request is merely to require information from the other party and not assert or deny anything."

[11] The Plaintiff is therefore of the view that the Request can never be a subsequent pleading. A subsequent pleading includes a Declaration, a Plea and/or an Exception. Once a Notice of Bar is issued, the Defendant is only allowed to file the aforementioned subsequent pleading. Therefore the Plaintiff's case must be upheld.

[12] The Defendant argues to contrary. In this regard, the Defendant refers to the local case of **Mand F. Engineering (Pty) Ltd v Hency Construction (Pty) Ltd High Court Case No. 952 [2021]** where Justice Magagula B.W. stated as follows:

"[17] In my interpretation of Rule 26 basically the rule opens a window to the Defendant despite that the initial dies within which he was supposed to file the pleading had lapsed. It then accords him a further 3 days to file the pleading which in this case in the plea"

"[18] Now the natural of events would be, if the plaintiff had extended the three (3) day period for the Defendant to file a Plea as it were, would the defendant not file an exception for instance, if the particulars of claim were excipiable? In my view, there is nothing that stops a Defendant to except to the particulars within the 3 day window given in the notice of bar if the particulars of claim are excipiable. That argument is my view would extend to the filing of a Request For Further Particulars... .. There is nothing in the Rule that

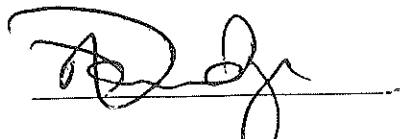
prevents the Defendant to request for those Further Particulars especially if it is done within the three (3) day window period before the Defendant is ipso facto barred."

[13] Likewise, in **Carl Boy Cervali v Royal Swaziland Sugar Corporation Limited and Another** High Court Case No. 1583/ [2014] SZHC 187 where it was stated as follows:

"Rule 26 might be rendered useless if lawyers are not vigilant that it required the notice of bar to specifically bar a subsequent pleading if they are not done within 3 days. A Plea is not only a pleading required in terms of Rule 26 for an exception to be filed; a Request For Further Particulars could extend the time for filing the Plea."

Court's conclusion

[14] This court is inclined to agree with the Defendant in that the Rules do allow a party to the proceedings to make a Request For Further Particulars before filing a subsequent pleading. In this particular case, the Defendant was expected to file a Plea, but instead opted to Request Further Particulars so as to enable it to prepare its Plea. There is nothing wrong with that procedure. The fact that the plaintiff had specifically requested the Defendant to file a Plea should not be interpreted to mean, it cannot file an exception, declaration or other subsequent pleading as per Rule 26. The Application in terms of Rule 30 (1) by the Plaintiff is accordingly dismissed with costs.


FAKUDZE J.

JUDGE OF THE HIGH COURT

Plaintiff: Miss Nkonyane

Defendant: Mr. Ginindza