

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV.CASE NO.283/90

In the matter between:

ZEDA CAR RENTAL (PTY) LIMITED t/a  
AVIS RENT A CAR

Plaintiff

and

DR BUTARE RUKUNDO

Defendant

C O R A M : DUNN J.  
FOR THE PLAINTIFF: MR MAVUSO  
FOR THE DEFENDANT: MR MAMBA .

RULING ON APPLICATION

7th October 1992

By summons issued on the 2nd April 1990, the plaintiff sought judgment against the defendant for payment of the sum of E5,359.83 with interest and costs on the attorney and client scale. The claim arises from certain agreements between the parties in terms of which the defendant hired vehicles from the plaintiff.

The defendant filed notice of intention to defend and requested further particulars as to how the sum claimed was arrived at. The particulars were duly furnished with the relevant invoices pertaining to the hired vehicles. The defendant pleaded as follows-

Defendant denies liability for the claimed amount of E5,359.83 but admits liability to plaintiff on the ground stated for the lesser amount of E1,808.29.

/On the...

2/ ... ..

On the 20th September 1989 at Manzini defendant in writing tendered payment to plaintiff of E1,808.29 which tender plaintiff rejected.

Defendant hereby repeats the tender unconditionally and hereby consents to judgment in the amount of E1,808.29.

The plaintiff then amended its claim reducing the amount from E5,359.83 to E3,785.52. An amended particulars of claim was filed by the plaintiff. The defendant proceeded to file a plea to the amended particulars of claim. In the amended plea the defendant denies being indebted to the plaintiff in the sum claimed or in any amount at all. He states that he made full payment to the plaintiff in respect of the hired motor vehicles.

The defendant has admitted its liability to the plaintiff in the sum of E1,808.29. The defendant cannot simply withdraw his admission by virtue of the plaintiff's amendment, reducing the amount of the claim. A formal notice of intention to amend the pleading should have been made and allowed to take its course in terms of Rule 28. Mr Mamba has applied for a post-ponement of the case to enable the defendant to move such an application. The application for a post-ponement is not opposed subject to the defendant paying the wasted costs.

The application is granted. The defendant is to pay the wasted costs.

  
B. DUNN  
JUDGE