

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO.1456/92

In the matter between:

S.E.D.C.O.

Plaintiff

and

CHARLES MSIMANGO

Defendant

C O R A M : DUNN J.
FOR THE PLAINTIFF : MR P.M. ZWANE
FOR THE DEFENDANT : MR B. SIMELANE

JUDGMENT

8th August 1993

In this application for summary judgment the defendant has raised the point, in limine, that the application is defective in that there is no averment that in the plaintiff's opinion the defendant has no defence to the action.

The relevant paragraph of the plaintiff's affidavit in support of the application reads -

I verily believe that the defendant does not have a good bona fide defence to the plaintiff's claim and that the notice of intention to defend has been delivered solely for the purpose of delay.

Rule 32(1) provides -

Where in an action to which this rule applies a combined summons has been served on a defendant or a declaration has been delivered to him and that

/defendant...

/2... ..

defendant has delivered notice of intention to defend, the plaintiff may, on the ground that the defendant has no defence to a claim included in the summons, or to a particular part of such a claim, apply to the court for summary judgment against the defendant.

Sub-rule 32(3)(a) provides -

An application under sub-rule (1) shall be made on notice to the defendant accompanied by an affidavit verifying the facts on which the claim or the part of the claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, and such affidavit may in addition set out any evidence material to the claim.

(my underlining)

The two sub-rules I have referred to differ materially from the provisions of Rules 32(1) and 32(2) of the South African Rules of Court. The decided cases to which I was referred deal with the requirement of the South African Rule that an applicant must set out that in his opinion the respondent has no bona fide defence. All that an applicant is required to do under our Rule 32 is to -

- (i) verify the facts on which the claim, or part of the claim, to which the application relates is based, and
- (ii) state that in his belief there is no defence to that claim or part, as the case may be.

The plaintiff in this case has verified the cause of action. The averment by the plaintiff that he verily believes that the defendant has no defence, meets the requirement of the sub-rule. The point raised in limine is dismissed with costs.

The plaintiff conceded that the defendant had succeeded in setting out a prima facie defence in his reply to the application and that leave to defend ought to be granted.

I order, on the merits of the application, that the defendant be granted leave to defend and that costs be costs in the cause.


B. DUNN
JUDGE