



IN THE HIGH COURT OF SWAZILAND

Civ. Case NO. 957/90

In the matter between:

Ephraem Toya Thwala

Plaintiff

and

Abel Mkhonta

1st Defendant

Sipho Tsela

2nd Defendant

CORAM:

Hull, C.J.

FOR FIRST DEFENDANT

Mr. Mamba

FOR PLAINTIFF

Mr. Vilakati

Order

(18/12/94)

The plaintiff's claim is that the first defendant agreed in June 1991 to sell him his half share in immovable property for a sum of E4500 which was duly paid, but has subsequently refused to complete the transaction and has subsequently sold the interest in land to the second defendant.

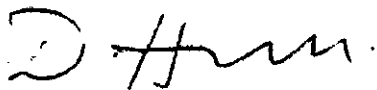
In the particulars of claim, the plaintiff goes on to allege that the instance of the first defendant he subsequently also agreed to buy the other half of the property from an estate, which stands ready to complete the transaction. This averment appears to be by way of completing a narrative of events. What the plaintiff actually seeks in this action is an order that the sale of the first defendant's share to the second defendant be declared null and void and that the first defendant be ordered to sign the necessary documents to complete the sale to the plaintiff.

The first defendant excepts on the ground that the agreement on which the plaintiff relies is contrary to the provisions of section 31 of the Transfer Duty Act (No. 8 of 1902) because it is not in writing and signed by both parties or their agents.

The exception must in my view succeed. The section requires that both parties must sign the contract for sale if it is to have any force or effect: Royke v. Medicine 1962 4 SA 281 (C).

Mr. Vilakati sought to argue that paragraph 6 of the particulars of claim avers this. With respect it does not. What it alleges is that the first defendant refused to sign a deed of sale and the other documents necessary to give effect to the transfer. It is nowhere alleged that the plaintiff's cause of action is based on a written agreement for sale that had been signed by or on behalf of both parties, and Mr. Vilakati has acknowledged that no such document exists.

The exception is allowed. The plaintiff's claim is dismissed, with costs. It is agreed that these are not to include the costs on the preparation of the plea that was subsequently filed.



DAVID HULL
CHIEF JUSTICE