



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1784/93

In the matter between:

CENTRAL BANK OF SWAZILAND

PLAINTIFF

and

FRANCIS MKHATSALI ZWANE

DEFENDANT

CORUM : DUNN J
FOR THE PLAINTIFF MR. KHUMALO
DEFENDANT IN PERSON

J U D G M E N T

31ST MARCH 1995

This is an application to set aside a default judgment granted on the 18th March 1994. The action arose from the defendant's failure to repay a loan which was granted to the defendant upon terms contained in Mortgage Bond Numbers 214/81 and 204/1983. The summons commencing the action was served at the *domicilium citandi et executandi* namely Lot No.20 Zembe and Sukati Streets, Sandla Township, Mbabane on the 1st March 1994. A writ of execution was subsequently issued and the deputy sheriff advertised for the sale by public auction of Lot 20 Sandla Township. The sale was to be held on the 13th May 1994.

On the 29th April 1994 the defendant filed the present application which also contained a prayer for an order staying the sale in execution pending the finalisation of this application. The defendant was successful in

obtaining a stay of the sale in execution. Several requests were made for a date for the hearing of the application and the matter was eventually set down for the 9th March 1995. On that date serious difficulties were encountered as the defendant attempted to move the application himself without legal representation. The requirements which an applicant is obliged to satisfy in such applications were explained to the applicant and he was urged to consider engaging the services of an attorney. The hearing was adjourned to the 24th March 1995 for purposes of enabling the defendant to seek legal advice.

When the matter was called on the 24th March the defendant indicated that he stood by the contents of the affidavits he had filed in support of the application which he would argue himself.

An applicant in an application for rescission of a default judgment must -

- (a) give a reasonable explanation for his default;
- (b) show that his application is **bona fide** and not made with the object of delaying the opposite party's claim;
- (c) show that there has not been a reckless or intentional disregard of the Rules of Court;
- (d) show that his action is not ill-founded;

- (e) show that any prejudice to the opposite party could be compensated for by an appropriate order as to costs.

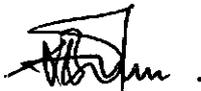
See **MSIBI v MLAULA ESTATES (PTY) LTD, MSIBI v G M KALLA AND COMPANY 1970-1976 SLR 345** and the authorities there referred to at p. 348.

The defendant has paid little, if any, attention to these requirements. He states that he was unaware of the summons until the 11th April 1994. The defendant selected the **domicilium citandi et executandi**. The summons is endorsed as having been properly served by the deputy sheriff.

In so far as setting out a **bona fide** defence, the defendant states that he authorised the plaintiff to work out moneys due to him in respect of benefits and pension and to transfer such moneys "into the loan account to reduce the money owing". It appears from a considerable amount of correspondence between the plaintiff and the defendant, which was annexed to the plaintiff's answering affidavit, that the question of the termination of the defendant's services with the plaintiff was a protracted one which resulted in an action before the Industrial Court. No agreement was reached between the parties regarding the application of any of the defendant's terminal benefits towards servicing the defendant's loan with the plaintiff. The defendant admits in his supporting affidavit that his attempts at an amicable settlement of the matter were not successful as the plaintiff's attitude was that the matter

had "dragged on for a long time". The defendant's averments regarding the unsuccessful attempts by him to secure a settlement do not amount to a defence to the plaintiff's claim.

The defendant has failed to satisfy the requirements necessary for the grant of the relief sought. The application for the setting aside of the default judgment of the 18th March 1994 is dismissed with costs. The interim relief staying execution of the writ accordingly falls away.



B. DUNN

J U D G E