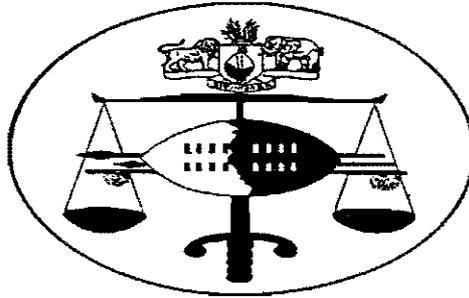


1302



THE HIGH COURT OF SWAZILAND

ARROW FEEDS (PTY) LTD

Plaintiff

And

TRANCOR INVESTMENT (PTY) LTD

Defendant

Civil Case No.3196/2002

Coram

For the Plaintiff

For the Defendant

S.B. MAPHALALA – J

MR. DLAMINI

MR. MDLADLA

RULING

(15/08/2003)

This matter was allocated the 7th *instant* for hearing by the Registrar pursuant to Rule 56 (3) and 4 (a) of the High Court Rules, Legal Notice No. 3 of 1969. The attorneys for the Plaintiff set the matter for hearing on that date.

When the matter was called for hearing *Mr. Mdladla* raised a number of points to the effect that the matter was not ready for trial and therefore should be removed from the court's roll. *Mr Mdladla* submitted that rules of court have not been followed in this matter *viz*, Rules 55 (1); 55 (3) (c); and 56 (1) (3). Essentially that the Plaintiff has

failed to prepare a proper Book of Pleadings in terms of the rules. Further, no discovery took place in this matter as there was no pre-trial conference in terms of the rules. The Defendant therefore was not in a position to proceed with the matter.

Mr. Dlamini in an unusual address to the court conceded all the points raised by *Mr. Mdladla* that the record has not been prepared in terms of the rules but shifted the blame to the Defendant. His defence is that the Defendant if they had any cause for complaint should have moved an application in terms of Rule 30. The argument here, which I found very hard to follow, is that because Defendant has not made a complaint all is well and the court should proceed with the trial irregardless of the fact that the papers are in disarray. I do not agree with this proposition and I said so when the matter was argued and I am repeating it here in this ruling. The relevant rule is Rule 56 (1) which reads in *extenso* as follows:

“56 (1) (a) When the Registrar has allocated a date of hearing of a civil cause in terms of Rule 55A he shall notify the party who made the request in writing of the date and time of the hearing and that party shall deliver a notice to set down accompanied by one set of copy pleadings and all other documents to be used by the court, the pages of which shall be numbered seriatim, bound book wise and have attached thereto an index showing the title of every pleading included in the set and the page numbered thereof.

Provided that, where the circumstances so require, the notification by the Registrar may be verbal, or by telephone or telegram or telex and subsequently confirmed in writing.

Provided further that such notification shall be given at such time as will enable the party notified to give the period of notice of set down between the parties or in the absence of such agreement not less than ten days notice.

(b) If such notice of set down or book of pleadings is not received by the Registrar not less than ten days before the date allocated for hearing of the matter, the allocation shall no longer be of force or effect and the matter shall be deleted from the roll”.

In the instant case *Mr. Dlamini* conceded that the Plaintiff has not delivered a notice of set down accompanied by one set of copy of pleading and all other documents to be

used by the court. The rule is peremptory that the pages of which shall be numbered *seriatim*, bound bookwise and have attached thereto an index showing the title of every pleading included in the set and the page numbered thereof. In the present case there is no Book of Pleadings as required by the rule. The only Book of Pleadings in this matter is for when the matter appeared for summary judgment before Sapire CJ (as he then was) where on the 20th March 2003, Plaintiff was granted judgment in so far as a sum of E3, 164-60. The Defendant was granted leave to defend for the balance. It was also ordered that costs to be costs in the cause.

I find on the above-mentioned reasons that Plaintiff has failed to prepare the record as required by the rules. I also find that Rule 30 is not applicable in this case as there was no irregular step taken by Plaintiff as envisaged by the said rule. Rule 30 (1) provides that a party to a cause in which an irregular step or proceeding has been taken by any other party may within fourteen days after becoming aware of the irregularity, apply to court to set aside the step or proceeding; provided that no party who has taken any further step in the cause with knowledge of the irregularity shall be entitled to make such application. Clearly *in casu* the filing of a notice of set down by the Plaintiff in terms of the rules after the Registrar has allocated a date for trial in terms of Rule 56 (3) and 4 (a) can hardly be described as an irregular step in terms of Rule 30.

In the result, the matter is deleted from the roll and the Plaintiff is ordered to pay wasted costs occasioned by the matter being removed.


S.B. MAPHALALA

JUDGE