

IN THE HIGH COURT OF LESOTHO

(Commercial Division)

**CCT 91/10
CCT 87/10
CCT 85/10**

In the matter between:-

NEDBANK (LESOTHO) (Pty) Ltd

PLAINTIFF

VS

CROWN MEDICAL AND LAB (Pty) Ltd

1ST DEFENDANT

and

KATA ANTHONY RAMETSE

2ND DEFENDANT

BOHLOKOA VERONICA RAMETSE

3RD DEFENDANT

and

MASENUKU THERESA RAMETSE

4TH DEFENDANT

Date of Hearing : 31st March 2011

Date of Judgment : 7th April 2011

CORAM : MR. ACTING JUSTICE L.A. MOLETE

Counsels :

Mr. Mpaka for Plaintiff

Mr. Tlapana for Defendants

JUDGEMENT

Plaintiff issued a summons against the 1st defendant on 20th November 2010 for payment of M70,500-00 in respect of an overdraft facility; being an amount owing on its account .

Plaintiff simultaneously issued summons against 2nd to 4th defendants in two different actions for the same amount. Defendants 2 and 3 are married in community of property. They all bound themselves as sureties and co-principal debtors.

All the defendants entered appearance to defend on receipt of summons. Plaintiff applied for summary judgment in all the matter. They were allocated for hearing on 31st March 2011. On the date of hearing the parties agreed to consolidate and to address the court in respect of the 1st defendant company only, as in an event the liability of the other defendants would depend upon the plaintiff's success against the company .

I need only give a brief background to the proceedings and proceed to make my ruling. After service of the summons the defendant filed an appearance to defend, and shortly thereafter requested further particulars. The plaintiff supplied the further particulars on the 24th January 2011 and subsequently made application for summary judgment on 2nd February 2011.

The defendant's affidavit opposing summary judgment raised a number of grounds; namely; that the summons do not disclose a cause of action and also that the plaintiff is disqualified from applying for summary judgment since a further step of supplying the further particulars had been taken. I propose to deal with the second ground only and decide the matter on that basis.

It has been held in a number of cases that a plaintiff who elects to proceed by way of summary judgment must not take any other further step in the action. Many South African cases are persuasive in this regard. I need only refer to the judgment of Mr. Acting Justice J. D. Lyons in our jurisdiction in the case of **STANDARD LESOTHO BANK LTD vs ILECK MAHOMED CIV/T/182/2010** (unreported). It is authority in this regard and counsel agrees that this court has to follow that precedent.

The honourable judge made it crystal clear that the threshold is set very high due to the very nature of summary judgment.

The following extract from the judgment is clear and correct;

“A summons is first filed and served. The entry of appearance then follows (if not judgment can be taken by default). Then the plaintiff has to take one of two options:-

either proceed toward trial by filing the declaration; or proceed by way of summary judgment. There is no room in the process for any other step.”

In the circumstances the Application for Summary judgment cannot succeed. It is therefore dismissed. The defendant is granted leave to defend the action. The defendant is to file the plea within 21 days in terms of the rules and the matter will proceed to trial in the normal way.

Costs will be costs in the cause.

L.A. MOLETE
ACTING JUDGE