

IN THE HIGH COURT OF LESOTHO

In the Application of :

CHIEF NKHAHLE MOHALE

Applicant

V

MINISTER OF INTERIOR  
CHIEF LESHOBORO SEEISO  
LELOKO JONATHAN  
TLOKOTSI MOTLOI  
POTSANE THABO LETSIE

1st Respondent  
2nd Respondent  
3rd Respondent  
4th Respondent  
5th Respondent

RULING AS TO COSTS

Delivered by the Hon. Acting Judge Mr. J. Unterhalter  
on the 1st day of December, 1982.

In this matter a Notice of Motion dated 3rd November, 1980 together with supporting affidavits was served upon the Respondents. The Solicitor-General gave notice of intention to oppose and this was served upon the attorneys for the Applicant Messr. W.C.M. Maqutu & Co. The notice recorded that the Law Office was the address at which the Respondent would accept notice and service of all process in the proceedings. An answering affidavit was served upon the Applicant's attorney on the 12th December 1980 and the replying affidavit was apparently delivered to the Ministry of the Interior on the 5th March 1981 and sent by registered post to the 2nd, 3rd and 4th Respondents. According to the note on the file the matter was postponed sine die on the 15th December, 1980. No further steps were taken in the matter until the 18th October, 1982 when a Notice of set down signed by the attorney for the "Plaintiff" recorded that the matter would be heard on the 29th November, 1982. There does

/not appear

not appear to have been service of this notice of set down upon the Solicitor-General but the notice had the stamp of the Minister of the Interior dated 18th October 1982.

On the 29th November 1982 the matter was called and Mr. Gwentshe appeared for the Applicant. There was no appearance for the Respondent. I decided that the office of the Solicitor-General should be informed of the situation, and I requested that office to send a representative to court on the 30th November 1982 to explain why there was no appearance for the Respondents. On the 30th November 1982 Mr. Gwentshe again appeared for the Applicant and Mr. Mafisa as representing the Solicitor-General for the Respondents. Mr. Mafisa informed the court that the office of the Solicitor-General had not received a notice of set down and was unaware of the fact that the matter was to be heard on the 29th November 1982. Mr. Gwentshe was unable to offer an explanation as to why the notice of set down had been delivered to the Minister of Interior and not the Solicitor-General. The matter was adjourned until the 1st December 1982 in order that Mr. Maqutu might appear personally before the Court and give an explanation as to the notice of set down not having been delivered to the Solicitor-General.

On the 1st of December 1982 Mr. Maqutu appeared in Court and Mr. Mafisa was present as representing the Respondents. Mr. Maqutu was asked why, as the matter was to be postponed to a date to be arranged with the Registrar, as requested by the parties, the wasted costs of the appearances should not be paid by Mr. Maqutu de bonis propriis. He said that in regard to the appearance on the 29th November 1982 the Applicant was in any event to apply for a postponement because of certain evidence that had come to

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hand and which would require to be examined in another court. He conceded that in regard to the costs wasted by the appearances on the 30th November 1982 and the 1st December 1982 these were costs that should be paid by him de bonis propriis and not by the Applicant, also conceding that such costs should be awarded in favour of the Respondents.

The Court draws attention to the provisions of Rule 61(1) which read as follows :

"Where in any proceedings before the High Court -

- (a) Costs are incurred improperly or without reasonable cause; or
- (b) Costs are wasted by undue delay or by other misconduct or default;

The Court may make an order against an attorney whom the Court considers to be responsible whether personally or through a servant or agent -

- (i) disallowing the costs between the attorney and his client;
- (ii) directing the attorney to repay his client de bonis propriis costs which the client has been ordered to pay to other parties; or
- (iii) directing the attorney to indemnify de bonis propriis the other parties against all costs payable by them."

In the present matter there has been clear default by the attorney for the Applicant. He caused the notice of set down for the hearing of the matter for 29th November 1982 to be served on the Minister of the Interior instead of the Solicitor-General despite the terms of the notice of intention to oppose which appointed the offices of the Solicitor-General as the address at which notice and service of process in the proceedings would be accepted. When the notice of set down was returned to his office he failed to peruse it in a sufficiently careful manner such as would have made him aware of the fact that there had not been proper notice of set down.

/As a result

As a result of this all the consequences that have been set out above occurred and all the costs occasioned were unnecessarily incurred.

It is of paramount importance that the rules of Court be carefully and conscientiously observed. Only in this way can there be an efficient administration of proceedings where justice is sought and only in this way can delay be avoided and the unnecessary incurring of costs be obviated.

It is necessary that practitioners should at all times be aware of their duties as prescribed by the rules of Court and it is for this reason, apart from their professional obligations, that rule 61 has been promulgated to ensure fulfilment of those obligations.

In the present matter it is ordered that the costs wasted by appearances on the 30th November 1982 and the 1st December 1982 are to be paid by the Applicant but, in terms of rule 61(1) (b)(ii) the attorney for the Applicant is directed to repay those costs to the Applicant de bonis propriis. It follows that the costs of those appearances are also disallowed as between attorney Maqutu and his client the Applicant.



J. UNTERHALTER  
ACTING JUDGE.

For the Applicant : Mr. Maqutu

For the Respondents : Mr. Mafisa