

IN THE HIGH COURT OF LESOTHO

In the matter between :

McINTYRE & VAN DER POST Plaintiff

v

MALUNGA EARTH MOVING Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 23rd day of May, 1983.

This is an application to grant judgment against the defendant by virtue of the fact that he has failed to file his plea timeously despite a reminder to do so.

In opposing the granting or entering of judgment in favour of the plaintiff counsel made a long speech imploring the Court to exercise its discretion in terms of the Rules of this Court (Rule 59).

The proceedings began on 13th January 1983 as an application for summary judgment. Defendant sought the payment of M6,698,85 being the amount of a certain cheque dated 13th September 1982 drawn by the defendant in favour of the plaintiff which when duly presented was dishonoured. The Defendant indicated his desire to oppose the application and was allowed by the plaintiff a full re-hearsal, i.e. pleadings were started from the beginning.

A plea is the defendant's answer to the plaintiff's claim and in it the former sets out whatever defence he relies upon. If he has not pleaded a defence he cannot rely on it. This

then is the document which the defendant was, for one reason or the other was very very reluctant to let the plaintiff have in terms of the Rules. He received a notice informing him to file his plea within three (3) days from receipt of the said document. This was totally ignored. Almost six days later the notice of set down was served on the defendant's attorneys. This evoked no reaction on the defendant's side. Only on the 6th day of May 1983 was it served on the plaintiff's attorneys. In it the defendant simply makes two defences, viz, first that the cheque was not drawn in favour of the drawees and the goods were never delivered. The funds were thus not made available to meet the said cheque. (As to the meaning of any endorsement on a cheque which has not been honoured by the Bank; see Lesotho Milling Co., v Paleo Tlelai, 1980(1) LLR. 85 at 86). Secondly, the cheque was handed to the plaintiff's attorneys in Maseru (who are the Bloemfontein attorneys for the drawee) and correspondents for Lesotho attorneys to make the cheque appear to be held by the plaintiff for value. They are, therefore, not genuine plaintiffs.

Whatever the merits or demerits of this plea, it was terribly out of time and not in accordance with the Rules. It has repeatedly been said that the Rules of Court are meant to be strictly adhered to, the discretion being in the hands of the Court. (See Mokutlulu v Solicitor General & Others, 1986(2) LLR. 405). In this particular case it was quite clear that the defendant had recklessly disregarded his obligations. It was incredible that counsel just mentioned, casually the question of costs. No serious attention was paid to it, i.e. tendering thereof.

/Considering

Considering the background of this matter as outlined earlier, the delay that would have been occasioned by a further postponement would have highly prejudiced the plaintiff because it would be lengthy. Again it would seem to the Court that what the defendant was in fact doing was to use for ulterior motive purposes a machinery devised specially for the proper administration of justice. The Court will do everything in its power to put a stop to this abuse. The actions of the defendant were, moreover, mala fide. He had no desire for his case to be heard timeously but rather to delay the plaintiff in obtaining his judgment. However, the Court cannot allow this to happen. It seems to me, therefore, that in these circumstances the Court was left with no option to exercise its discretion but to grant judgment as prayed in the summons.


J U D G E.

For the Plaintiff : Mr. Moiloa
For the Defendant : Adv. Gwentshe.