

IN THE HIGH COURT OF LESOTHO

In the matter of :

EDWARD MOEKETSI KHALI Applicant

V

NANDY KHALI Respondent

J U D G M E N T

Filed by the Hon. Mr. Justice M.P. Mofokeng
on the 13th day of February, 1984.

This is an application for :

1. Rescission of the Order given against the Applicant under Civil Application No. 275/83 on the 12th day of December 1983.
2. An Order directing the Respondent to pay the costs of this Application on an Attorney and Client basis.
3. An Order granting the Applicant such further or alternative relief as this Honourable Court may deem fit.

The Order which the Applicant requests the Court to rescind was based on the allegation that the Applicant had not complied with a term of the Deed of Settlement, when he and Respondent were divorced, which deed was made an Order of this Court. The Applicant had undertaken to buy the Respondent a vehicle of the value of not
/more than

more than M5,000.00 (FIVE THOUSAND MALOTI ONLY) "by not later than the end of October 1983". (My underlining)

On the morning of the 12th December, 1983 the applicant appeared in person. He had not previously indicated his opposition but nevertheless was afforded a full hearing. He produced documents to prove that he had bought the respondent a vehicle, albeit out of time, in terms of the Deed of Agreement. However, the documents clearly showed that the same vehicle had been bought for his present wife, the cause of the divorce between the applicant and respondent. In the end, the applicant conceded before me, that he had not complied with the provision of 4(c) of the Deed of Settlement which had now become an order of Court. He was now in contempt of Court. Strictly speaking he ought not to have been heard at all. However, he was afforded a full opportunity of presenting his case before this Court. He is no simpleton. He is an Auditor of renown in this Kingdom having been the first Mosotho to write a text-book on Accountancy. He understood fully the proceedings and what was required of him.

And now he complains that the time of the Notice was too short and that it did not comply with Rule 8(8) of the Rules of this Court. In my view this does no longer hold any water. The applicant never raised that point in as much as he was ready to argue his case and did not ask nor was he refused a postponement. In fact, he argued his case very well indeed. There is attached an annexure "A" written in the Sesotho language. The Rules require it also be translated into the English language.
/Lesotho ...

Lesotho is a bilingual country.

The applicant states that he has complied with the terms of the Deed of Settlement. The relevant term viz. 4(c) stipulates inter alia that it shall be complied with "by not later than the end of October, 1983. It simply means that performance could be effected any time before the end of October but certainly not thereafter. In Court the applicant, supported by documents which he was given time to fetch from his vehicle outside the Court, proved and conceded that he had not fulfilled the relevant terms of Deed of Settlement in dispute. The applicant had been afforded a full hearing. No irregularity has been pointed out in the granting of the previous Order. The applicant had conceded. I am quite certain that he was fully alive as to what he said and why he said it.

The applicant has not in his affidavits shown that he has a bona fide defence since in my view, and it has not been submitted otherwise, that the judgment against which rescission is sought, is a regular one. (Mthembu v Iqbal, 1980(2) L.L.R. 510)

It is quite obvious that the applicant is one of those clients who will do everything in their power and tell their lawyers everything but the truth. He is still venting his venom on his ex-wife. That is the sole purpose of the present application.

The application is refused with costs.

/JUDGE ...

J U D G E

14th February, 1984.

For the Applicant : In Person

For the Respondent : Mr. Sello.