

IN THE HIGH COURT OF LESOTHO

In the matter of:

R. E. PASHLEY & CO. LIMITED

v

M. MOHLABI t/a PHOMOLONG SHOPPING CENTRE

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J. L. Kheola on the 26th day of November, 1984

This is an application for Summary Judgment made in terms of Rule 28 (1) (b) of the High Court Rules 1980. On the 2nd November, 1984 the plaintiff issued a summons against the defendant claiming the sum of R3,873.86 in respect of the purchase price of goods sold and delivered by plaintiff to the defendant at the latter's special instance and request in or during March, 1984 to date, and which amount is now due and payable.

It is not clear when the summons was served upon the defendant but on the 8th November, 1984 a notice of appearance to defend was filed with the Registrar and also served on the plaintiff on the same day.

On the 9th November, 1984 Notice of Application for Summary Judgment was filed with the Registrar stating that application would be made to this Court in terms of Rule 28(2) on the 19th day of November, 1984 at 9.30 a.m.

/Mr. Hlaoli

Mr. Hlaoli, Counsel for the Respondent, has submitted that the application was set down before the expiry of seven days prescribed by the Rules. Rule 28 provides that 'the notice of application shall state that the application will be set down for hearing on a specified date which shall not be less than seven days from the date of delivery of the notice'.

In the computation of days we refer to Rule 1 (1) which reads:

"days" shall mean court days except that in the computation of time expressed in days prescribed by these rules and fixed by any order of court, Saturdays shall be included except those Saturdays which are public holidays. Provided that when the last day of the number of days prescribed in a non court day or Saturday the time shall end on the next court day following,

We shall again have to refer to the Interpretation Act 1977 to find out if we have to include the 9th November when we compute the seven days prescribed by the Rule. Section 49(1) (a) reads:

" In computing time for the purposes of an Act -

(a) A period of days from the happening of any event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done."

It is clear that the 9th November, 1984 when the Notice of Application for Summary Judgment was served on the Respondent shall be excluded. From the 10th November the seventh day falls on the 17th November 1984 which was a Saturday.

/The last ...

The last day is the following Court day, the 19th November, 1984. The set down was therefore irregular in that it was made less than seven days from the date of the delivery of the notice for Summary Judgment.

The application is dismissed with costs.

ACTING JUDGE
26th November, 1984

For the Plaintiff : Mr. Buys

For the Defendant : Mr. Hlaoli