

IN THE HIGH COURT OF LESOTHO

In the Matter of :

TSELISO MAKUTLE

Plaintiff

v

1. LAZARUS NYAI  
2. MAKALO SEMOLI

Defendants

J U D G M E N T

Filed by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 24th day of February 1984

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On 3rd February 1984 I rescinded a judgment which I had entered in favour of the plaintiff on 10th June 1983 in default of appearance of the defendants. The application for rescission was originally opposed but during argument Mr. Khauoe for the plaintiff conceded that a default judgment should not, in the circumstances, have been entered.

The claim was one for damages to a vehicle (in the sum of M2389.35 with interest) arising from a motor collision between the plaintiff driving a Hiace Combi Registration No. A 6109, and a truck Registration No. A 7416 owned by the first defendant and allegedly driven by the second defendant in the course of his employment.

It did not occur to plaintiff's counsel, nor, I regret to say, to the Court itself at the time, that in actions of this nature some evidence is required on the matter about the quantum of damages before a judgment

is entered in default. Legal research on the subject was made only in the course of argument and this revealed that evidence must be led on or, exceptionally, available in affidavit form before the Court before judgment is entered.

Rule 27 (5) provides:

Whenever the plaintiff applies for judgment against a defendant in terms of sub-rule (3) herein, the court may grant judgment without hearing evidence where the claim is for a liquidated debt or a liquidated demand. In the case of any other claim the court shall hear evidence before granting judgment, or may make such order as it seems fit.

In Knight N.O. v Harris (1962 2 S.A. 317) Beadle, C.J. stated:-

"It is the duty of the Court in every specific case to decide whether or not it will exercise its discretion and dispense with hearing of evidence, and this is the way in which I approach the instant case. Claims for damages arising out of motor accidents are by no means simple and straightforward, as complex issues such as whether or not the plaintiff was himself guilty of contributory negligence often arise. In the normal course, therefore, I am inclined to the view that it would be unwise for a Court to dispense with the hearing of evidence in claims such as this".

(See also Nathan and Barnet ) Uniform Rules of Court 2nd Edition - Rule 31 - p.190, and Mafereka v Moojane & An. (CIV/T/178/83 dated 30th December 1983 - unreported).

As intimated earlier the default judgment was rescinded. The defendants were ordered to file a plea within 21 days.

/I will

I will make no order as to costs in this application but defendant may uplift the security he provided when the application for rescision was lodged.

CHIEF JUSTICE  
24th February 1984

For Plaintiff : Mr. Khaue )  
For Defendants : Mr. Pheko ) with copies of Judgment