

IN THE HIGH COURT OF LESOTHO

In the Application of :

MASILO NONYANE                      Applicant

v

'MATHABANG MALEKE                      Respondent

J U D G M E N T

Delivered by the Hon. Acting Judge Mr. Justice  
J.L. Kheola on the 13th day of March, 1984

This is an application for rescission of a judgment by default granted against the applicant in CIV/T/32/82 and in favour of the respondent. The procedure for an application for rescission of judgment is clearly described in Rule 27(6) (a) (b). The first requirement under subrule (a) is that the application may be made within twenty-one days after the applicant has knowledge of such judgment. In the present case the applicant became aware of the judgment on the 13th July, 1983 when the cattle he was herding were attached and removed by the chief's messenger. The application was filed with the Registrar on the 12th August, 1983.

The question is whether or not the application was out of time when it was lodged on the 12th August, 1983. My computation of time is that the last day was the 8th August, 1983. The application is out of time.

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The second requirement under Rule 27 (6) (b) is that 'the party so applying must furnish security to the satisfaction of the Registrar for the payment to the other party of the costs of the default judgment and of the application for rescission of such judgment'. In CIV/T/207/81 Musiyambiri v Molapo (unreported) Mofokeng J., had this to say on the interpretation of this sub-section:


"To my observation the applicant has no choice but to furnish security the amount of which is determinable by the Registrar. The use of the word "must" in my view is used deliberately. It is imperative that the applicant furnishes the security for costs in terms of the above sub-section." The non-satisfaction of this sub-section, if my observation is acceptable, means that the application cannot be entertained by the Court until the defect has been corrected; but in very serious cases, such as where the matter is left hanging in the air for an unreasonably long time, the application for rescission for the default will be dismissed because in such circumstances it would be rightly said that the applicant is employing delaying tactics."

I entirely agree with the view expressed by the learned Judge that the sub-section is peremptory and that failure to comply with it means that the application is wrongly placed before the Court. It was Mr. Matsau's submission that on this ground alone the Court was entitled to dismiss this application. It has been stressed in a number of cases of this Court that non-compliance with the Rules of the Court cannot be condoned. This application is a typical example of how the Rules of this Court are ignored.

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I do not think that it will be necessary for me to go into the merits, i.e. whether the applicant has a bona fide defence or whether he has shown good cause because the two defects I have stated above are fatal.

The application is dismissed with costs.

  
ACTING JUDGE  
13th March, 1984

For the Applicant : Mr. Tsotsi

For the Respondent : Mr. Matsau