

IN THE HIGH COURT OF LESOTHO

In the Application of

MIRIAM JUDITH NANTAGYA Applicant

v

CHRISTOPHER HERBERT NANTAGYA Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice Mr. Justice
T.S. Cotran on the 25th day of June 1984

This is an application by Miriam J. Nantagya (the applicant) to rescind a judgment entered by my brother Mola J on the 7th May 1984 in favour of Christopher H. Nantagya (the respondent) in default of her appearance.

The default judgment was granted to Christopher Herbert Nantagya upon his application for an order to eject Miriam Judith Nantagya, who was for all practical purposes his wife, from premises which they jointly occupied on Plot 186 Cenez Road Maseru West which were allocated to him by the Government of Lesotho (no doubt as a lawfully married man to Miriam) when he jointed the Ministry of Health as a dentist in 1980 Both parties are Ugandans.

This erstwhile Christopher had, in his application (No.84/1984) for the ejectment of Miriam from the joint premises, averred that he married a Russian lady called Irene in the U.S.S.R. in 1969 and that she divorced him in Uganda in 1983 by virtue of a judgment pronounced in the Magistrate's Court of that country on the 3rd August 1983.

/A copy

A copy of this judgment was attached to his application. Christopher averred that he did in fact marry Miriam Judith Nantagya in February 1977 in Nairobi Kenya, but that he did so bigamously, and he adds that since he is now fed up with this Miriam, and since she is not in law his wife, he is entitled to have her kicked out of the premises

The application for ejectment was filed in the High Court on 10th April 1984. It called upon Miriam (who was then respondent) if she intended to oppose,

- (a) to notify the applicant's attorney in writing on or before the 17th April 1984 and
- (b) within 14 days of such notification to file an answering affidavit etc . and
- (c) if no notice of intention to oppose is given the Court will be moved on the 7th May.

The sheriff certifies that he served Miriam with the papers on the 30th April 1984 (we do not know in the morning or in the afternoon) and Miriam swears that the sheriff did show her some papers on that day but said that he had inadvertently left behind the copy that was supposed to be hers and did not bring it until the following day Tuesday the 1st of May. I have no reason to disbelieve Miriam. She did realise the implications on seeing the papers Wednesday 2nd May was a public holiday it being the King's birthday Miriam had only two days to take action, the 3rd and 4th May 1984, and she went to the Legal Aid Division of the Ministry of Justice to seek help. They took the papers from her.

It is common cause that neither Miriam nor a representative of Legal Aid appeared before the Judge on the 7th May 1984.

Christopher opposes the rescission of the default judgment
/and

and Mr. Sello argues

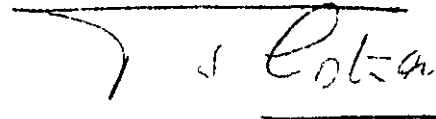
- (a) he was technically right in asking for a default judgment because either Miriam, or Legal Aid, should have appeared on the 7th to seek extension of time and
- (b) that by reason of the Ugandan judgment Miriam has no chance of being successful in any defence that she might raise, and, (if I heard him correctly)
- (c) that Miriam has already been ejected from the premises so whatever the Court decides is academic¹

In my opinion rescission of this default judgment must be granted

- (a) The applicant was given seven days to take stock of her situation and a further fourteen days to file an affidavit. It is true that the 7th of May was the return date stated in the Notice of Motion, but this presupposes that the times specified in the notice were in fact afforded. They were not. There was no notice of set down for the 7th May and it is beyond me how it found its way on the roll. Legal Aid staff are enjoined by the Act to be satisfied that the applicant was in fact indigent before they act. We cannot put too much blame on a lay person for failing to appear in these circumstances. The seven and fourteen days respectively must commence from the 30th April 1984. There was no genuine compliance with Rule 8(8) of the High Court Rules and the default judgment was thus surreptitiously obtained
- (b) (1) Ejection of a person who is prima facie in actual physical lawful occupation of premises is not and would not normally be granted on application
- (11) Ejection will not necessarily be ordered even if the respondent proves that that marriage to Miriam was invalid. Protection from eviction from the home of the parties can be given to a mistress as it can to a wife. The respondent Christopher is not the landlord. He is in no better position with regard to the premises than Miriam

- (iii) Christopher is a self confessed bigamist and has committed a crime under the laws of Uganda, Kenya and Lesotho. A Court of law will be loathe to grant relief to this type of person and needs a lot of persuasion to do so
- (iv) The copy of the judgment from Uganda is not certified. It is not a decrece nisi, much less a decrece absolute. That judgment is not therefore the end of the matter
- (v) A judgment or a decree from any other country is not automatically binding on the Courts of Lesotho and can be challenged on several grounds.
- (c) I see no warrant of execution granted to Christopher to eject the applicant Miriam signed by the Registrar. I hope I have misheard Mr Sello. If Christopher has succeeded in ejecting Miriam she has an immediate remedy mandament van spolie without waiting a moment longer to be put in possession

The respondent will pay the costs on attorney and client scale so that applicant will also get her out of pocket expenses. The applicant is given leave to defend, her opposing affidavit to be filed within twenty one days



CHIEF JUSTICE
25th June 1984

For Applicant Adv. Moorosi)
For Respondent Mr Sello) with copy of Judgment