

IN THE HIGH COURT OF LESOTHO

In the Application of

CASSALIS HLAOLI MOTSUMI

Applicant

and

THE VETERINARY OFFICER AND
ADMINISTRATOR OF THE LIVESTOCK
DEPARTMENT FOR THE DISTRICT OF
LERIBE

1st Respondent

THE ATTORNEY GENERAL

2nd Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai
on the 18th day of March, 1986.

On 28th February, 1986, I dismissed this application with costs. The following are my reasons for the decision.

The applicant herein moved this court for an order framed in the following terms:

- "1 That a Rule nisi be issued returnable on the date and time to be determined by this Honourable Court calling upon the Respondents to show cause (if any) why
 - (a) The first Respondent shall not be directed to issue applicant with permits to import stock from the Republic of South Africa for slaughter.
 - (b) The first Respondent shall not be directed to issue Applicant with permits for the importation of ninety two (92) cattle and one hundred and twenty one (121) sheep being the balance of the number of stock Applicant could have imported on previously obtained permits, or refund Applicant the sum of M762.50 being the total amount of money paid on the animals.
2. That Respondent be directed to pay the costs of the application.

- 3 That prayers 1(a) and (b) operate in an interim order with immediate effect.
4. That Applicant be given such further and or alternative relief."

The Rule was on 4th February, 1986, granted in terms of prayers 1 and 2 only. The return day was fixed as 10th February, 1986 on which date the matter was postponed to 3rd March, 1986 and the Rule accordingly extended. The Respondents opposed confirmation of the Rule and affidavits were duly filed from either side.

On 24th February, 1986, the Applicant filed a notice purporting to anticipate the extended return day to 28th February, 1986 and the Registrar accordingly placed the matter on the roll.

I must point out that Rule 8(18) of the High Court on the basis of which the Applicant purported to anticipate the extended return day provides

"(18) Any person against whom an order is granted ex-parte may anticipate the return day upon delivery of not less than 48 hours notice" (my underlining).

It will be observed that in this matter, the Rule was granted ex-parte against the Respondents and not against the Applicant. Rule 8(18) of the High Court Rules was therefore no authority for the Applicant to file notice to anticipate the return day and the Registrar should have refused to place this matter on the roll before the 3rd March, 1986.

Again, after the replying affidavits had been filed on 21st February, 1986, the Applicant continued to file other affidavits on 24th and 27th February, 1986 in total disregard of this court and its Rules. In an application of this nature the parties are allowed only three sets of affidavits viz. the founding, the answering and the replying affidavits. Rule 8(12) of the High Court Rules categorically provides

"(12) no further affidavit may be filed by any party unless the court in its discretion permits further affidavits to be filed "

3/ I found

I found Applicant's persistent disregard of the Rules of this Court unacceptable and decided to ignore his additional affidavits filed on 24th and 27th February, 1986. The Registrar would also assist the court in the smooth running of its work if she could insist on compliance with the Rules when parties bring papers for filing in her office.

Coming now to the merits of this case, the facts disclosed by the affidavits were very simple. The applicant was running a butchery in the district of Leribe. He used to obtain from 1st Respondent permits authorising him to import slaughter animals from the Republic of South Africa. 1st Respondent subsequently stopped issuing him with such permits unless he first complied with certain conditions which he (Applicant) considered unreasonable.

Furthermore, on several occasions in 1985, Applicant applied for and was issued with permits for importation of slaughter animals. For reasons beyond his control, Applicant could not, however, obtain all the animals he was authorised to import. Consequently he asked 1st Respondent to either refund him M762-50 being the levy he had paid for the animals he could not import or issue him with fresh permits authorising him to import an equivalent number of animals.

It is to be observed that Applicant did not say, in so many words, that 1st Respondent had refused to refund him the M762-50. Indeed, 1st Respondent deposed that he would be willing to consider the question of refunding the M762-50 provided Applicant could submit the original permits as proof that he did not import, on those permits, a number of animals equivalent to the M762-50 he had paid as levy. Before dragging 1st Respondent to court on this point, Applicant should have shown that the former was refusing to refund him the M762-50. As Applicant had not done so and 1st Respondent stated that he would have considered Applicant's request had it been submitted to him I deemed an order made in terms of prayer 1(b) of the notice of motion unnecessary.

1st Respondent conceded that he had taken the decision not to issue any more importation permits to applicant unless

4/ the latter met

the latter met certain conditions that were communicated to him through letters marked annexure "A". "A1" and "B".

The question that immediately arose was whether or not 1st Respondent was in law empowered to take the decision he had admittedly taken against the Applicant. The provisions of Section 4 of the Importation, etc., of Livestock Proclamation No. 57 of 1962 left me with no doubt whatsoever that 1st Respondent who was the Veterinary Officer for the District of Leribe was vested with discretionary powers to refuse importation permits or grant them subject to certain conditions. The section reads

"4. Subject the provisions of subsection (3) of section two, any officer authorised to grant any permit under the provisions of this Proclamation may, in his discretion refuse to grant such permit or may grant it subject to such additional conditions as he may endorse thereon Provided that any person to whom the grant of a permit has been refused in terms of this section, or who objects to any condition imposed may appeal in writing to the minister whose decision shall be final (my underlinings)

It is, of course, a well known principle of our law that a discretionary power must not be exercised whimsically. It is a judicial discretion. The words I have underscored in the proviso to S.4 of the Importation, etc., of Livestock Proclamation, supra, clearly indicate that if the Applicant took the view that 1st Respondent had not exercised his discretion properly his duty was to appeal in writing to the Minister of Agriculture. Instead of doing so the Applicant brought his application to this Court. It was an attempt to prevent the Minister from exercising the powers vested in him in terms of the proviso to the above section. That in my view, could not be allowed. Wherefore I came to the conclusion that the application was misconceived and the Applicant could not be entitled to the relief he sought under prayer 1(a) of the notice of motion.

Consequently, I took the view that this application ought not to succeed and it was accordingly dismissed with costs.

B.K. MOLEAI,

JUDGE

20th March, 1986.

For Applicant Mr. Mohau,

For Respondent Mr. Mpopo.