

IN THE HIGH COURT OF LESOTHO

In the Application of :

OCRIM S.P.A.

Applicant

V

MARTHA MARGRIETHA BURGER t/a
ADRIMAR ENGINEERING

1st Respondent

THE MINISTRY OF AGRICULTURAL
AND MARKETING OF THE GOVERNMENT
OF LESOTHO

2nd Respondent

BINNIES & PARTNERS - LESOTHO

3rd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 16th day of April, 1986

This is an application for an order in the following terms :

- (a) That the rules relating to the forms and service be dispensed with in terms of Rule 8(22) and that this matter be heard as one of urgency.
- (b) That the Order granted by this Honourable Court in Case No. 121/86 on 10th April 1986 be and is set aside;
- (c) That the first Respondent pay the costs of this application;
- (d) That the Second and Third Respondents pay the costs hereof in the event of them opposing the relief sought herein;
- (e) Granting other or alternative relief.

Before the matter was argued in substance counsel for the Respondents raised a point in limine that the person who deposed to the founding papers had no authority to do so. However, without much ado counsel for Respondents had to concede that he was on the wrong. The

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application was therefore dismissed with costs to both counsel.

Then counsel for the Respondents made a second application, from the bar, for a postponement. In support thereof he filed an affidavit by one Reginald Carlisle who described himself as first Respondent's attorney.

Counsel for the Respondents wished to obtain the services of counsel who was in another Court conducting a case. He needed time to prepare the necessary papers. There would be no prejudice to the applicant if he were allowed a short time to enable him to procure the services of counsel to argue the application for postponement. He further said that he had no knowledge of the allegation contained in the papers before Court. He said that the main application by the applicant was a substantial one and that it involved questions of law.

In answer Mr. Sulman S.C. said that it had not been stated to the Court why the order previously granted by this Court could not be uplifted. As counsel for the Respondents had stated, the order was a garnishee and this applied to Government through one of its Ministries. He submitted that the Government in Lesotho cannot be garnishee. To that extent the order was defective. (See Lesotho Glass Works Ltd. v Mabote Building Construction and Ministry of Works, 1980(1) L.L.R. 89 at 94). That the order granted only the previous week by this Court was in the nature of an interdict. It has immediate effect on the Government and it was understood

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in that way. He further stated that it was idle to talk about being taken by surprise by counsel for Respondent. The Respondents had initiated these proceedings by not disclosing to the Court why notice was not served on the Applicant; that arbitration proceedings were to take place outside Lesotho. The order had been snatched. Section 6(8) of the Rules of Court certain conditions must be complied with. In terms of section 6(7) it must appear just if notice has not been given to the other side. This has not been shown. It must have been anticipated that the other side would reply to the allegations levelled against it.

The Respondent had not disclosed to the Court why notice was not given. It was not disclosed that a tribunal had to be held outside the jurisdiction of this Court. It was for the instructing attorney to have particularly brought this attention to the Court. No reason is given for this non-disclosure.

The Respondents had been granted an interim order by this Court the previous week. This was done by an ex parte application. The terms of the Rules of this Court were not complied with. This was a serious matter for not disclosing these matters to the Court. The other matters have already been mentioned above. In the words of the counsel for the applicant in present matter a judgment had been snatched.

What, however, the Court considers to be more serious is to garnishee the Government through one of its Ministries. This term was used by counsel for the Respondents. It was encumbered on the counsel to have

acquainted himself with the decisions of this Court.
This important fact was not brought to the attention
of the presiding judge before he granted the judgment
that he did.

In seeking for an application for an adjournment it
was not even disclosed what the Respondents will say in
reply.

In the circumstances of this application it is
equitable and just to make an order for an upliftment
of the order previously obtained ex parte and it is so
ordered with costs to both counsel. Costs to be borne
by the first Respondent.

BY - M.P. Mofokeng
J U D G E.

For Applicant : Adv. Sulman assisted by Adv. Sapire
For Respondents :