

IN THE HIGH COURT OF LESOTHO

In the application of :

ATTORNEY GENERAL

Applicant

v

BEN ALOTSI

Respondent

JUDGMENT

Delivered by the Hon. Acting Mr. Justice D. S. Levy
on the 9th day of July, 1986

An appeal has been noted by the Respondent against the judgment delivered by this Court ordering that the Respondent be evicted from the Government house presently occupied by him and that he pay arrear rentals in an amount of R276.80 and costs.

Respondent now applies for a stay of execution pending the appeal. Rule 6 of the Appeal Court Rules provides that the noting of an appeal does not operate as a stay of execution of the judgment appealed from but that the Appellant may apply for such stay to the Judge of the High Court whose judgment is appealed from and who may make such order as seems just to him.

It is for the party seeking such stay to establish that there is good reason why the Court should exercise its discretion in his favour. of South Cape Corp. v Engineering Management Services 1977(3) S.A. 534 at 546 (A).

Since the main judgment is for eviction Respondent argues that if a stay is refused he will be put out of the house which he presently occupies and that for some months, if he succeeds, he will, unnecessarily, have been subjected to the hardship of finding other accommodation. He says that

/the appeal ...

the appeal raises interesting points of law on which he may well succeed.

On the other hand, the Applicant argues and has proved that the house occupied by the Respondent is a Government house for the accommodation of its servants; that the Respondent was dismissed for absenting himself from his duties from as far back as May 1984; that he has not paid the meagre rent which he was required to pay in terms of his conditions of service; and that the house is urgently required for the accommodation of Government servants who are in need of such accommodation.

If the eviction order is to be carried into effect then this may well cause hardship to the Respondent which he will have suffered unnecessarily if the appeal succeeds. Whereas if the appeal fails after execution has been stayed the Applicant's servants will have been unnecessarily deprived of accommodation wrongfully retained by Respondent. (See: South Cape Corp. case at p. 552)

I am of the view that the balance of convenience favours the Applicant and that the Respondent who has too long remained in free occupation of a house to which he is no longer entitled has failed to show good reason for me to exercise my discretion in his favour. The letting value of the house must be far in excess of the paltry sum paid as rent by the Respondent who has neither tendered such rent nor offered security for it.

I am satisfied therefore that I should exercise my discretion in favour of Applicant. No distinction is drawn between the claim for eviction and the claim for payment of R276.80, since that amount is admittedly owing by the Respondent

/The application ...

The application for a stay of execution is dismissed
with costs.

SGD

D. S. LEVY
ACTING JUDGE

9th July, 1986

For the Applicant : Mr. Mpopo

For the Respondent : Mr. Pheko