

IN THE HIGH COURT OF LESOTHO

In the Application of :

DURGAPURSAD HAMPROTAL

Applicant

V.

TELEKO MOSAO
COMMISSIONER OF POLICE

1st Respondent
2nd Respondent

R U L I N G

Delivered by the Hon. Acting Mr. Justice M. Lehohla
on the 30th day of May, 1988.

May 27th 1988 was the anticipated return day in response to an urgent application moved ex parte before Molai J who granted the interim order returnable on 3rd June, 1988.

On the anticipated return day applicant sought extension of the return date to the original one granted at the hearing of the application ex parte. First respondent vehemently opposed the postponement and the concomitant extension of the rule.

Applicant sought the postponement on the grounds that because of the distance between his attorneys' offices in Maseru and his own place of residence in Durban Stanger he is not able to furnish his replies on the anticipated return date. First respondent however, and properly so argues that when applicant approached the Court ex parte he should have weighed the odds against him and realised that should the respondent anticipate the rule the applicant would be faced with the obvious predicament he finds himself in today. In other words respondent cannot be allowed to evade the worst circumstances brought about at his own instance.

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In an attempt to come to the applicant's rescue Mr. Moilola submitted that the subject matter in the main application namely a motor vehicle is in neutral hands and in any event the original return date is only a week away and that applicant has understood that he would be required to pay the costs of the postponement.

I have had occasion to refer to C of A (CIV) No. 16 of 1984 Kutloano Building Construction vs Matsoso & 2 Others (unreported) at 7 where Schutz P. said

"I am afraid that my decision may smack of the triumph of formalism over substance. But forms are often important and the requirements of the sub-rule are such."

The purport of this dictum clearly is to enforce compliance with the rules. It has basis on the well known principle of the procedural rule that when form is not observed a failure of action ensues.

A countervailing view however exists and I think it has application in the instant matter that forms are surrendered in order to avoid miscarriage of justice.

Consequently, in exercise of my discretion based on R. 59, and not without reluctance I grant application for extension of the rule to 3rd June 1988. The application is postponed to that day. Costs of 27th May 1988 were awarded to first respondent. Today's costs will stand over pending the final determination of issues involved in the application.



ACTING JUDGE.

30th May, 1988.

For Applicant : Mr. Moilola

For Respondents : Mr. Nthethe.