

IN THE HIGH COURT OF LESOTHO

In the matter between:-

RAPHAEL RAMALIEHE KALI

Applicant

and

SAMUEL 'MELI HLABANWANE

Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 14th day of September, 1989

This is an application for rescission of the order of this Court which was granted on the 17th June, 1988. This order was granted on the basis of a deed of settlement signed by the parties' attorneys on the 17th June, 1988.

At the hearing of this application, Mr. Khaoue, applicants attorney, failed to appear and Miss Tau, counsel for the respondent decided to argue the matter and to apply that the matter be dismissed with cost on the points she intended to raise in limine. It must be put on record that Mr. Khaoue was present within Court premises at about 10.00 a.m. to-day. I received a message from him in chambers that he asked that the matter should stand down for five

minutes because he was going to pay security for costs in terms of Rule 27 (6) (b) of the High Court Rules 1980. He did not come back until about thirty minutes later when Miss Tau decided to proceed.

Miss Tau submitted that the application should be dismissed for failure to comply with Rule 27 (6) (b) in that the applicant has not furnished any security to the satisfaction of the Registrar for payment of costs.


Rule 27 (6) (b) provides that 'the party so applying must furnish security to the satisfaction of the Registrar for the payment to the other party of the costs of the default judgment and of the application for rescission of such judgment.

It is common cause that the applicant has not furnished any security for costs and that it was only this morning that attempts were being made to pay the amount fixed by the Registrar. The attempt did not materialise until Miss Tau decided to proceed in the absence of Mr. Khaueo. The Court had no choice in the matter because Mr. Khaueo had requested only five minutes. In any case payment of security for costs of the judgment and of the application must be made when the application for rescission is lodged with the Registrar.

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In Phillip Mosae v. Lesotho Agricultural Development Bank CIV/APN/96/84 (unreported) it was held that the provisions of Rule 27 (6) (b) are mandatory and the applicant's failure to comply with them would be fatal to the application.

I have come to the conclusion that on that ground alone the application must be dismissed and it is accordingly so dismissed with costs.

  
J.L. KHEOLA  
JUDGE

14th September, 1989.

For the Applicant - Mr. Khaue  
For the Respondent - Miss Tau.