

IN THE HIGH COURT OF LESOTHO

In the Matter of :

V. COWLEY Plaintiff

and

LIOLI FOOTBALL CLUB Defendant

R U L I N G

Filed by the Hon. Mr. Justice B.K. Molai on the
12th day of April, 1989.

On 6th April, 1989 I made a ruling that the hearing in this matter be postponed, with costs to Plaintiff on an attorney and client scale, to a date to be arranged with the Registrar, for the following reasons:

On the afternoon of 5th April, 1989 P.W.1, V. Cowley, who is the plaintiff in this matter was being cross-examined by Mr. Seotsanyana, counsel for the defendant. I took the view that the line of cross-examination pursued by counsel for the defendant amounted to asking Plaintiff to tell the court why his lawyer did or wrote certain things in the pleading he had filed on his (plaintiff's) behalf and/or digging out what, in the pleadings, plaintiff had said he could not discover on grounds that it was privileged information/correspondence between

2/ client and

client and attorney. I pointed out that to counsel for the defendant and expressed the view that I was not sure that it was proper to spend too much time on that line of cross-examination. Indeed, Mr. Ficks, counsel for the Plaintiff also conceded that the line of cross-examination pursued by counsel for the defendant was irrelevant and a waste of the court's time. Notwithstanding the view taken/expressed by the court, counsel for the defendant went on arguing that there was nothing wrong with his line of cross-examination and he would find himself unable to cross-examine plaintiff in the light of the view taken/expressed by the court. At 4.35 p.m. I postponed the hearing to the following day, 6th April, 1989 to release the staff who had to knock off duty at 4.30 p.m.

Whilst I was unrobbing in the chambers I was approached by my Secretary who told me that the lawyers wanted to know at what time, on 6th April, 1989, the hearing would resume and replied that it would be at 9.30 a.m.

It may be mentioned that on 6th April, 1989 I had CRI/T/26/86 - Rex vs Khoaele in which the crown had already closed its case and we were waiting for the evidence of the Psychiatrist to enlighten the court on whether or not the accused was sane at the time of the commission of the offence against which he stood charged. I was not sure that the Psychiatrist would be ready with his report. To avoid delays I decided to start with the present trial on 6th April, 1989.

3/ At 9.30 a.m.

At 9.30 a.m. on 5th April, 1989 everybody, except counsel for the defendant and his client, was ready for the court to resume the hearing of this trial. At 9.40 a.m. I went into the court room only to find that counsel for defendant and his client were still not in attendance.

Mr. Ficks, counsel for the Plaintiff, addressed the court and disclosed that after it had been announced in court on the previous day, 5th April, 1989, that the hearing would continue on the following day, 6th April, 1989, he and his instructing attorney, Mr. Harley, verified from the Judge's Secretary that the hearing would resume at 9.30 a.m. on 6th April, 1989. They relayed the information to counsel for defendant who, however, argued that the court had not specified in the court room, the time at which the hearing would resume on 6th April, 1989.

Mr. Ficks further told the court that when the court wanted to sit at 9.30 a.m. on 6th April, 1989 he and Mr. Harley went to counsel for the defendant who was talking to his client outside the court room. They asked him to come into the court room so that the hearing of this trial could continue. Counsel for the defendant refused to come into the court room still arguing that on the previous day the court had not announced, in the court room, the time at which it would sit to continue with the hearing on 6th April, 1989. It was clear, therefore, that for the reason he had stated ^{to} him and Mr. Harley, counsel for the defendant was not prepared to abide by the court's decision that the hearing of this case should continue at 9.30 a.m. on 6th April, 1989. In the circumstances, Mr. Ficks told the court that he had no

4/ alternative

alternative but to ask for judgment in favour of the Plaintiff.

I told Mr. Ficks that in the interest of justice I was not inclined to make a rushful decision in the matter. If counsel for the defendant refused to come into the courtroom I would rather postpone the hearing to a later date and proceed with the matter which was also on the roll for that day, 6th April, 1989. I would, however, be prepared to award costs of the day to Plaintiff for the unnecessary postponement. Mr. Ficks told the court that in that event he would ask for costs on the attorney and client scale.

I pointed out that by law the offices of the High Court were open from 9.00 a.m. and everyone concerned ought to be ready to start work at that time - see G.N. No. 34 of 1962 and Rule 3 of the High Court Rules, 1980. It was also a well established practice of the High Court of Lesotho to begin its business at 9.30 a.m. and all legal practitioners involved in cases before the court ought to be in attendance at that time. It followed, therefore, that notwithstanding the fact that the court did not specifically announce in the court room that the hearing in this trial would resume at 9.30 a.m. on 6th April, 1989 Counsel for the defendant, like all other practitioners, ought to have been in attendance at that time.

In any event if the decision of the court that the hearing would resume at 9.30 a.m. on 6th April, 1989 were relayed to counsel for defendant soon after the case was postponed on 5th April, 1989 and he was, on 6th April, 1989, specifically told that the court wanted to continue with the hearing

5/ at 9.30 a.m.

at 9.30 a.m. there was no justification for his refusal to come into the court room. To hold the contrary would amount to suggesting that counsel for the defendant and his client had the right to hold this court at ransom and prevent it from doing its work. That would be untenable. The behaviour of counsel for the defendant and his client was, in my view, simply most contemptuous and intolerable.

I was, for the foregoing reasons, prepared to postpone the hearing of this case to a later date but award plaintiff costs of the day at an attorney and client scale.

B.K. MOLAI

Judge

12th April, 1989.

For Plaintiff : Mr. Ficks,
For Defendant : Mr. Seotsanyana.