

IN THE HIGH COURT OF LESOTHO

In the Application of:

PAULOSE MOTLATSI RAJELE Applicant

and

BELINA 'MALERATO RAJELE 1st Respondent
DEPUTY-SHERIFF (Mr. L. 'Nyane) 2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai on
the 23rd day of February, 1990.

The applicant herein has moved the court for an order,
against the Respondents, framed in the following terms:

- "(a) Staying the execution of judgment in CIV/APN/224/87 pending the determination of the appeal therein;
- (b) Directing second Respondent to release forthwith to Applicant the property attached and/or removed by him on 8th January, 1990.
- (c) Directing Respondents to pay the costs hereof only in the event of opposition;
- (d) Granting Applicant such further and/or alternative relief."

The Respondents intimated their intention to oppose the application. Affidavits were duly filed by the parties.

Very briefly, it is clear from the affidavits that the gist of the relief sought by the applicant is the stay of execution of maintenance order which the first defendant has obtained,

pendente lite, against the applicant. Assuming the correctness that the order was obtained pendente lite, it stands to reason that the proceedings in which the order was granted were interlocutory. It is trite law that no appeal lies against the decision given in interlocutory proceedings unless, of course, it is by leave of the court of appeal.

It is common cause that although the appeal has been lodged to the court of appeal against the decision of the High Court granting maintenance order, pendente lite, the former court has not given a decision in the matter. That being so, the decision of the High Court still stands good.

It was on the basis of a valid decision of the High Court that a writ of execution had been issued and the Deputy Sheriff carried it out. The fact that an appeal has been lodged to the court of appeal does not automatically render a judgment of the High Court invalid. I am not convinced, therefore, that it would be proper for this court to order stay of execution which is being carried out on the basis of a valid judgment of the High Court merely because an appeal has been lodged for leave to appeal against an order granted in interlocutory proceedings.

It has, however, been pointed out that at the time he attached and removed applicant's property in execution, the Deputy Sheriff's attention was drawn to the fact that some of the property, thus attached and removed, belonged to certain people and not the applicant. That being so, it seems to me that before he could sell the property by auction sale to satisfy the judgment for maintenance order against the applicant, the second Respondent would first have to comply with the provisions of Rule 51 of the High Court Rules 1980 i.e. institute

inter-pleader summons/proceedings against the claimants of the attached property, otherwise this application is not granted in terms of prayers (a) and (b) of the notice of motion.

It is worth mentioning that yesterday when the judgment was delivered in open court I mistakenly said the application was granted in terms of prayer (a) and (b) of the notice of motion. This morning I told the Assistant Registrar (Miss Sello) to call the two counsels before me in order to advise them of the correction I wished to make in the judgment. Neither of them appeared before me and I proceeded to make the necessary correction so that the decision reads: application is "not granted" instead of "granted" in terms of prayers (a) and (b) of the notice of motion.

This being a family dispute I would not make an order as to costs.

B.K. MOLAI

JUDGE

23rd February, 1990.

For Applicant : Mr. Pheko
For Respondent : Mr. Maqutu.