

IN THE HIGH COURT OF LESOTHO

In the Application of :

KLOS MOTLALEPULÉ Applicant

v

ATTORNEY-GENERAL Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 11th day of February, 1991

---

In this matter the Applicant has approached this Court against the Attorney-General asking the Court to direct the Respondent to pay the balance of the Judgment Debt of M11,200 owing from a Judgment which was granted him by default in CIV/T/169/84 between the same parties, and that further the Court should grant him Judgment for interest of six (6) percent from November 1984 plus costs on attorney and client scale. I haven't been addressed on this last portion of the claim and whatever therefore will be the ultimate judgment in this matter, costs will be on ordinary scale.

It appears from the evidence before me that of the M18,200 which had been granted by default only M7,000 was paid to the Applicant and that the arrangement to pay came long after the mandate of the attorney representing him had ceased; it having ceased at the time when Judgment by default in the global amount was given.

/I have

I have asked Mr. Mohapi for the Respondent to at least draw for me a line between this two causes of action that is the original cause of action consisting in the civil trial and this cause of action consisting in the notice of motion. He very rightly showed me that it would appear there is a connection even though the Act, i.e. the Government Proceedings and Contracts Act 4 of 1965 at Section 6 dealing with the matter talks of the word "another". In my view it seems that the word "another" would only relate to a matter which has nothing really to do with reference to a balance flowing from the original claim but a new matter altogether.

In this matter the Plaintiff or Applicant can be placed on similar footing with a man who claims against another man where after the Court has given its Judgment an arrangement is made as to how - by agreement either between the lawyers for the parties or the parties themselves - the Judgment is going to be put into effect. They may agree that a portion of the Judgment be paid forthwith or even that such portion be regarded as the final Judgment or final acceptance in the matter of the amount owing. It should be interesting to note that even though agreement would have been reached to regard a portion paid as representing the whole. Noting from what I have seen in cases of this nature, would bar such a Plaintiff from approaching the Court and enforcing execution of the writ. This would be so because the Judgment of the Court cannot be altered solely by agreement between parties themselves. It remains a Judgment of the Court and capable of enforcement at the instance of the judgment creditor.

So, in this case it seems that the fact that it is Government which is being pursued to pay and it has undertaken to pay only a portion of the amount in the amount of M7,000 it does not mean the balance should not be at this stage enforced against Government simply because it seems

/the

the attempt to enforce it has come five (5) years after part of the original claim has been accepted by the Plaintiff. In this case the Plaintiff's right to execute on/<sup>A</sup>claim against the Government is not barred by his acceptance of a portion of the amount which was granted by the Court. If he accepted so much of it surely the total amount that the Court granted is not to be regarded as having been waived by the Plaintiff and the fact that he does not have a right to issue a writ does not mean he is barred from pursuing his right to have his balance paid by the Government by approaching this Court.

In the circumstances therefore I find for the Applicant with costs on ordinary scale.

-----  
J U D G E

11th February, 1991

For Plaintiff : Mr. Maqutu

For Defendant : Mr. Mohapi