

CIV/T/471/89

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MACHANGELA LEONORA HOOHLO

Applicant

and

CONSTANTINUS TOLOKO KIMANE

1st Respondent

EUSEBIA MAITUMELENG NTLHABO

2nd Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 19th day of February, 1991

In terms of subrule 21 of Rule 8 of the High Court Rules 1980 I am satisfied that in interlocutory and other applications incidental to pending proceedings the applicant is not required to use Form "J" prescribed in subrule 7 of Rule 8 which requires that the applicant must set forth an address within 5 kilometres of the Registrar at which he will accept notice and service of the process; and that if the respondent intends to oppose the application he must notify applicant's attorney and also file his

opposing affidavits within specified periods. He must also appoint an office within 5 kilometres of the office of the Registrar. (See *Yorkshire Insurance v. Reuben*, 1967 (2) S.A. 263 (W.L.D.) ¶....

What subrule 21 of Rule 8 requires is that in interlocutory and other applications incidental to pending proceedings the application may be brought on notice accompanied by affidavits and set down at a time assigned by the Registrar or as directed by a Judge. The respondent is not required to file any answering affidavits within any specified period. The reason for not requiring the respondent to file any answering affidavit is that in some applications the position taken by him may be very clear from the papers in the main action. In the present application the respondents' attitude is that the further particulars sought by the applicant constitute matters for evidence and are interrogatory in nature. Under the circumstances there was no need for the respondent to file an answering affidavit. In some cases the respondent may feel that he wants to clarify certain things and may file an answering affidavit; but there is no need for him to indicate in advance that he intends to oppose the application.

It is significant that in the present proceedings the applicant did not use Form "J" because in interlocutory and applications incidental to pending proceeding it (Form "J")

is never used for the reasons I have stated above.

The attorneys involved in this applications have already addressed me on the merits as to whether the applicant is entitled to the particulars sought. I am convinced that the applicant is entitled to some particulars she seeks.

In paragraph 1 (a) the applicant wants to know the nature of the provocation whether she did anything or said anything. It is like saying 'you assaulted me'. The applicant is entitled to know the nature of the assault, whether the respondent was hit with a stick or merely threatened with violence. Provocation may consist of insulting words or assault in all its forms.

In paragraph 1 (b): (i) the respondents are ordered to supply those particulars.

(ii) and (iii) those are matters for evidence.

(iv) the respondent is ordered to supply those particulars.

In paragraph 2 (a) the order similar to the above order is made.

(b) the respondent has already fully complied with the request.

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In the result, the application to compèl is granted with costs. The respondent must comply with this order within seven (7) days from the date of this judgment.

J.L. KHEOLA
JUDGE

19th February, 1991.

For the Applicant - Mr. Sello

For the Respondents - Mr. Redelinghuys.