

IN THE HIGH COURT OF LESOTHO

In the Matter of :

AGRIC. - AID(PTY) Ltd

Plaintiff/  
Respondent

vs

CO-OP LESOTHO LTD

Defendant/  
Applicant

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 22nd day of February, 1991.

The Defendant/Applicant has filed with the Registrar of the High Court, an application in which the court is moved for an order against the Plaintiff/Respondent, framed in the following terms:

- "1. Setting aside the default judgment granted against the defendant in CIV/T/74 & 87 on 5th February, 1988.
2. Staying execution of the writ issued pursuant to such judgment.
3. Granting the applicant costs of this application in the event of opposition.
4. Granting the applicant such and/or further relief the Honourable court may deem fit."

It appears from the pleadings that on 25th November 1987 Plaintiff./Respondent served upon the Defendant/Applicant summons commencing an action in which the former claimed against the latter (a) payment of the sum of M6,631-50 being the balance on goods sold and

2/ delivered,

delivered, (b) payment of the sum of M6,325-00 being in respect of goods sold and delivered, (c) interests thereon at the rate of 11% per annum from the date of issue of the summons to date of payment, (d) costs of suit and (e) further and/or alternative relief.

On 2nd December, 1987 Defendant/Applicant served the Plaintiff/Respondent with notice of intention to defend the action. On 15th December, 1987 Plaintiff/Respondent filed with the Registrar of this Court an application for summary judgment which was to be moved on 5th February, 1988. The ground on which the application was based was that the Defendant/Applicant was indebted to Plaintiff/Respondent. Defendant/Applicant had therefore, no bona fide defence and the notice of intention to defend was merely for the purposes of delay.

The application was served upon the Defendant/Applicant on the same day, 15th December, 1987. Although duly served with the application on 15th December, 1987 Defendant/Applicant did not file notice of intention to oppose until 27th January, 1988 i.e. some 43 days after the application papers had been served. The notice of intention to oppose the application for summary judgment was neither accompanied by any affidavit, nor was there any indication that the Defendant/Applicant had paid any security for costs. In other words the provisions of Rule 28(3) of the High Court Rules 1980 had not been complied with. No wonder, therefore, that

3/ on 5th .....

on 5th February, 1988 Lehohla, J. granted the application in terms of prayers (a) and (b) of the summons.

On 9th March, 1988 i.e. some 33 days after the summary judgment had been granted the Defendant/Applicant instituted the present application in terms of the provisions of Rule 27(6) of the High Court Rules 1980. It is significant that according to the record of proceedings, the summary judgment was, on 5th February, 1988 apparently granted in the presence of both counsels for both parties.

Assuming he was, in the circumstances, correct in bringing the present application in terms of the provisions of Rule 27(6) of the High Court Rules 1980, it is significant that the Defendant/Applicant knew of the judgment on the same day, 5th February, 1988. In terms of the provisions of Rule 27(6) (a) of the High Court Rules 1980 Defendant/Applicant had 21 days within which to file the present application. Contrary to the provisions of Rule 27(6)(a) of the High Court Rules, 1980 the present application was, however, filed 33 days after the Defendant/Applicant had had knowledge of the judgment. The application was, therefore, terribly out of time.

I was told in argument that, notwithstanding the allegation made in the notice of motion viz. that security would be paid simultaneously with the filing of the present application, the Defendant/Applicant had, again contrary to the provisions of Rule 27(6)(b) of the

High Court Rules 1980, furnished no security for the costs of the default judgment and the application for rescission thereof.

The provisions of Rule 27(6) (b) of the High Court Rules 1980 are mandatory. Failure to comply therewith rendered the present application irregular. In the result, I am of opinion that this application ought not to succeed and would accordingly dismissed it with costs.

B.K. Molai

J U D G E

22nd February, 1991.

For Plaintiff : Mr. Harley  
For Defendant : Mr. Molete.