

IN THE HIGH COURT OF LESOTHO

In the matter between

JONATHAN LEPOQO MOLAPO

Applicant

and

DEPUTY SHERIFF  
DORBYL VEHICLE TRADING AND FINANCE  
COMPANY (PTY) LIMITED

1st Respondent

2nd Respondent

JUDGMENT

Delivered by the Honourable Mr Justice T Monapathi  
Acting Judge on the 23rd day of February 1994

The hearing of today follows upon an application for re-instatement of a *rule nisi* which had lapsed in August 1993. On the 2nd March, 1994 the rule was re-instated. I did not then award costs if my recollection is good on this aspect. I made an additional order that the main application for Stay of Execution be heard within 30 days. On the 2nd March 1994 the Order was extended to the 3rd March 1994 and then to today.

This *rule nisi* was granted, in this matter, by the Chief Justice on the 10th March 1993. The Applicant had sought in his

Notice of Motion the following Orders

"1 That a Rule Nisi be issued and returnable at the time to be determined by this Honourable Court, calling upon the Respondent to show cause, if any, why

(a) Strict compliance with the rules of Court shall not be dispensed with,

(b) Writ of execution in CIV/T/521/92 in the amount of M176,718 43 shall not be stayed pending the determination of the present value of the vehicle, 1990 ERF E6 passenger bus, engine number MK01041SA0592874, chassis number 66926 already repossessed by the Respondent herein,

(c) Second Respondent shall not be directed to submit monthly statements of debits and credits to Applicant's Attorneys herein in order that Reconciliation of Statement could be made.

(d) Cost of this application in the event of opposing the same,

(e) Further and/or alternative relief

2 That prayer 1(a) and (b) operate with immediate effect as interim orders pending the outcome of this application

I have found that there are three fundamental problems with the Application. Firstly, the Applicant herein and the Defendant in CIV/T/521/92 was not able to substantiate, with facts, as to how much he stood owing as at before the Order for Summary Judgment and how much he stood owing as after the Order for Summary Judgment made on the 16th November 1992. It will be observed from its own file (CIV/T/521/92) that the amount awarded was in the sum of M176,718.42 with interest at the rate of 18.25%. The amount in payment and payments made by Applicant would have a bearing in the matter, and to persuade this Court, that there are good reasons for reconciliation of statements as applied for in prayer 1(c) of the Notice of Motion by the Applicant. As said before Applicant was not able to show in his papers what he had paid in order to even debate the prayer for reconciliation fruitfully.

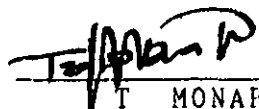
The second problem which this Court found was that, much as Applicant himself conceded, that the 2nd Respondent was entitled to value the vehicle in terms of the agreement signed by the

parties, that in itself cut the ground from under the feet of the Applicant. This necessarily means that there was no basis upon which the Applicant would ask for a second valuation as after the vehicle was repossessed. When this is read with the first ground upon which the Applicant was found wanting, the situation becomes even more serious in conducting against the confirmation of the application.

The third problem which I considered to be the most crucial is related to the following statement in the supporting Affidavit namely paragraph 8.4 "I wish to make it very clear that I do not deny that I am indebted to Second Respondent but my point is that my proper balance can only be determined when reconciliation of statements have been made, hence the reason I am applying for stay of execution and not for rescission of judgment in CIV\T\521\92." I questioned myself and the parties' Counsels, as to what principle there is upon which the matter would have to be opened up after one year and three months. By opening up I mean to investigate the correctness of the judgment sum awarded in the summary judgment. I hold that it would be a different story if the matter came up for rescission of judgment, or review (in appropriate cases) or on appeal. I suppose that I would have found that the dispute about the sum claimed, if it arose in an application for rescission of judgment, would normally be a good foundation for an allegation that the Applicant Defendant had a

bona fide defence and an entitlement to defend the matter

It is clear therefore that the view I took was that the application for stay of execution ought not to succeed I dismissed the application and I discharged the rule with costs to the 2nd Respondent I also awarded costs of the application for reinstatement of the rule to the 2nd Respondent



---

T MONAPATHI  
Acting Judge

For the Applicant Mr T Hlaoli (T Hlaoli & Co )

For the Respondent Mr S Buys (Du Preez, Liebetrau & Co )