

CIV/APN/488/93

IN THE HIGH COURT OF LESOTHO

In the Application of :

AFSAL ABUBAKER

Applicant

vs

ZUBEDA ISSA

1st Defendant

BARCLAYS BANK PLC

2nd Defendant

THE COMMISSIONER OF LANDS OF LESOTHO

3rd Defendant

RULING

Delivered by the Honourable Mr. Justice T. Monapathi
Acting Judge on the 25th day of April 1994

This morning the 1st Respondent filed a notice of motion in the matter of application for leave to file further affidavits. This application was supported by the affidavit of ZUBEDA ISSA. The additional affidavit that the 1st Respondent sought to be admitted was that one of ESTELLE BARNARD and was accompanied by a confirmatory affidavit of one FAROOQ ISSA. Mr. Sappire for the 1st Respondent applied for admission of the additional affidavit. This was opposed by Mr. Weinstock for the Applicant. It will be noticed that the Order of Court in the main application was issued on the 13th December, 1993 and the 1st Respondent filed

her Opposing Affidavit on the 27th January, 1994. There having been argument on points-in-limine a ruling thereon was pronounced on the 22nd March 1994.


The general rule is that only three sets of affidavits in terms of Rule 8(12) are permitted but the Court may in its discretion permit further sets to be filed. The Courts will not however exercise its discretion in the absence of an explanation of why it is necessary to file an affidavit concerned and will always act only subject to conditions of fairness and justice and in the absence of prejudices to other parties.

Mr. Weinstock submitted out that the application for admission of the Affidavit should be refused on the grounds of the inordinate delay in the application, the absence of any prior indication that such affidavit would be applied for or was necessary and that the reasons of the pregnancy (as a cause of the unavailability of the deponent) of ESTELLE BARNARD (it being not an illness) was not a good ground.

I do not think I have been persuaded to admit this affidavit of MISS ESTELLE BARNARD, as the Respondent has applied. I do not decide that it be admitted. I have the following reasons namely: That there are no good reasons why the Affidavit could not have been sought and filed in time. I do not accept the reasons put

forward by the Respondent. The proceedings have gone a long way as evidenced by the fact that there has ever been a ruling on point in-limine I find the Affidavit would not do justice to the proceedings nor to the case of the first Respondent as it stood. Rather this would only serve, most probably, to prolong this proceedings without benefitting the Respondent demonstrably in her case. I avoid to comment on matters which are essentially of the merits in this matter although this took almost the whole of the Counsel's argument in this application. It would amount to anticipating the prospects in the matter.

I would find that, for this time, the application is not well grounded and I would dismiss it.


T. MONAPATHI
Acting Judge

25th April, 1994

For the Applicant : Mr. Weinstock

For the Respondents : Mr. Sappire