

IN THE LESOTHO COURT OF APPEAL

In the matter of:

DAVID THEKO KHOABANE MOTEANE

APPELLANT

AND

MOHLALEFI MOTEANE

1ST RESPONDENT

MOSUOE MOTEANE

2ND RESPONDENT

LETEKETA MOTEANE

3RD RESPONDENT

MATJATO MOTEANE

4TH RESPONDENT

Held at:

MASERU

CORAM:

STEYN JA,

KOTZÉ JA,

LEON JA,

JUDGMENT

STEYN JA:

When this matter was called, Counsel for the Appellant advised us that the Counsel he had briefed to argue the

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Appeal was not available today. He asked us to postpone the matter, so as to enable Counsel to appear.

After consultation with the President of the Court, we declined the request in open Court and gave *extempore* reasons for doing so. These were the following:

1. For some years now, this Court has conducted its proceedings by way of a continuous roll. The roll on this occasion has, as in the past, specifically provided that:

"The roll is a continuous roll. The order of cases may be promoted or demoted according to the circumstances prevailing."

This is a clear intimidation to parties that the Court expects the continuous nature of the roll to be observed by all practitioners. It is no answer for Counsel to inform the Court that he/she is only available on a particular date. If that is the case, other Counsel simply has to be briefed.

2. The efficient functioning of the Court depends on

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the proceedings conducted by all those litigating before it on the basis that the roll is a continuous one. The Court has from time to time had problems in ensuring that its proceedings are conducted expeditiously and in an orderly manner because practitioners have been lax in observing the continuous nature of the roll. We cannot continue to tolerate this state of affairs and our decision in this matter gives clear notice of this fact.

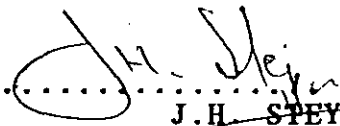
3. We have read the record in this matter and we have considered Counsel's written heads of argument. We are of the strong *prima facie* view that the appeal is without merit. This has buttressed our resolve to make the order set out below.
4. Whilst we did not raise the matter in open Court, it is also clear that Appellant's heads of argument were filed out of time and that no application for condonation has been made.
5. Finally, we do not close the door irrevocably by the order we have decided to make. Should Appellant be advised to proceed, the Court can despite our order, reinstate the matter on the roll on good cause shown, provided *inter alia* that he convinces us that he has reasonable prospects of success and that his failure to prosecute the appeal in accordance with the procedures set out

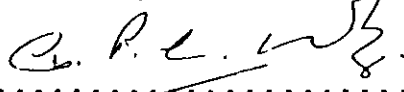
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above is explicable and sustainable.

The order we made is:

The Appeal is struck off the roll.  
Appellant is to pay the costs.

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J.H. STEYN  
JUDGE OF APPEAL

I agree: .....   
G.P.C. KOTZÉ  
JUDGE OF APPEAL

I agree .....   
R.N. LEON  
JUDGE OF APPEAL

Delivered at Maseru this ..25<sup>th</sup>..... day of July, 1995.