

parties at the trial as being due, although payment of this was not ordered by the Court *a quo*. It is common cause that all that was required, was quantification of the amount due to be paid by respondent. That has now been done by the parties, in the agreed sum of M4812-54.

It was also clear, however, that appellant has never sought to recover this agreed amount from the respondent. Neither did he seek to rectify the judgment in terms of Rule 45(1). The rule reads as follows and is applicable to the present set of facts:

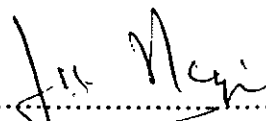
“45. (1) The court may, in addition to any other powers it may have *mero motu* or upon the application of any party affected, rescind or vary —

- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby,
- (b) an order or judgment in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) an order or judgment granted as a result of a mistake common to the parties.”

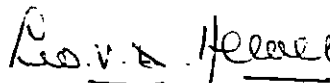
Instead of taking one of these two steps, appellant has appealed against the whole of the High Court judgment and sought - without any merit - to prosecute an appeal in which he sought an order for payment of M121,478.92. This appeal in turn led to the preparation of a record of more than 250 pages. All these costs have therefore been needlessly incurred.

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In the circumstances, and save that the agreement of the respondent to pay appellant the agreed amount of M4812-54 is recorded and confirmed, the appeal is dismissed with costs.

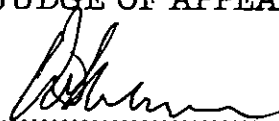


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J.H. STEYN  
PRESIDENT OF THE COURT  
OF APPEAL



I agree:

.....  
L. VAN DEN HEEVER  
JUDGE OF APPEAL



I agree:

.....  
D. SHEARER  
ACTING JUDGE OF APPEAL

Delivered at Maseru this 31<sup>st</sup> day of July 1998.

For appellant :

For respondents :