

CIV/APN/361/01

IN THE HIGH COURT OF LESOTHO

In the matter between:-

KOLO DIAMOND MINES LTD

APPLICANT

and

PETER T. MOSEBO
CORNELIUS J. EUGELBRECHT

1ST RESPONDENT
2ND RESPONDENT

JUDGEMENT

Delivered by the Honourable Mrs Justice Hlajoane
Acting Judge on 13 Day of September, 2001.

In this Application which was moved on urgent basis, Mr Moruthoane appeared

before Court at 4:35 p.m. followed by Mr Phafane. The certificate of urgency showed that counsel considered to be urgent to pray for condonation under Rule 59 in order to remedy the lapse of an *interim* order which was obtained on the 17th August, 2001. He also considered it urgent to pray for consolidation in terms of Rule 10 of **CIV/APN/309/2001 and CIV/APN/335/2001.**

Rule 59:- “Notwithstanding anything contained in these Rules the Court shall always have discretion, if it considers it to be in the interest of justice to condone any proceedings in which the provisions of these rules are not followed.”

Rule 10; deals specifically with joinder of Parties and cause of Action. I thought that what Counsel here wanted to refer to was Rule 11 which deals with consolidation of actions.

Rule 11:- “ Where separate actions have been instituted, the Court may order, upon the application of any party thereto and after notice to all interested parties make an order consolidating such actions if it considers it convenient to do so.”

What counsel further sought in the notice of motion, was the suspension of *interim* Rules in both **CIV/APN/309/2001 and CIV/APN/335/2001.** Before Mr Moruthoane could go further, Mr Phafane requested to be allowed to interrupt, and he

was allowed as he had been mentioned in the application as having appeared in the two quoted Applications.

Mr Phafane argued that the Application was misconceived and was not proper in that in **CIV/APN/335/2001** the rule had long lapsed and in **CIV/APN/335/2001** the return date would be on the 21/09/2001. The two files referred to were brought to me by the Registrar, and I had occasion to peruse them in order to learn the stage at which one of them was. The rule in **CIV/APN/309/2001** has lapsed and it concerned the same parties as in the present Application. It was for the Applicant in this case to have applied for the revival of the rule. In **CIV/APN/335/2001** concerning the same parties the rule was made returnable on 21/09/2001.

In the prayer for consolidation the parties ought to have come together and arrived at some sort of an agreement in order to have the two matters consolidated. This has not been the case, instead Mr Moruthoane approached the Court at Mr Phafane's back to unilaterally apply for consolidation contrary to the Rules of Court. There would have been no conflicting orders as the rule in the other application had lapsed.

What Mr Moruthoane sought to achieve in this application would be the

suspension of the two orders which suspension was to operate with immediate effect.

When Counsel approached the Court as he did, he was aware that Counsel on the other side would object. This was more so because both Counsel met before the Application was brought to Court and had occasion to discuss it. It was only after they had parted ways that Counsel for the Applicant in this case rushed to Court.

Even when they met within Court's premises, Mr Moruthoane refused to show what Application he was coming to move, but only showed to the other side that he would only come to know about it after he will have been formally served with it and after it would have been granted by the Court. All these were not denied by Mr Moruthoane, that it was only by sheer luck or coincidence that Mr Phafane came to know about this Application.

This what Mr Moruthoane sought to achieve was not only a novel situation but also an abuse of Court process, which as was argued, had to be visited with an appropriate order of costs as a sign of showing the Court's displeasure towards the conduct of some Legal Practitioners towards the Courts.

It is worth noting to mention that the three Applications were moved before three different judges. The first was before the Chief Justice, the second before my brother Peete J. and the third before me. After the opposition from Mr Phafane Mr Moruthoane sought to withdraw his Application which withdrawal was granted. In withdrawing his Application Counsel conceded that he might have not understood the ruling in the other Application before Peete J..

Though I had allowed the withdrawal of the Application I still felt that the approach was clearly an abuse of Court Process and had to be visited with an Appropriate order of costs. On the authorities of **LESOTHO UNIVERSITY TEACHERS AND RESEARCHERS UNION vs NATIONAL UNIVERSITY OF LESOTHO C of A (CIV) NO. 13 OF 1998, PHAI FOTHOANE AND ONE vs PRESIDENT OF CHRISTIAN DEMOCRATIC PARTY AND OTHERS C OF A (CIV) NO.48 OF 2000** [unreported] where the Court of Appeal showed its displeasure on Legal Practitioners who want to bring the Administration of Justice into disrepute, I awarded costs against the Applicant on Attorney and client scale, and would not allow the offer of costs on party to party scale. The special circumstances that existed in this case being that, Counsel rushed to Court knowing well that the matter would be opposed

and yet still had another remedy open to him, moreover it was before the return date in the other Application.


A.M. HLAJOANE
ACTING JUDGE

For Applicant: Mr Moruthoane

For Respondents: Mr Phafane