CIV/APN/254/99

IN THE HIGH COURT OF LESOTHO

In the matter of :

ELLERINE HOLDINGS (PROPRIETARY)LTD T/A TOWN TALK FURN MAPUTSOE	APPLICANT

vs

THE REGISTRAR LABOUR COURT	1st RESPONDENT
THE PRESIDENT LABOUR COURT	2nd RESPONDENT
BEN MOLOANTOA	3rd RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice K J Guni
on the 13th day of February, 2001

This is a matter of an application for review of the decisions or proceedings of THE LABOUR COURT, in terms of Section 50 HIGH COURT RULES, Legal Notice No. 9 of 1980. This rule provides, amongst other things, for the review by THE HIGH COURT, of the decisions or proceedings of any Subordinate or inferior courts or of any, officer who is exercising *quasi*-judicial powers. Any party who seeks to bring under review any decisions or proceedings of any inferior

court, must comply reasonably with the requirements set out in the said an enabling statute.

In terms of Rule 50 (1) (a) HIGH COURT RULES [Supra] the review proceedings must be brought to THE HIGH COURT by way of Notice of Motion. Such notice must call upon all the persons to whom it is addressed to show cause why such decisions or proceedings should not be reviewed, corrected or set aside. In addition, the notice must call upon the person who is in possession of the record of the proceedings to be reviewed, to dispatch, within fourteen days of service of the notice upon him or her, to the Registrar of THE HIGH COURT, the said record of the proceedings to be reviewed. [Rule 50 (1) (b) HIGH COURT RULES Supra].

In order to succeed, an applicant, in the review proceedings, must set out in the said notice of motion the decisions or proceedings sought to be reviewed. The notice must be supported by an affidavit setting out: (a) the grounds

(b) the facts and

(c) circumstances;

upon which the applicant relies to have the decision or proceedings set aside or

corrected.

The power, of the High Court, to review the decisions or proceedings of subordinate or inferior courts, or of any officer who performs judicial or *quasi* - Judicial function, is a statutory one. *KLIPRIVER LICENSING BOARD V EBRAHIM 1911 A.D 458.* It is very material that such powers are exercised judicially within the perimeters of the said enabling statute. *RECEIVER OF REVENGE V SADEEN 1912 A.D. 339.*

The grounds upon which the applicant relies to have the decision or proceedings set aside or corrected, in terms of Rule 50 (2) HIGH COURT RULES, [Supra] have been enumerated to at least five by the learned author *I ISAACS in BECKS THEORY and PRINCIPLES OF PLEADING IN CIVIL ACTIONS, Fifth Edition, at page 326.* They are:-

(2) Incompetency of the court in respect of cause of action such as absence of jurisdiction.

(3) Incompetency of the court in respect of the judicial officer such as that he or a near relative had an interest in the cause.

(4) Malice or corruption on the part of the judicial officer.

(5) Gross irregularity in the proceedings.

(6) The admission of evidence which should not have been admitted.

The applicant's case is not very clearly set out. Applicant seems to be seeking the review of a number of decisions by various officers who were involved in the proceedings before THE LABOUR COURT, as support staff and perhaps parties or their representatives. Applicant's attorney seems to suggest that the Registry clerk at THE LABOUR COURT, made an irregular or malicious decision, which must be set aside, when she refused to accept or acknowledge receipt of documents which were presented [if they were at all presented] out of time in terms of THE LABOUR COURT RULES 1994. Secondly, the wrong decision was also made by Counsel for the 3rd respondent by omitting to draw to the attention of the President of THE LABOUR COURT, the fact that the applicant's attorney had filed an answer and that he was in attendance. Thirdly, it is averred by Mr. Buys that a wrong file [i.e. a file without the documents which Mr. Buys had attempted to file that morning] had been placed before the 2nd respondent.

The facts, gleaned from the papers filed of record on behalf of the applicant are as follows:-

The applicant herein, received an originating application which was issued out of THE LABOUR COURT OF LESOTHO, by the 3rd respondent, here at MASERU on or about the 10th May 1999. Mr STEFAN CARL BUYS attorney of Record of the Applicant, received instructions [para..6 Founding Affidavit] to represent the

applicant firm, where upon he caused Notice of Intention to oppose to be filed in the record of the respondent. There was no answer to the originating application. None was prepared. None was filed for the reasons stated in the founding affidavit. On or about the 21st June 1999, the attorneys of record of the applicant received a Notice of Hearing from the 3rd respondent, advising that the matter will be heard on Tuesday 29th June 1999 at the specified time and place. On the date of the hearing of the matter, Mr STEFAN CARL BUYS, avers that he lodged an original and copy of the Answer in the file of the 1st respondent. He requested the registry clerk to place a stamp thereon, in acknowledgement of receipt thereof. The clerk was however not prepared to accept the documents without perhaps the 2nd respondent's and Mr. Buys's consensus. Mr Buys informed the Registry clerk to maintain the two copies of the Answer in her file and to inform the legal representative of the 3rd respondent that Mr. Buys is waiting outside court and ready to attend the matter [My under lining]. At 09.30 hours Mr. Buys enquired from the Registry clerk if the 3rd respondent's counsel had attended. The answer was in the negative. Mr. Buys then left after requesting the Registry clerk to inform the legal representative of the 3rd respondent to wait for him until he returned to attend to the matter. Mr. Buys was away from THE LABOUR COURT for approximately one hour. On his return he was informed by the Registry clerk that the matter has been disposed of. He further noticed that the documents

[presumably those lodged in the file of the 1st respondent that morning] were not placed in the court file presented to the 2nd respondent for the hearing of the matter. Mr. Buys came to the conclusion or realisation, that the correct file had not been placed before the 2nd respondent and secondly, that the 2nd respondent had not been made aware of his attendance at court and the filing of the answer to the originating application. The judgment obtained by the 3rd respondent against this applicant is in default of both:-

1. the filing of an Answer to the originating application and
2. the failure by the applicant to attend and present or prosecute its case.

It is for these reasons that this application for review and setting aside of these proceedings of THE LABOUR COURT, are being sought. Are those the valid grounds for review? What are the grounds which warranty the review of the decisions or proceedings? The grounds as enumerated in *Becks Theory and Principles of Pleadings in Civil Actions,* do not include the grounds set out by the applicant herein.

Once the party receive the Notice of originating application, he or she is required to "enter an appearance to the proceedings by means of presenting, or delivering by registered post, to the Registrar and to the applicant an answer to the originating

application, which shall be in writing or substantially in accordance with form LC2 contained in Part A of the schedule and which shall set out the grounds on which the respondent intends to oppose the application. [Rule 5. THE LABOUR COURT RULES 1994]. In terms of Rule 14, LABOUR COURT RULES 1994, a Judgment by Default may be entered by the LABOUR COURT, whenever a respondent fails to file an answer to an originating application. Written representations may also be submitted for consideration provided such written representations are delivered, not later than three days before the hearing of such application [Rule 15. LABOUR COURT RULES 1994].

The applicant in this matter has not complied with any of the directions given in the Rules of THE LABOUR COURT 1994. It is averred in the founding Affidavit of STEFAN CARL BUYS that no answer was timeously prepared nor filed because of the reason given by him. The time within which an answer to an originating application, should be filed with both Registrar and the other party, had lapsed. The applicant's attorneys were served with the Notice of the hearing of the matter on the 21st June 1999, advising that the matter will be heard on the 29th June 1999. At this juncture the written submission which should be considered by the court on the date of the hearing, should, in terms of Rule 15 Labour Court Rules 1994, been presented for the court's consideration, three days prior to such hearing. There is

no where in the Founding Affidavit by Mr. Buys, that such written representations were submitted in terms of this rule. Even if I accept without proof and in the face of the direct denial on behalf of the 3rd respondent that there was an attempted late filling of an answer, on the date of the hearing of the matter, such late filing was contrary to rule 15. If the Registry clerk refused to acknowledge receipt and filing of the said papers in those circumstances, there was nothing irregular to warrant this application for review of the said clerk's decision for refusing to accept that late filing of an answer.

The parties agreed to proceed in this matter without the record of the LABOUR COURT. Therefore, I have no opportunity to peruse and determine for myself the condition and contents of the said LABOUR COURT RECORD. It is denied on behalf of the 3rd respondent that his counsel touched and extracted as alleged by Mr. Buys, the papers filed by him that morning. It is averred that by the time the parties got to the courtroom the court files were with the President of The LABOUR COURT and such files could not be touched by 3rd respondent's counsel. The absence of the answer was the applicant's failure to file the same. That is not an irregularity that can justify the setting aside of the default judgment obtained in absence of an answer to the originating application. It is the applicant and its attorney, who failed to file the necessary papers in terms of the rules of The Labour

Court. Their failure cannot entitle them to have the default judgment entered against the applicant for failing to answer, to be set aside on review.

The attorney for the applicant was informed that the matter has been disposed of on his arrival at THE LABOUR COURT from THE HIGH COURT. There is no doubt therefore that the default judgment was entered in his absence. That is not an irregularity which can in anyway warrant the review of the said default Judgment. May be an application for rescission of the judgment granted in default of filing the answer or failure to attend court, should have been an appropriate option.

For these reasons this application for review and setting aside the default Judgment entered against this applicant by THE LABOUR COURT on 29th June 1999, must fail and it is dismissed with costs.

K.J. Guni
JUDGE
13th February, 2001

Mr. Buys for : Applicant
Mr. Makotoko for : Respondent