

IN THE HIGH COURT OF LESOTHO

In the matter between:

THE VICE CHANCELLOR OF N.U. L  
NATIONAL UNIVERSITY OF LESOTHO

1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT

and

MATSOBANE PUTSOA

RESPONDENT

**Before the Honourable Mrs Acting Justice A.M. Hlajoane**  
**on 12<sup>th</sup> Day of March, 2002**

**RULING ON POINTS IN *LIMINE***

This is an Application for stay of execution of the judgment of this Court in **CIV/APN/314/2001** pending the outcome of the appeal to be heard in April this year.

Before the main Application was argued Counsel for the Respondent raised the following points of law in *limine*.

- (a)(i) That the Application is irregular and improperly before Court for non-compliance with the peremptory requirements of **Rule 6(3)** of

**the Court of Appeal Rules - 1980.** And that condonation of such non compliance not within the purview of this Court.

- (ii) That Application is irregular and defective for non-compliance with the peremptory requirements of **Rule 8(8) of the High Court Rules - 1980.**

Counsel for the Respondent first outlined the Common Law position of the effects of noting an appeal. I will not waste any time in going into that as in our jurisdiction that Common Law position has clearly been reversed by Statutory Promulgation.

**Rule 6(1) of the Court of Appeal Rules 1980:-**

“Subject to the provisions of the sub-rules *infra* the noting of an appeal does not operate as a stay of execution of the judgment appealed from”

- 6(2)** “The appellant may, at any time after he has noted an appeal, apply to the judge of the High Court whose decision is appealed from for leave to stay execution.”

As earlier shown, it is submitted on behalf of the Respondent that this application is irregular and improperly before the Court for failure to comply with Provisions of **Rule 6(3) of the Court of Appeal Rules 1980.**

**Rule 6(3)**

“ The application referred to in sub-rule (2) herein **shall** (my emphasis) be brought by notice of motion, supported by affidavit, delivered to the respondent and filed by the Registrar not less than seven days before the date set down for hearing the application.”

As rightly conceded the above quoted Rule is preemptory. Applicant’s counsel on the other hand concedes that through the Rule is couched in mandatory terms, it does not necessarily mean that the High Court cannot dispense with the rules pertaining to modes and periods of service of applications. **Rule 8(2) of Court of Appeal Rules - 1980** provides that:

“The Court shall have discretion to condone any breach on the application of the appellant.”

When one looks at the interpretation of ‘Court’ under section 1(i) of the **Court of Appeal Rules 1980**, will notice that by ‘Court’, is referring to Court of Appeal Lesotho. That means, the condonation referred to is not within the purview of this Court, but the Court of Appeal. In dealing with such condonation under that Rule 1 would be usurping the powers of the Superior Court.

I would therefore not agree with the proposition that **Rule 6 of the Court of**

**Appeal Rules 1980** applies within the High Court's sphere of operation. It is therefore not the High Court which is better suited to deal with applications of the nature of the one in *casu* under the **Court of Appeal Rules**. Granted, the Court of Appeal does not have original jurisdiction except in dealing with interlocutory matters as envisaged by **Section 11 of the Court of Appeal Rules**. As shown under **Rule 6 of the Court of Appeal**, where reference is made to the High Court, the rule clearly specifies that the Judge of the High Court may or shall ....

If condonation is granted , it will not be under the Court of Appeal Rules but will be in terms of the provisions of the **High Court Rules, Rule 59 of High Court Rules**.

**Rule 8(8) of the High Court Rules 1980 .**

The Respondent contents that the Applicant has not given the address within 5 kilometres of the Registrar's office in terms of **Rule 8(8) of the High Court Rules**. The Applicant on the other hand specifies that the address is there in the notice of motion, and that Respondent has shown no prejudice suffered as a result. Respondent in fact has been able to serve his answering papers upon the Applicants on the address given in the notice of motion, as such he has suffered no prejudice.

As regards the question as to periods of service provided for by the Rules, the Court had already granted dispensation with the ordinary periods and modes of service.

I have already shown that the noting of an appeal does not suspend the operation of the judgement of this Court. **Andre vs Papashane 1979 (1) LLR at 39** is the authority for the proposition that, the general approach of the High Court in matters of this nature, subject course to the merits of the appeal, is governed by the principle whether the Applicant would suffer more prejudice if the execution proceeded than the prejudice the Respondent would suffer if the execution was stayed. Respondent has not alleged any prejudice that he might suffer as a result.

In our case stay of execution would mean excluding the Respondent from his office. The exclusion being for purposes of performing some audit inspection. I would not take this exclusion as expulsion, but a temporary measure for a certain purpose. That being the case I would dismiss the points of law in *limine* that were raised and allow the application for stay of execution pending the appeal to be heard in April, this year.

The costs of this application are to be costs in the appeal.



**A.M. HLAJOANE**  
**ACTING JUDGE**

For Applicants: Mr Mosae  
For Respondent: Mr Mahlakeng