CIV/APN/102/01

IN THE HIGH COURT OF LESOTHO

In the matter between:

BASIA MAHALEFELE **Applicant**

and

LESOTHO BANK **1st Respondent**
DEPUTY SHERIFF **2nd Respondent**

For the Applicant: **Sethathi & Co.**

For the Respondents: **Mr. S.C. Buys**

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 19th day of February 2002

I agreed that the application ought to be dismissed with costs inasmuch as Applicant/Defendant's Counsel did not prosecute it to an end.

The Applicant applied for an order in terms whereof the execution scheduled for the 2nd March 2001 was stayed. The Applicant further applied for rescission of judgment and to be granted leave to defend the proceedings instituted against him under CIV/T/250/00.

Proceedings were filed in this Court against the Applicant who was Defendant on the 25th August 2000. Judgment was granted by default on the 11th September 2000 against the Defendant who had instructed Counsel with a view to settle (as he admitted liability) to no avail.

It was quite clear that an application of this nature by the Applicant should and should have complied with the provisions of Rule 27(6) of the High Court Rules, which provides for time limits within which to apply to set aside the given judgment, and the fixing of security.

The First Respondent contends in his opposing affidavit that the Applicant was already aware of the judgment on the 4th October 2000 when a warrant of execution against movable assets was served upon him. He responded by simply informing the Deputy Sheriff that he does not have attachable movable assets.

Twenty days has therefore expired within which the Applicant was supposed to bring an application and in the circumstances the failure to do so was fatal as I concluded.

In addition thereto the Applicant has failed to comply with Rule 27(6)(b) in that no security has been furnished to the satisfaction of the Registrar of the High Court for the payment to the First Respondent of its costs for the default judgment. The furnishing of security is mandatory and failure to do so is fatal to the application. See **Ramdaries v Mafaesa** CIV/T/56/83 delivered on the 25th May 1983 by Cotran CJ.

There was also evidence before this Court, in the form of correspondence between the Applicant's Attorneys, that the Applicant admitted liability and offered to pay the debt by way of monthly instalments. Because an agreement could not be reached in this regard the First Respondent proceeded (as it was entitled to) with the execution against immovable property. The First Respondent argued that there was no good cause for the default judgment to be set aside as is provided for in Rule 27(6)(c), which reads as follows:

"At the hearing of the application the Court may refuse to set aside

the judgment or may on good cause shown set it aside on such terms including any order as to costs as it thinks fit."

The Applicant did not show good cause on which the judgment may be rescinded. This attitude was strengthened by the fact that the Applicant has admitted liability.

There would therefore be no sense in setting aside the judgment as there would be nothing to try before this Court once the judgment was set aside. This in my view would be waste of time and money where the Applicant was not able to show that he had a *bona fide* defence to First Respondent/Plaintiff's claim. See **Grant v Plumbers (Pty) Ltd** 1949(2) SA 470(O).

In the circumstances the application for rescission was dismissed with costs.

T Monapathi
Judge

19th February, 2001