IN THE COURT OF APPEAL OF LESOTHO

C of A (CIV) No.11 of 2006

In the matter between:

Joseph Tjatji **Appellant**

and

Sunshine Motors **First Respondent**
Deputy Sheriff (Mr. Masenyetse) **Second Respondent**
Monaheng Khoanyane **Third Respondent**

Held at Maseru on 27th March 2007

CORAM:
Steyn, P
Melunsky, JA
Nomngcongo, JA

JUDGMENT

Summary

*Application for condonation of late noting of appeal – reasons for refusal were a repeated and extensive non compliance with the Rules of Court in material respects – Court **a quo** in any event correctly discharging rule **nisi** irregularly obtained **ex parte** – applicant accordingly had no prospects of success on appeal. Appeal accordingly dismissed with costs.*

STEYN, P

[1] At the hearing of this matter on the 27th of March 2007 the Court held as follows:

1. The appellant has no reasonable prospect of success in the appeal.

2. The application for condonation for late notice of appeal is refused. (The judgment of the High Court was delivered on the 29th of March 2005 and the appeal was noted on the 17 of August 2006)

3. The appeal is dismissed with costs.

[2] I intimated that I would give reasons for our decision. They are the following:

[3] The appellant owed the 1st Respondent M66 500 together with interest and costs. Judgment for this amount was granted, so it would appear, sometime in 2000. During 2002 he surrendered his vehicle, a Toyota Corolla Sprinter, as security for his debt and agreed to pay off his debt in instalments of M1 000 per week. He said he could only pay 3 instalments because he took ill. (This is disputed by the 1st respondent who alleges that the appellant only paid one single instalment of M1 000).

He left hospital in March 2003 and went to 1st respondent's attorneys to follow up on a report that he had received that his car had been sold. He had been so informed whilst in hospital. He instituted legal proceedings

in which he asked the Court to declare the sale invalid as there had been a breach of the Rules of Court inasmuch as the vehicle was not sold at the site advertised. He sought an urgent interdict because he feared that the respondents "might dispose of my vehicle" and if notice is given to the 3rd respondent (who bought the vehicle) might dispose of it presumably to defeat applicant's rights.

[4] Accordingly and on the 6th of October 2003, some 6 months after he was discharged from hospital, he applied *ex parte* – and as a matter of urgency - for a rule ***nisi*** interdicting the respondents from selling the vehicle and certain other relief. Such a rule was granted by the High Court. On the return day of the rule it came before Monapathi J and on the 29th of March 2005 the learned Judge discharged the rule. The main ground upon which the Court did so was that there was no urgency and that in availing himself of the very special provisions of the High Court Rule 8 (22), the appellant abused the process of the Court.

[5] This decision was clearly correct. Both the High Court and this Court have in various dicta pointed to the extensive prejudice that can be sustained by a respondent where he is without good reason deprived of the protection provided in the Rule of Court concerning notice, and the consequent inadequate opportunity to respond to the allegations founding an applicant's claim. The sometimes unforeseen serious impact such an interim order can have on litigants personally and financially is often substantial. See in this regard the comments of this Court per Gauntlett JA in The Commander LDF and Ano. v Matela 1999-2000 LLR/LB 13 at p16 where the Court says the following:

> "To have issued an interim order without notice to the other side when no basis was laid for this on the papers was a serious error on the part of the Court. This is the more so in view of the fact that it included as an interim interdict an order that the first appellant and his subordinates were restrained "from continuing to defame appellant by issuing any kind of documentation and/or statements which have the effect of defaming appellant".
>
> I pause to note that the frequency with which interdicts and other orders are sought by counsel, and granted by the High Court, without notice to parties cited as respondents is a matter for concern. As a general rule, basic considerations of fairness and the need to prevent the administration of justice being brought into disrepute require appropriate notice to be given. Orders should only be granted without notice where this is rigorously justified (where, for instance, there is extremely urgency or the need to prevent the order from being frustrated where any prior notice could well have that effect). Legal

> practitioners who continue to disregard these requirements must expect costs orders to be made *de bonis spropriis* in appropriate cases."

[6] I also point out that the litigation was conducted in a dilatory manner and inasmuch as matters may have become urgent, such urgency was of the appellant's own making. Note in this regard that to the knowledge of the appellant the car was already sold whilst he was in hospital in late 2002. He brought his application as one of urgency in October 2003. The judgment was delivered in March 2005 and he sought to file grounds of appeal on the 17th August 2006, a year and five months later. For this conduct no adequate explanation was given. No court will allow its procedures and Rules to be flaunted in this dilatory manner to the detriment of litigants.

[7] As indicated above, in these circumstances Monapathi J was clearly correct in discharging the rule *nisi* which had been irregularly obtained. The appellant therefore had no reasonable prospects of success in the appeal.

[8] Mr. Mohau has asked the Court to comment on the possible unfairness of the outcome – this is, if indeed there had been a breach of the relevant rule when the car was auctioned. If this were to be the case, and I make no such finding, it is to be laid at the door of the appellant and his relevant advisers from time to time both for the appellant's lack of diligence in pursuing his rights and for the ill-advised proceedings that were instituted by his legal advisers.

[9] It was for these reasons that we refused the application for the condonation of the non-compliance with the Rules.

J H Steyn
President of the Court of Appeal

L. Melunsky
Justice of Appeal

T. Nomngcongo
Justice of Appeal

Delivered on the 4th of April 2007

For the Appellant: Mr. K.K. Mohau

For 1st Respondent: Mr. S.C. Buys