

IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

C of A (CIV) NO. 33/2016

In the matter between:

**BELINA BALONE
MALINEO SERETSE
LEPHOTO LEPHOTO
MOTEBANG RAMAI**

**1ST APPELLANT
2ND APPELLANT
3RD APPELLANT
4TH APPELLANT**

and

DIRECTOR GENERAL (MINISTRY OF FINANCE)

1ST RESPONDENT

CHAIRPERSON OF DISCIPLINARY

COMMITTEES (MRS MAKAMOHO MAJORO-DAG)

2ND RESPONDENT

PRINCIPAL SECRETARY (MINISTRY OF FINANCE)

3RD RESPONDENT

MINISTRY OF FINANCE

4TH RESPONDENT

ATTORNEY GENERAL

5TH RESPONDENT

CORAM : FARLAM, A.P.
MAJARA, C.J. (*ex officio* JA)
DR MUSONDA, A.J.A.

HEARD : 3 MAY, 2017

DELIVERED: 12 MAY, 2017

SUMMARY

Judgment, rescission of – High Court Rule 45 (2) – necessity for parties whose interests may be affected to be given notice before a judgment is rescinded

JUDGMENT

FARLAM A.P

[1] On 10 June 2016 the appellants brought an urgent application in the High Court against the respondents for an interim interdict and other relief. The notice of motion stated that the court would be approached for the relief sought at 9:30 a.m. on 15 June 2016.

[2] The respondents served a notice of their intention to oppose the application on the appellants' attorneys at 4:12 pm on the afternoon of 14 June 2016 but the respondents' counsel did not appear in court to oppose the application on the next day when it came before **Peete J**, who granted the order sought, *viz* a rule *nisi*, (which he made returnable on 4 July 2016) and an interim interdict.

[3] Without an application for rescission of the order having been made by the respondents the learned judge on 21 June

2016 in the absence of the appellants rescinded the order he had made.

[4] The appellants have appealed against the rescission. Their counsel submits that '(i)n the absence of an application by the respondents in terms of High Court Rule 45 (2) it remains unknown how the court a quo came to decision to set aside and rescind theorder.'

[5] Relying further on rule 45 (2), which provides that '*any party desiring any relief under this Rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought*', counsel submitted that the appellants had to have been given notice before rescission was granted, a fortiori in this case where the rescission was ordered before the return day.

[6] It is clear in my view that this contention must be upheld and that the appeal must be allowed.

[7] The following order is made.

1. The appeal is allowed with costs.
2. The rescission order made on 21 June 2016 is set aside, the original order made on 15 June 2016 is reinstated,

with the alteration that a date 15 court days after the date of this judgment will be substituted for the return day originally stated.

**I.G. FARLAM
ACTING PRESIDENT**

I agree:

**N. MAJARA
CHIEF JUSTICE (ex officio JA)**

I agree:

**DR P. MUSONDA
ACTING JUSTICE OF APPEAL**

For Appellants : Adv P.C. Ntsihlele, instructed by
Snyman & Co.

For First Respondents : No appearance