

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) 38/2018

CCA 0037/2018

In the matter between:

MAMOHATO MOLAPO

APPLICANT

KHOMO SOLOMON MOLAPO

AND

THE EXECUTOR ESTATE LATE

1ST RESPONDENT

MASTER OF THE HIGH COURT

2ND RESPONDENT

ATTORNEY- GENERAL

3RD RESPONDENT

CORAM: DR K.E. MOSITO, P

J.W. VAN DER WESTHUIZEN, AJA

N.T. MTSHIYA, AJA

HEARD: 13 OCTOBER 2020

DELIVERED: 30 OCTOBER 2020

Summary

Application for review of this court on judgment –mistake attributed to this court and raised by applicant- application papers not in order-matter postponed to next session.

RULING

MTSHIYA AJA

POSTPONEMENT OF MATTER

[1] The matter was enrolled for hearing on 13 October 2020. When the matter was called Advocate P.L. Mohapi, for the appellant informed the Court that he had just filed an application for condonation for late filing of heads. The Court, including the respondents had not yet received the application.

Advocate Elliot Mokone Sello, for the respondent opposed the application saying he had not been served with any papers. He also said the record was incomplete as he was yet to file an answering affidavit.

[2] Advocate Sello attributed the failure to comply with the rules of this court to the bad relationship between him and the appellant's counsel, namely Advocate Mohapi. He said they were not on talking terms and hence no progress was being made in the matter. Advocate Mohapi denied the allegations.

[3] Faced with the issue of an incomplete record and the admission from both Counsel that the matter would not proceed, the court was inclined to have the matter struck off the roll. To that end both Counsel were asked to file submissions to show cause why an order of *cost de bonis propriis* should not be made against them. Both Counsel complied and filed submissions on 16 October 2020. In the main they were both apologizing.

[4] In order to make progress in this matter, I am of the view that it would be prudent to postpone it to the next session so that the parties can prepare a complete record.


This approach will avoid the need for a further application to have the matter reinstated on the roll. The question of costs would then be decided at the completion of the hearing of the application during the next session.

In the meantime the Registrar should be asked to obtain a report from the Master of the High Court relating to progress on the administration of the estate.

Decision

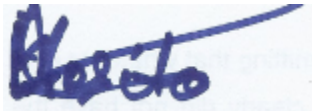
[5] In view of the foregoing it is ordered that:

1. The matter be postponed to the next session to allow for preparation and submission of a complete record.
2. In the meantime the Registrar shall request for a report from the Master on the administration of the estate.
3. The issue of costs shall be decided at the completion of the hearing of the application.



N.T. MTSHIYA
ACTING JUSTICE OF APPEAL

I agree:



K.E. MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree:



J. W. VAN DER WESTHUIZEN
ACTING JUSTICE OF APPEAL

FOR APPELLANTS: MR E M SELLO

FOR RESPONDENTS: ADV MOHAPI