

IN THE HIGH COURT OF LESOTHO

In the matter of :

NATIONAL PAPER INDUSTRIES(PTY)LTD Plaintiff

vs

B. MOLOKENG t\ a ROADSIDE RESTAURANT Defendant

R U L I N G

Delivered by the Hon. Justice M.L. Lehohla on
the 14th day of February, 1996

Mr Malebanye sets out as follows : L\F Mr.Monyako is not here. I received telephone call yesterday from someone saying he is his son asking for postponement. I told him that my instructions were to proceed unless Mr. Monyako came personally to motivate his application for postponement in which case the Court would have been able to see if there is merit in application for postponement. In short I intend proceeding today.

Court : Orderly call applicant's name three times
outside Court

ORDERLY(obliges) : No response My Lord.

Court : Please proceed Mr. Malebanye then.

Mr Malebanye for plaintiff\respondent motivating the dismissal of application for rescission sets out the argument as

follows :

We have taken two points in limine. These appear in the opposing affidavit paragraph 4. Here we object that applicant has not furnished security for costs as required by Rule 27(6)(b).

Authorities show this to be fatal. See R. Ramlaries vs K. Mafaesa CIV\T\56\83 : Failure to furnish security is fatal to an application of this nature.

Second point taken in limine is that even this application for rescission is time-barred in terms of Rule 27(6)(a). The application was filed on 9-2-95.

We couldn't get an early date. We obtained today's date in May last year.

Even in para 3 of his own affidavit and admission plaintiff got to know of this Judgment on 8-12-94 (though we don't agree with that date); and yet the application was only filed on 9-2-95.

Rule 27(6)(a) applies that an application be filed within 21 days of knowledge of such judgment.

My client apart from taking these points in limine has answered and registered his opposition on the merits.

It should be borne in mind as reflected on Court's minute outside file cover that default Judgment was granted on 12-2-90.

At para 3 Buti Molokeng says :

"I humbly submit in the circumstances I was not in wilful default in defending the matter, for I was never served with any summons or same left at my place".

But compare and contrast with "NPI 2" showing that he was served with a Writ and his vehicle was attached on 21-5-90. This was about less than 3 months after Judgment of 12-2-90 was granted. So it can't be true he only got aware of Judgment as late as only 8-12-94.

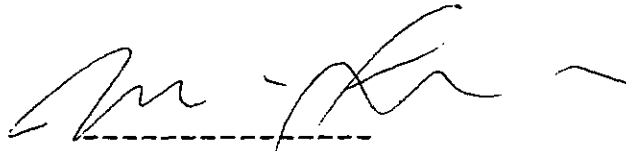
RULING

On points raised in limine Court is satisfied that there are obvious untruths on the part of the applicant\defendant such as saying that he only came to know of this entire process including Summons as late as only 8-12-94 when Judgment was granted on 12-2-90 and YET he was served with Writ flowing therefrom on 21-5-90 when even his property was attached.

"NPI 1" also shows that defendant was served personally with Summons on 17-11-89. Compare and contrast this with defendant's averment in paragraph 3 of his Founding Affidavit line three from the bottom where he says "I was never served with any summons". Of course this averment cannot be true as it goes

against what is in the proper and true record of this Court.

I uphold points raised in limine. Thus
applicant\defendant's application for rescission and stay of
execution is dismissed with costs.



J U D G E

14th February, 1996

For Plaintiff\1st Respondent : Mr Malebanye
For Applicant\Defendant : No Appearance