

IN THE HIGH COURT OF LESOTHO

In the matter of :

LESOTHO AGRICULTURAL DEVELOPMENT BANK Plaintiff

vs

JUSTICE THABO MOKOTSO Defendant

J U D G M E N T

Delivered by the Hon. Mr Justice M.L. Lehohla on the
18th day of September, 1996

I need only emphasise that summons - and this is now my judgment-summons ordinarily speaking constitutes a skeleton of the claim that a party who is aggrieved is enjoined to bring for the information of the court and the opposing party.

Summons may not include every detail or even some of what might appear to be very important aspects. Such aspects can be covered for the information again of the court and the other party by what is called a declaration the plaintiff's declaration. Until the pleadings have been closed it is important that parties should go through all these motions for purposes of enlightening the court and the respective parties about what is involved in a matter.

In the circumstances, I realised that there was a summons

which was not accompanied by a declaration and I may hasten to indicate that it couldn't have per se been a mistake to have left out the declaration because the Rule indicates that there is nothing wrong with submitting a summons provided that within 14 days after entry of appearance to defend has been filed the declaration is in turn filed. Why is this so? It is so because sometimes a defendant may not feel disposed to object to the summons in which case proceedings are curtailed and the matter may just go by default. But where the defendant has entered an appearance to defend it is obligatory that a declaration should be filed or the plaintiff's declaration should be filed and the purpose as I have stated of the declaration is to vindicate issues which were provided in the bare skeleton provided by the summons.

So I have also listened to the sad history of this case where the present attorneys for plaintiff have come into the shoes of previous attorneys - the case has also got a singular disadvantage of the defendant appearing on his own behalf thus I doubt if he, as a layman, has a copy of the Rules. But I don't doubt his ability to understand and follow the statement of the Rules at least from what I have observed as I read out the rules for his benefit. But the court cannot ordinarily speaking deny a party who comes before it, for purposes of making its task or the task of all parties that much easier, the opportunity to let the court help itself by way of basing its decision on all material that may be necessary to consider before reaching the conclusion it finally comes to.

I have paid attention to the fact that Mr Mokotso is opposing this application even although Mrs Chimombe has assured him that in the end the filing of the declaration will benefit all parties. I may only say for all her good intentions Mrs Chimombe should heed the warning that each party is presumed to know what is in its best interests in a suit. Moreover it is no idle statement that a man has a right to renounce things granted even for his benefit.

Mr Mokotso raised a query that while the summons as it stands embraces only the question of Hire Purchase, the declaration which was sought to amplify it includes new things such as oral agreement relating to the purchase of certain farming equipment referred to in paragraph 8 of the said declaration. While at first blush this would seem to be a valid objection, the objection is rendered nugatory by reference to the opposing affidavit filed beforehand by Mr Mokotso himself way back in 1990 when he opposed the application for summary judgment. See paragraph 6 of that opposing affidavit, the purport of which to me indicates that the matters which he complains of as new today were already known to him in 1990.

But in the circumstances I am relying on Rule 59, viz :

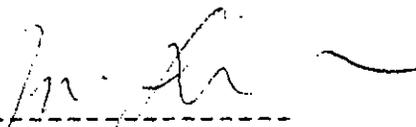
"Notwithstanding anything contained in these Rules the court shall always have discretion, if it considers it to be in the interests of justice, to condone any proceedings in which the provisions of these rules are not followed".

So clearly the provisions of these Rules haven't been followed insofar as an omission was made in the sense that a declaration has neither accompanied the summons which could ordinarily have been done in the first place, nor has it been filed within fourteen days after the entry of appearance to defend was made. So there was this omission and I think Rule 59 is made mainly to cover any such omissions or irregularities unless an irregularity goes to the heart of the matter. In my opinion it doesn't go to the heart of the matter and the other party is not prejudiced; thus this Rule may be invoked. This is more so because there is a statement in the approach advised through various decisions of superior courts both in Lesotho and in South Africa that the Rules are made for the court and not the court for the Rules.

I have no difficulty in the circumstances in granting the application as prayed for leave to submit the plaintiff's declaration. I am however reluctant to saddle the defendant with costs for opposing this application. I think it was within his rights to oppose it even though he had been advised that no costs would be granted against him if he didn't oppose - I feel that notwithstanding that he has opposed he should be free from liability to pay costs.

For reasons that I intimated to the parties I am disinclined to preside over the main trial. The Registrar should therefore place the trial proceeding when it eventually comes, before

another judge.



C J U D G E
18th September, 1996

For Plaintiff: Mrs Chimombe
For Defendant: In Person