CIV/T/419/96

IN THE HIGH COURT OF LESOTHO

In the matter between:

ENOCH SEPHIRI MOTANYANE	**1st**	**Plaintiff**
NOTSI MOLOPO	**2nd**	**Plaintiff**
SHAKHANE ROBONG MOKHEHLE	**3rd**	**Plaintiff**
PAKALITHA MOSISILI	**4th**	**Plaintiff**

v

CANDI RATABANE RAMAINOANE	**Defendant**
THE EDITOR "MOAFRIKA"	

AND

CIV/T/439/96

IN THE HIGH COURT OF LESOTHO

In the matter between:

ENOCH SEPHIRI MOTANYANE		**Plaintiff**

v

CANDI RATABANE RAMAINOANE	**1st**	**Defendant**
(THE EDITOR "MOAFRIKA")		
MOEKETSI TSATSANYANE	**2nd**	**Defendant**

REASONS FOR JUDGMENT

Delivered by the Honourable Mr. Justice W.C.M. Maqutu
on the 25th day of August, 1997.

On the 11th August, 1997, I had made the following order in both CIV/T/419/96 and CIV/T/439/96:-

(a) Failure to file a Power of Attorney by plaintiffs is by consent condoned.
(b) Defendant is ordered to plead within 14 days.
(c) Plaintiffs are ordered to obtain their own legal representation pursuant to the order of the court made on the 10th February, 1997.
(d) Costs to be costs in the cause.
(e) Reasons for judgment would be filed on the 25th August, 1997. These are the reasons for the order for which I have written a full judgment.

On the 11th August, 1997, I found before me two trials CIV/T/419/97 and CIV/T/439/96 that were supposed to proceed. Both Counsel informed me that they were ready to proceed.

These are cases of defamation in which first plaintiff alone and first plaintiff with three others sue the editor of the same newspaper.

It will be observed that the summons were subsequently found to be irregular. In terms of Rule 30 of the *High Court Rules*, defendant ought to have objected to them within 14 days. This was not done. The Court *mero motu* had

ruled on the 10th February, 1997, that the Attorney General ought not to institute legal proceedings for or appear for the plaintiffs in personal matters such as defamation. The fact that plaintiffs are Ministers made it all the more necessary for them to get their own legal representation.

It will be observed also that when the matter came for hearing on the 11th August, 1997, it was also found that the Attorney General had no Power of Attorney to represent the plaintiffs contrary to Rule 15 of the *High Court Rules*.

What I found deplorable was the fact that the defendant newspaper had not pleaded. I found this particularly disturbing because in cases of defamation:-

> "The effective restoration of reputation rests on speed. The true position must be established before the lie hardens into fact in the public mind, while the context is fresh. Yet speed is singularly lacking."—J.M. Burchell - *The Law of Defamation in South Africa* page 29 quoting *The Commonwealth Law Reform Commission*.

It is important for Ministers standing to be restored timeously by finalising litigation concerning their good names because as Innes CJ said in *Botha v Pretoria Printing Works*, 1906 TS 710 at 715:

> "The public acts of public men are, of course matters of public interest, and criticism upon them does a great deal of good provided corrupt motives are not imputed. But the character of a public man is not only a precious possession to himself, but is a public asset...I

> think the Court should, by its attitude impress upon all concerned that attacks upon the private character of public men should not be lightly made...they must be justified."

I think at the root of this misunderstanding in this case is the failure of the Attorney General to separate the Ministers from Government merely because they are the instruments through which Government acts. Consequently he probably believes "the public acts of public men are, of course, matters of public interest" in the sense that are never private. The correct approach is that such actions of public men who act in the public interest as servants of the Crown are acts of Government. Therefore, as Van Zijl J said in the *Minister of Justice of SA v SA Associated Newspapers Ltd* 1979 (3) SA 466 at page 476C:-

> "Matters of Government policy...may be freely criticised and condemned even if such criticism is unfounded and unfair."

Once any person imputes in proper motives or dishonest conduct to Ministers and blacken the names of the Ministers in an unsubstantiated manner that has nothing to do with Government and Government policy, the Ministers have a personal right to sue for defamation. That in law is seen as having nothing to do with Government, therefore the Attorney General as the principal legal officer of the Crown ought to keep away. The reasons for doing so will be apparent later in the judgment.

I was informed by the defendants' Counsel Mr. *Khauoe* that a plea could not be forthcoming while the Attorney General continued to act for plaintiffs contrary to my court Order. I found the question of representation had initially been treated as minor by the defendant, otherwise he would have objected to the summons of plaintiffs. That being the case, it should not have affected pleading, consequently I ordered defendant to plead within 14 days in both matters.

I was then told there was an application in which this court through another judge had said the Attorney General could represent Ministers who were suing in their personal capacity. That court's judgment was not produced before me. I was told that an appeal was pending in that matter. I do not know what was involved in that application, therefore I do not think I should search for it. If it had been ancillary to these proceedings it should have been part of the record of proceedings in the matters before me. The judgment of Lehohla J in CIV/APN/368/96 was subsequently brought to me after I had written this judgment. Consequently I had to amend the judgment.

As I see these matters, my ruling of the 10th February, 1997, was made before Lehohla J's judgment of 21st April, 1997, consequently it has to stand. It is unfortunate that Lehohla J was unaware of my ruling. Interlocutory applications should not have separate files from the main action. If this has happened, it is the duty of Counsel on both sides to draw the court's attention to previous rulings and

to make the file in the main case available to the judge. Why this was allowed to happen, I cannot say.

Mr. *Makhethe* for the Attorney General wanted to proceed by default and get judgment against the defendant newspaper. Mr. *Khauoe* for the defendant argued that the court had directed that plaintiffs should get their own legal representation and further that the summons in both cases were irregular because the plaintiffs had not given the Attorney General the Power of Attorney to sue. Mr. *Makhethe* pointed out that his position was that the Attorney General does not have to file a Power of Attorney.

The first plaintiff in his summons in both CIV/T/419/96 and CIV/T/439/96 is described as a member of Parliament and Minister of Law and Constitutional Affairs in the Government of the Kingdom of Lesotho. The other three plaintiffs in CIV/T/439/96 are respectively described as member of Parliament and Ministers of Employment and Labour, Natural Resources, and Deputy prime Minister and Minister of Home Affairs. The questions for decision were four, and these were:

(1) Whether Government could sue for defamation?

(2) Whether Ministers and Government in matters of defamation are indistinguishable?

(3) Whether Ministers ought to sue for defamation in their personal capacities?

(4) Whether the Attorney General can by law sue in the name of Ministers for the defamation of Ministers in his capacity as Attorney General?

In my mind, the Attorney general could not act for Ministers in private litigation which is their personal matter. The distinction between Ministers as citizens and Government should never be blurred.

J.M. Burchell in *The Law of Defamation in South Africa* page 53 crisply states:-

> "The Appellate Division in *Die Spoorbond v SAR* 1946 AD 999 stated clearly that Government cannot sue for defamation. If an individual member of Government is referred to, he can sue for defamation in his own name, but Government as an entity cannot sue for defamation." See *Die Spoorbond v SAR (supra)* at page 1013.

Schreiner JA who was President of the Court of Appeal of Lesotho gives the following reasons:

> "I have no doubt that it would involve a serious interference with free expression of opinion hitherto enjoyed by this country if the wealth of the State, derived from the State's subjects, could be used to

> launch against those subjects actions for defamation because they have falsely and unfairly it may be, criticised or condemned the management of the country." —See *Die Spoorbond v SAR (supra)* at page 1013.

The *Die Spoorbond* case settled the issue that Government cannot sue for defamation and that Ministers personal reputations are quite distinct from government. Consequently Government quite rightly is not a party to these proceedings.

It goes without saying that Government may not use Ministers' names to sue for defamation of character. Indeed the Attorney General cannot use his constitutional office of impartiality to make it appear that Government is using his office to sue for defamation by using Ministers' personal names as a front.

In *Johnny Wa Ka Maseko v Attorney General and the Commissioner of Police* C of A (CIV) No.27 of 1988 the Court of Appeal (per Ackermann JA) deplored the tendency to use the machinery of the State to protect the reputations of Ministers of the Crown. In that case, the State had detained an editor of a newspaper under the *Internal Security Act* of 1984 for defaming a minister by publishing secret information concerning him and the Government. The Court of Appeal felt the Government of the day was using the machinery of Government to silence its critics. Whatever the merits of these cases may be, the Attorney General has to maintain the outward constitutional impartiality of his office.

Section 14(1) of the *Constitution* permits unhindered freedom of expression. But this right is not unlimited because provision has been made in terms of Section 14(2)(b) of the *Constitution* for laws to be made or to remain in operation for the "purpose of protecting the reputations, rights and freedoms of other persons". It will be noted Government is not included. The State has been given the right to intervene by legislation in the interests of defence, public safety, public order, or public health. Section 14(3) provides these powers shall not abridge the unhindred enjoyment of freedom of expression to a "greater extent than is necessary in a practical sense in a democratic society". My approach has been conditioned by what I consider to be the needs of a democratic society as the *Constitution requires* of me.

I was also conscious of the Principles of State Policy which require of organs of State to promote these principles within the constraints imposed by "economic capacity and development of Lesotho". See Section 25 of the *Constitution*. I was in particular conscious of Section 26(1) of the *Constitution* which provides:

> "Lesotho shall adopt policies aimed at promoting a society based on equality of justice for all its citizens regardless of....status."

I noted that there was the *Legal Aid Act* 1978 where Lesotho has tried to create

equal justice. This *Act* may be way beyond the economic means of the country at the moment, nevertheless the country is under an obligation to implement it. It seems to me that if plaintiffs were indigent they could apply for Legal Aid from the Chief Legal Aid Counsel. Plaintiffs just because they are Ministers should not get free legal aid from the Attorney General. The view I take is that it is not the job of the Attorney General to give legal aid to private individuals especially those who are elevated in status. What the Attorney General has done in this case is discriminatory within the meaning of Section 18(3) of the *Constitution*. The Attorney General done this,

> "by affording different treatment to different persons attributable wholly or mainly to...status and accorded privileges or advantages which are not accorded to persons of another description."

Ministers in matters of litigation of a personal nature are exactly the same as any other litigant. Why should they be given State aid over defendant in this case?

In *S.A. Associated Newspapers & Another v Estate Pelsar* 1975(4) Wessels JA noted how it is often difficult to separate the Minister from Government but noted that a line should be drawn at a point where the intention is to injure the Minister's name personally and at page 808 C said:-

> "I might add, in my opinion, it cannot be said that the reputation of

> an individual Minister has those robust universal characteristics which in the case of Government (as a separate entity), render it invulnerable to criticism of a defamatory nature. His reputaion is indeed a "frail thing", capable of suffering injury by publication of a defamatory matter regarding his conduct in the management of State affairs."

As I see it, a Minister's right of action, in case of defamation is not only private and personal, it must be seen to be personal. The issuing of Summons by the Attorney General in this private matter gives it a public and governmental odour. Before the courts appearances are as important as what in fact takes place. Justice must not only be done but it must been to be done. To put this in another way, Ministers of the Crown must not only be treated as equals with other citizens, they have to be seen to be so treated. The Attorney General's intervention obscures this equality of treatment. If Ministers have a personal right of action in cases of defamation the Attorney General should not be allowed to make it appear as if they are the front of Government by issuing summons as he would do if Government was involved. This is not fair to the Ministers themselves and to the judicial system which must reflect democratic values.

My attention has subsequently been drawn to Section 5 of the *Legal Practitioners Act* of 1983 which provides:

> "Notwithstanding anything to the contrary in this Act or any other Law, Law Officers shall be entitled and shall be considered to have

> been entitled to perform any work of an advocate and attorney and to appear in the courts of Lesotho on behalf of the Crown, a department of the Government or any person in any civil proceedings."

It would reduce the right of audicence before the courts to absurdity if any Law Officer, without proper authority, could appear for "any person in any civil proceedings". That is not what this section means or implies. Litigation in civil proceedings is a personal matter. Section 15 of the *Interpretation Act* 1977 enjoins the courts to interpret every enactment remedially in order best to ensure the attainment of its objects. The object of the *Act* is not to make Law Officers legal practitioners of a general nature. The Attorney General, as the principal Law Officer in whose name the other Law Officers act, has specific functions and is bound by law. He cannot do as he chooses.

The *Legal Practitioners Act* of 1983 deals (and is intended to deal) with the right of audience before the courts by people who appear before courts as representatives of litigants. It does not confer on Law Officers the right to appear for litigants which advocates and attorneys do not possess by law. The Attorney General has a legal duty to appear before the courts in matters concerning the public interest. Indeed he can even take over or initiate litigation for an individual or groups of people if the public interest makes such a cause necessary. He has no power or even a right to appear for any person or persons in matters that are entirely private. It is wrong to assume he can be used by Ministers or choose to

be used by Ministers in their private affairs.

In terms of Section 98(2)(c) of the *Constitution* the Attorney General has an obligation to

> "take necessary legal measures for the protection and upholding of the *Constitution* and other laws of Lesotho."

How the Attorney General might do this is not spelled out. In modern times, a private citizen does not have to depend on the Attorney General where his rights are infringed. The Attorney General can bring proceedings himself independently in the public interest *ex officio*, although he often lends his name in relator actions provided the case is a fitting one and those interested undertake to pay costs. In that event, the relator action is prosecuted in the end as if it is a civil claim.

The way I see the actions before me was neatly summarised by Lord Wilberforce in *Gouriet and Others v H.M. Attorney General and Others* [1978] AC 435 at 477 EF in the following words:

> "A relator action - a type of action which has existed from the earliest times - is one in which the Attorney General, in the relation of individuals who may include local authorities or companies, brings an action to assert a public right. In terms of the constitutional law, the rights of the public are vested in the Crown, and the Attorney General enforces them as an officer of theCrown.

> And just as the Attorney General has in general no power to interfere with the assertion of private rights, so in general no private person has the right of representing the public in the assertion of public rights."

As this matter of the defamation of the character of Ministers is an assertion of a private right to a good name of those individual Ministers, the Attorney General ought not to interfere.

The Attorney General has to be alive to the fact that it is his duty in terms of the *Constitution* to protect the Fundamental Human Right of Freedom of Expression which is provided for in Section 14 of the *Constitution*. This obligation follows from Section 98(2)(c) of the *Constitution* which provides that:

> "It shall be the duty of the Attorney General to take necessary measures for the protection and upholding of the *Constitution* and other laws of Lesotho.

This duty of the Attorney General should be understood in the words of De Villiers CJ in *Hertzog v Ward* 1912 AD 62 at page 70 where he said:

> "It is the policy of the law on the one hand to protect the right of full and free discussion of matters of public interest and on the other hand to protect the right which every person has to the maintenance of his reputation."

The office of Attorney General as inherited from Great Britain is a complex institution. The reason being that he is the principal law officer at the service of Government and yet he is also independent of the Government in the exercise of his powers. In the past he had to sift all actions which individuals might wish to bring against the Crown. An individual could not sue the Crown unless the Attorney General had cleared those proceedings which were brought by way of petition of right by authorising that they be endorsed with the words *fiat justitia* (let right be done).—See E.C.S. Wade and A.W. Bradley *Constitutional and Administrative Law* 11th Edition page 745. Since the enactment of the *Crown Liabilities Proclamation No.77* of 1948 (now repealed) individuals are now free to sue the Crown if and when they please.

The right and powers of the Attorney General in favour of the citizen only remain in respect of matters in which the public interest calls for such intervention. It will be observed that when he exercises that power, he does so independent of Government. This power has been preserved by the Section 98(4) of the *Constitution.* The Attorney General cannot act for Ministers in private matters and therefore be seen to act in a manner partial to the Government of the day. As Lord Wilberforce has pointed out in *Gouriet v H.M. Attorney & Others (supra)* the Attorney General is obliged to keep out of private matters as his concern is for the public interest only.

On the 10th February, 1997 when both these matters were before me for judgment by default as there was no plea, I wrote the following on their files:-

CIV/T/419/96

> "Plaintiff has to obtain his own legal representation as the claim is highly personal."

CIV/T/439/96

> "The court being not aware that there is an objection from the defendant had directed Miss Sesinyi to warn plaintiffs that they should obtain their own legal representation as a person's good name and reputation is his own personal possession."

After doing so, I postponed both matters *sine die.*

There can be no doubt in my mind that these two minutes on the files of CIV/T/419/96 and 439/96 were court orders. I could not have taken trouble to actually write them on the files if I did not intend them to be court orders. As Wunsh J said in *Simon NO & Others v Mitsiu & Co. & Others* 1997(2) SA 475 at 497 A:

> "The court's intention must be ascertained primarily from the language of the order and construed according to the usual rules for interpreting documents. It must be read as a whole by reference to its context and objects."

What the court directed is clear and unequivocal. The function of the court is not to give advice. Even if it might give advice, if it so chooses, in this case it had clearly directed plaintiffs to get their own legal representation.

At the outset, Mr. *Makhethe* (for Attorney General) conceded that a person's good name and reputation are highly prized personal possessions. He also agreed that a good name is a right that is protected by law, whether a person is a government minister or an ordinary citizen. Mr. *Khauoe* (for defendant) also agreed that plaintiffs as Ministers of the Crown should not be taken advantage of by all and sundry and that their reputations should not be bismirched left right and centre.

There is no dispute that a person's reputation is a valuable asset and that as J.M. Burchell has said in *The Law of Defamation in South Africa* at page 18:-

> "The LAW of defamation seeks to protect a person's right to an unimpaired reputation or good name. Reputation mirrors the estimation or good opinion which an individual has in the eyes of society. In other words, an impairment of reputation leads to a lowering of the individual's standing in the estimation of others."

What is in issue here is the intervention of the Attorney General in what is a personal matter for the plaintiffs merely because they happen to be Ministers of the Crown. There is not even a power of attorney authorising the Attorney

General to represent them in bringing legal proceedings on their behalf. The Attorney General has issued summons in the personal names of the plaintiffs.

Rule 15(1) of the *High Court Rules* provides that:-

> "Any person bringing or defending any proceedings in person may appoint an attorney to act on his behalf, who shall file a power of attorney and give his name and address to all parties in the proceedings."

The Attorney General has not filed any Power of Attorney because Mr. *Makhethe* argues that according to the Rules of the High Court he does not have to do so. I checked the Rules of the High Court of Lesotho, and I found that there is no such a Rule. Such a Rule exists in the Republic of South Africa. Even in South Africa it would not entitle the State Attorney to bring personal actions on behalf of Ministers. The State Attorney in the Republic of South Africa strictly brings actions on behalf of the Government.

The use of South African text books and the close similarity of our rules of court with those of South Africa often leads to mistakes of this nature. In Lesotho all parties who chose to be represented in civil proceedings must cause Powers of Attorney to be filed of record as proof that they authorised such an attorney or legal representative to bring such legal proceedings and to represent them before the Court.

The *Government Proceedings and Contract Act No.4* of 1965 (as amended) provides at Section 3(2) that

> "Actions or other proceedings by His Majesty in His Government of Lesotho shall be instituted by and in the name of the Attorney General."

In the light of what has been said above, I do not agree that the Attorney General can treat Ministers as Government. I understand the Attorney General to be obliged to act for "a Minister or other servant of the Crown in his capacity as such." See Rule 8(23) of the *High Court Rules* 1980.

It will be observed that the filing of a Power of Attorney to institute legal proceedings is very important for a legal practitioner who institutes legal proceedings on behalf of a client. Rule 15 of *High Court Rules* provides that he "shall file a power of attorney". It is the court's duty to enforce its Rules. If it insists that a particular Rule be followed without dismissing the action that is not a final judgment, that order is purely interlocutory. If the court is wrong, that ruling has to be obeyed and an appeal can later be filed at the end of trial. See the case of *Northern Assurance Co. Ltd v Somdaka* 1960(1) SA 588. It is the duty of the court to see that proceedings are in order from the very beginning. If there are mistakes to see they are corrected timeously. Defendant is not allowed to let mistakes riddle proceedings and then at the end object. Where the court itself

spots mistakes and have them corrected, it normally does not award costs against the erring litigant.

In this case, I might have been obliged to dismiss actions of the plaintiffs because it is not clear whether the Attorney General was authorised by Government or by the individual Ministers to bring these proceedings. It seems the issue of who authorised proceedings is important because as will be seen government has no power to authorise the issue of private proceedings, nor does the Attorney General in a purely personal matter such as defamation. In *Minister of Prisons v Jongilanga* 1985(3) SA 117 at page 123 Eloff AJA said where a basic component was missing in the issue of summons courts will not condone the omission. There is uncertainty on an important issue of who authorised proceedings to be instituted. One of the possible parties who might have authorised these proceedings is the government which is not permitted.

The inaction of defendant tipped the scales in favour of plaintiffs. Plaintiffs had got to a stage by the 10th February, 1997 where they wanted a judgment. It will be observed that defendant had not objected timeously against the absence of a Power of Attorney in terms of Rule 30 of the *High Court Rules,* but the Court had *mero motu* already made an order that plaintiffs should obtain their own private legal representation for which reasons appear above. The dilatoriness of defendant obliged me to exercise my discretion in favour of the plaintiff as I felt

too much time had been wasted already. It is debatable whether the summons of the plaintiffs were so irregular that they are a nullity.—*Federated Insurance Co. Ltd v Malawana* 1986(1) SA 751. As defendant had not objected timeously, I felt I have a discretion in the matter.

In this case a Power of Attorney given by plaintiffs to whoever appears for them is necessary because the plaintiffs are the ones who at the end of the day have to pay costs. These plaintiffs, who are Ministers at the moment, might not be Ministers by the time this matter is heard. In that event, they might disclaim responsibility for legal proceedings that on the face of the record they did not authorise. The Court of Appeal in *Lesotho Human Rights Alert Group v Minister of Justice and Human Rights and Others* 1993-94, *Lesotho Law Reports & Legal Bulletin* 264 at 267 observed that being plaintiff involves payment of costs, consequently a plaintiff must make a deliberate decision to institute legal proceedings. In our courts, the plaintiff does this by committing himself to the litigation by signing a Power of Attorney by which he exonerates his attorney from whatever might be done which at the end of the trial might cause plaintiff to incur costs.—3rd Edition of Herbstein & Van Winsen *Civil Practice of Superior Courts in SA* page 113. The Attorney General has not got this Power of Attorney to represent these litigants in these private matters of litigation. Therefore these summons have a flaw in that there is no guarantee that defendants will enforce their judgment as to costs. The Crown can only be involved if an issue of a public

nature was involved. In that event, the Attorney General could be involved irrespective of whether the Government of the day was involved in the exercise of his legal duty of impartiality.

In Lesotho we do not have a special rule of the court that deals with the question of Power of Attorney. In South Africa we have Rule 7 specifically dealing with the question of the Power of Attorney. In this Rule 7(5) the State Attorney who handles civil litigation on behalf of the State does not have to file a Power of Attorney. In Lesotho all parties who have to be represented in civil proceedings must file a Power of Attorney.

Where any Minister, acting as the servant of the Crown wants to sue in the name of Government, the Attorney General institutes such legal proceedings in name of Government and signs those summons or legal proceedings in terms of Section 3(2) of the *Government Proceedings and Contract Act* 1965. Had these proceedings been brought on behalf of Government, the Attorney General would be a party *ex lege* in his own right, consequently he would not need representation. In that event no Power of Attorney would be necessary.

Since these Summons have not been instituted on behalf of Ministers acting for Government, a Power of Attorney had to be filed. These summons in CIV/T/419/96 and CIV/T/439/96 have been issued by individuals in their own

names, although these individuals happen to be Ministers of the Crown. Consequently the Attorney General ought to have nothing to do with these legal proceedings. They are not "Government proceedings" or "proceedings by His Majesty in his Government of Lesotho".

I am advised that a separate application in CIV/APN/368/96 was made and this court, dealing with a different issue of interdict *pendente lite*, and that Lehohla J found that the Attorney General could act for plaintiffs in their individual capacities. Even if he was entitled to do so, I do not think in that event the Attorney General could act for plaintiffs without a Power of Attorney because he would not be a party to those proceedings. The reason being that he can only be automatically a party if Government was a party. See Section 3(2) of the *Government Proceedings and Contract Act* of 1965. I have already shown my displeasure against the concealment of my orders of the 10th Feburary, 1997, from Lehohla J.

The opening of several files for the same matter creates confusion because the court is sometimes left unaware of what has been done in the main case. I agree with Lehohla J in what he said earlier in CIV/T/439/96 when it was before him, complaining about the mistakes of the Registrar in the following words:

> "The remisssiveness of the registrar...is viewed with disfavour by this court which seriously ponders awarding wasted costs... against

the Registrar..."

I feel the same unhappiness against the office of the Attorney General. Attorneys have been made to pay their clients costs personally (costs *de boniis propiis*). I considered blaming Crown Counsel for this unfortunate mistake. I am not amused that the four Ministers were not given proper advice. Mr. *Makhethe* has in the past said the office of the Attorney General has no books. The books that used to be there have been misplaced, lost or stolen. It is incumbent upon the Attorney General to see that the Law Office has a library that is the best in the country. Government and its servants should not be put in untenable situations merely because its law officers are not provided with the tools of trade for advising it.

I need to stress that in terms of Sections 98(4) and 99(6)of the *Constitution* the offices of Attorney General and Director of Public Prosecutions are offices of impartiality and are of such importance that they should have well-equipped libraries. Unless this is done, the Attorney General shall not be able to give Government proper legal advice in terms of Section 98(2)(b) of the *Constitution.*

I was a bit disturbed that my order of the 10th February, 1997, was not acted upon and the plaintiffs were not called upon to get their own attorneys. In terms of Rule 30(1) of the Rules of the High Court the summons in CIV/T/419/96

and CIV/T/439/96 are irregular proceedings because unauthorised summons were issued by the Attorney General. I could not grant a default judgment on summons which did not have any Powers of Attorney from plaintiffs empowering the Attorney General to act for them. I have already held the Attorney General could not lawfully accept instruction from Ministers to sue in personal actions such as defamation. I also could not allow a situation in which my orders were not acted upon and the laws of this country were overlooked and when attention was drawn to this by this court, files were taken to a different judge.

The plaintiffs could not be punished for a fault that was not their own although courts normally do this. In any event, since defendant did not timeously ask the court to set aside plaintiffs' summons as he should have, I felt obliged not to permit him to benefit from his oversight. Furthermore, this matter had been before this court for an application for default judgment because of defendant's remissiveness. A lot of time has been wasted and in defamation cases, speed is of the essence, therefore in terms of Rule 59 of the *High Court Rules* in my discretion I have condoned the filing of irregular summons in CIV/T/419/96 and CIV/T/439/96. They shall remain as they stand. To this, defendant's attorney has consented. That being the case, I made the following orders:

(a) Failure to file Powers of Attorney by the plaintiffs is condoned by consent and the summons issued by the Attorney General shall be allowed to stand in both CIV/T/419/96 and CIV/T/439/96.

(b) Plaintiffs are ordered to obtain their own legal representation as actions of defamation are personal actions.

(c) Defendant is ordered to plead within 14 days.

(d) Costs are to be costs in the cause.

.....
W.C.M. MAQUTU
JUDGE

For plaintiffs : Mr. T. *Makhethe*
For defendants : Mr. T. *Khauoe*