

IN THE HIGH COURT OF LESOTHO

CIV/APN/242/07

In the matter between:

AFWA INVESTMENTS (PTY) LTD

1ST APPLICANT

AFZAL ABUBAKER

2ND APPLICANT

AND

ESTATE OF LATE SAMUEL MOKHOELE MONKI

1ST RESPONDENT

COMMISSIONER OF LANDS

2ND RESPONDENT

REGISTRAR OF DEEDS

3RD RESPONDENT

DEPUTY SHERIFF OF THE HIGH COURT

4TH RESPONDENT

ATTORNEY GENERAL

5TH RESPONDENT

MASTER OF THE HIGH COURT

6TH RESPONDENT

JUDGMENT

Delivered by the Honourable Justice T. Nomngongo

On the 24th June 2011

The following applicant seeks relief

in the following terms:

1. The 3rd Respondent is on the verge of cancelling title of the 1st Respondent with respect to Lease Number 17684-181 passed under Deed of Transfer Number 25132 and this will be prejudicial to the interests of the 1st Applicant.
2. Inasmuch the matter in question **CIV/APN/359/03** was heard, the Counter Application for rescission of judgment in **CIV/T/318/96** was not decided and therefore prejudicial to the Applicants. The judgment in **CIV/T/318/96** is now executable against the estate and the property of the Applicants and yet the Court was aware of the fact the Applicants herein made payments or consideration for the subject matter.
3. There has not been adjudication or proper adjudication on the Counter Application of the Applicants for rescission of judgment under CIV/T/318/96 and the Applicant must submit his claim to the Administrator of the Estate of Samuel Mokhoele Monki in the time and as soon as possible before distribution of the assets of the Estate.
4. If the assets in the Estate are realized and distributed to the debtors and beneficiaries before the Applicants can lodge their claims with the Administrator, the applicant shall be highly prejudiced inasmuch as the Applicant has a substantial interest therein.
5. The Deputy Sheriff of this High Court is now seized with a Warrant of Execution against the estate and property of the 2nd Applicant for recovery of the alleged amounts of M90,000.00 being judgment debt under **CIV/T/318/96**.

This application was brought on an urgent basis. Apart from being totally misguided, there was absolutely no urgency in the matter. My

judgment was handed down a full two months and more and that of Monpathi J. seven years earlier. The excuse that this delay was caused by the conduct of the applicant's erstwhile attorney is simply ridiculous in the circumstances. The applicant cannot sleep on his rights for seven years and then blame someone else.

What the applicants essentially seek is not just to the court to review its decision and that of Monpathi J. but also to appeal to this court against its own decision. The applicants in the founding affidavit for instance allege that I erred in the factual and legal conclusions that I came to. That is a matter to be decided in another court and not the court that came to those conclusions. This court is *functus officio*.

My judgment dated 2nd April, 2007 stands and no appeal or review has been lodged against it. In that application the applicant sought and was granted prayers in terms of which he sought cancellation of a deed of

transfer in favour of the present applicants who were then first and second respondents and a further order that the Registrar of Deeds – the third respondent then to effect such cancellation. That judgment stands. Now this applicant has come back and asked me to sit on appeal or review of my judgment. This is a gross abuse of process. The court will show its displeasure by an appropriate order as to costs.

This application is dismissed with costs on the attorney and client scale.

T. Nomngongo
Judge

For Applicants: Webber Newdigate
For Respondents: Mr Tsenoli