

IN THE HIGH COURT OF LESOTHO

CIV/T/624/09

In the matter between:

BOFIHLA MAKHALANE

Plaintiff

And

KEITH THOMAS WHITLOCK

1st Defendant

LETS'ENG DIAMONDS (PTY) LTD

2nd Defendant

EDITOR OF LESOTHO TIMES

3rd Defendant

ARICA HOLDING SA

4th Defendant

DISTRIBUTOR OF LESOTHO TIMES

5th Defendant

PRINTER OF LESOTHO TIMES

6th Defendant

**JUDGEMENT ON COSTS OF APPLICATION FOR
POSTPONEMENT**

CORAM : Hon. T. E. Monapathi

DATE OF HEARING : 22nd November 2012

DELIVERED : 23rd November 2012

[1] The Applicant appeared in person. The consequences became very clear quite early in argument.

[2] The Court had already decided that the wasted costs be awarded to the Respondents. This is primarily because the Court deprecated at Plaintiff's belated filing of notice of postponement on the 20th November, 2012. This left less than forty-eight hours from the date of hearing which was a day later, the 21st November, 2012. On any account the application for postponement was inconsiderate and embarrassing. Applicant must have known much earlier that such postponement would be necessary. The application before my sister Majara J testifies to this.

[3] On the other hand Mr Viljoen, for the Respondents insisted that costs should be on an attorney and client scale. They pointed out at the fact that before Majara J., the Applicant had conceded that there would be no issue of consolidation and that the only issue that remained was that of costs. So that, to the Respondents, it was surprising that the intended consolidation of the three(3) matters was a basis for postponement as the Applicant suggested in his notice of postponement.

[4] What is significant is that, as long ago as March, 2012, the Plaintiff had indicated that he would not proceed with consolidation. Notwithstanding that, the issue of consolidation was resuscitated as the proceedings before Majara J. testified. There is a lot of valid and credible criticism in Majara J's judgement against this attempt to consolidate. Incidentally this includes (in the application to consolidate) the present matter, to another matter in which different parties were involved and a matter in which pleadings were not closed. This was indeed most awkward and a sure recipe for confusion.

[5] I respond again to Mr. Viljoin's contention. Rather, what happened before Majara J. was that the Applicant's application for consolidation was attacked as irregular proceedings. Apparently this was what Majara J. had to decide on the 22nd November, 2012. I am however fortified that, bearing in mind the background of these proceedings, including that the Applicant had in the beginning of the year undertaken not to proceed with consolidation of these proceedings. Consequently

the whole thing, even speaking of the present proceedings alone, has become an extreme kind of abuse of court process and a serious undermining of the administration of justice. I noted that the Applicant is a layman.

[6] While I am reluctant to award costs on an attorney and client scale, I am prepared to make an order that the present proceedings will not proceed further before the Applicant pays the wasted costs of the postponement. In the meantime the matter remains postponed. Costs are awarded on the ordinary scale.

T. E. Monapathi
Judge

For Applicant : In person
For Respondents : Mr. Viljoen SC