

IN THE HIGH COURT OF LESOTHO

Held at Maseru

In the matter between:

BOKANG LELIMO

Applicant

And

THAABE LETSIE

1st Respondent

LIPHAMOLA CARETAKER (PTY) LTD

t/a Auto Service Station

2nd Respondent

MEI & MEI ATTORNEY

3rd Respondent

TAXING MASTER (MISS MOLEFI)

4th Respondent

DEPUTY SHERIFF (MISS LEKOATSA)

5th Respondent

ATTORNEY GENERAL

6th Respondent

S. PHAFANE CHAMBERS

7th Respondent

JUDGMENT

Coram	:	Hon. Mr Justice T. E. Monapathi
Date of Hearing	:	12 th September 2013
Date of Judgment	:	16 th September 2013

Summary

An application for rescission of judgement under Rule 27 or Rule 45 will be untenable where parties were present and argued. It is because it cannot have been a judgement by default and there cannot have been a mistake common to both parties nor could any requirement under the Rule 45 have been satisfied. In the instant matter the judgment could only have been appealable. The application failed.

[1] The Applicant approached court, in person, the tenth (10th) time for rescission of a judgement or in such applications. The judgment in issue was handed down on the 3rd September 2013 by this court where applicant has

applied for stay of execution. Several procedural points were raised by Mr Phafane. In none of this did Mr Lelimo offer any good defence.

[2] It is Applicant's case that the court erroneously upheld certain points of law which were alleged to be irregular. This included a query over a notice of intention to oppose which was handed in by Advocate Phafane KC. It was said to be irregular and fraudulent in that it was not properly served on the offices of the Applicant. That it was produced only during argument. And that furthermore it had fraudulently borne the signature of one Chuene a legal practitioner. Adv. Chuene was not made to deny his alleged signature.

[3] It is also Applicant's case that the said notice of intention to oppose produced was fraudulently served as his attorney of record who were in fact never served. It was a misrepresentation that such attorney or Applicant's offices were served. This matter was not pursued by the court. The court formed an impression that the Applicant was either naive or downright ignorant of the implication of his statement.

[4] Advocate Phafane KC argued further (quite correctly) that rescission cannot be granted in circumstances such as this, to be particular where the Applicant was present in court and made his submissions. Therefore **Rule 27** nor **Rule 45** should not apply.

[5] **Rule 45** gives the court powers to rescind an order where judgement is obtained erroneously in the absence of other party, or there is ambiguity and/or there is mistake common to all parties. In the circumstances of this case, the above entire incidents are not applicable in this case because Applicant was

present in court made submissions and judgement was later delivered against him in his presence.

[6] In terms of Rule 45, one may make an application to Court for rescission of judgement only where one was not present in court when the case was heard. In our case the Applicant was present in court and made his submissions and he conceded that he was present when the case was agued. This means Rule 45 is not applicable.

[7] In terms of **Rule 45** (4)

“ Nothing in this Rule shall affect the right of the Court to rescind any judgement on any ground on which a judgement may be rescinded at common law”.

As Applicant applies for rescission I do not find any where in his papers of and/or argument where he is alleging rescission of Judgement on the ground of common law. This makes the rule inapplicable.

[8] I find this application as only meant to delay execution of Judgment and thus leaves me with no option but to dismiss it with costs.

T. E. MONAPATHI
ACTING CHIEF JUSTICE

For Applicants : Mr. Lelimo
For Respondents : Adv. Phafane KC