CIV/APN/……2012
CIV/APN/123/2011

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

REVEREND DANIEL RANTLE	1st Applicant
STEPHEN MAPHEELLE	2nd Applicant

And

TRUSTEES OF THE ALL FOR AFRICA'S CHILDREN TODAY IN LESOTHO TRUST	1st Respondent
JILL KINSEY	2nd Respondent
CATHERINE TARA KINDSEY BAANEN	3rd Respondent
PIETER CORNELIS HENDRIK BAANEN	4th Respondent
GRANT STRUGNELL	5th Respondent
MARTHA MATHESELE MAKOAE	6th Respondent
LEBESELE LETSIE	7th Respondent
VERA LUCIA RAMOS	8th Respondent
FUSI LESAANE	9th Respondent
CHIEF MATEKETA	10th Respondent
THE COMMISSIONER OF POLICE	11th Respondent
THE ATTORNEY GENERAL	12th Respondent

JUDGEMENT IN APPLICATION FOR RESCISSION OF JUDGEMENT

Coram	:	Hon. Mr Justice T. E. Monapathi
Date of Hearing	:	21st June, 2012
Date of Judgment	:	26th November, 2014

SUMMARY

A court is entitled to except an Applicant for rescission to do more. Absence of bona fide defence and prospect of success is telling where the court was inclined to consider other factors favourablely. This case was not one of those.

ANNOTATIONS:

CITED CASES

Thamae and Another v Kotelo and Another LAC (2005-2006) page 283at page 290D-292B

Lesotho Bank v Expertype Secretarial Services (Pty) Ltd and Another C of A (CIV) No. 16 of 2007-2008 at page 279-284

Letsoela v Chief of Kolojane and Another LAC (1995-1999) page 281-290.

STATUTES

[1] In ***Thamae and Another v Kotelo and Another LAC (2005-2006)*** page 283at page 290D – page 292B the Court of Appeal set out the test to be applied in applications for rescission. The court said:

[2] In an application for rescission what the Applicant has to show is good cause in order to succeed. Essentially, the court will consider the following requirements. The Applicant must give a reasonable explanation of his default. The application must be bona fide. The Applicant must show that he has a *bona fide* defence to the Plaintiff's claim. Not one of these requirements is decisive. The Court is obliged to look at the total picture presented by all the facts and that,

generally speaking no one factor should be considered in isolation from all the others.

[3] It was submitted that the present application is typical of situation where the above considerations seem to fail and do not auqur for the Applicant. In addition that the issue of the absence of a *bona fide* defence was most telling of all.

[4] Other decisive judgments which deal with the application of the test in rescission applications are ***Liquidator*** of ***Lesotho Bank v Expertype Secretarial Services (Pty) Ltd and Another LAC (2007-2008)*** at page 279 – p284, ***Letsoela v Chief of Kolojane and Another LAC (1995-1999)*** page 281-p.290.

[5] The failure of the Applicant to appear before and to comply had been well demonstrated. The explanation for the Applicant's default on 7th May 2012 is that their counsel was ill-disposed on the day in question. In the founding affidavit the Applicants make vague allegation concerning this assertion of significance they say they were advised that their counsel was ill "and has rushed to Bloemfontein".

[6] After being criticised for this by the Respondents in the Respondents' answering affidavit, in the reply the Applicants go no further than to state that despite their best efforts, the best have been able to do is acquired a "sick note". This certificate they attach to their replying affidavit marked "DR1". There is no affidavit from their counsel concerned. In the end the explanation proffered remains vague and convincing as I found. Incidentally this issue of the absence of Applicants was discussed thoroughly before the court accepted that it would be safe to enter a judgement be default.

[7] Moreover as Applicants' Counsel (Adv. Masiphole) further submitted, the condition that purportedly rendered Applicants' counsel "ill-disposed" was flu. Normally this is not a condition which is sufficiently serious to cause one to be "rushed to Bloemfontein". Moreover, the counsel concerned did not seek medical attention in Bloemfontein as one would have accepted. Instead the medical

certificate, annexure "DR.!", suggests he was seen in Ladybrand. And he was only booked off for a day, from 7th May 2012 to 8th May 2012. I agreed that in the end the explanation for the Applicants' default is thoroughly unconvincing. Not much weight could be attached to it. It was however, a consideration that must be taken into account in evaluating the merits of this application. In my view this was palpably without veracity.

[8] Since the explanation for the Applicants' default is not as convincing I have found, this court cannot be persuaded that the application is made bona fide. Having regard to the fact that the Applicants did not have a *bona fide,* dated and having regard to the fact that the Applicants do not have a *bona fide* defence to the main application – as was be demonstrated by Respondents – a court is entitled to expect an Applicant who relies on the failure of his counsel to attend by reason of ill health to do more than the Applicants have done in this matter to explain their default.

[9] One would have expected far more compelling proof. At least there should have been an affidavit from Adv. Masiphole himself. In the absence of such convincing proof this court, as with the unconvincing explanation as dealt with above, the court was not been persuaded that this application is made *bona fide*. Neither would it be a neutral consideration. The court is left no doubt that the application was not *bona fide.*

[10] As correctly submitted the Appeal Court cases cited above make it clear that the court entertaining an application for rescission of default judgment must deal "with the Defendant's prospects of success" and a failure on the part of the court hearing the application to do so amounts to a misdirection vitiating the decision to grant or refuse rescission. The matter, ***Letsoela v Chief of Kolojane and Another*** cited above is of particular interest. In this matter, the Court of Appeal upheld the High Court's refusal to rescind its judgment by reason that the Appellant had no prospects of success in his action. It is submitted correctly that the same applies in this matter.

[11] With regard to prospect of success, I took into account what the Respondents deponent said in the main application:

> "I am the superintendent of the MCSA. For all intents andpurposes, the Methodist Church of Southern Africain Lesotho is entitled to have full control over the orphanage site at Semonkong Children's centre. I verily aver that we need not involve Applicants herein when we have to recruit employees at the children's center in the country. All what the Applicants were expected to do was to hand over to the first and second Respondents all the property belonging to the MCSA. All what we wanted from the Applicants was to have them vacated from the property of the MCSA."

The turning point was obviously that the MCSA was in count of the property not the Applicant's church.

[12] In addition to the heads of argument filed on 23rd August, 2011, the merits of the Applicant's defence to the main application have been carefully analysed before this court. In their main heads the Respondents show that Rev. Rantle and his co-Applicant do not have prospects of successfully defending the main application. It is for the reason shown above.

[13] As the court concluded in the end what is apparent from the facts is that the dispute is clear. Rantle and his followers are claiming to be Methodist Church of Southern Africa and they want control of its assets. There is no dispute that the property belongs to the MCSA. The only issue is-who exactly is (or represents) the MCSA. So the real (and only) dispute to be resolved is – who is the MCSA? If it is whom the Applicant say then Rantle and his followers are not the MCSA. Instead they are a break-away group. Alternatively if Rantle and his church are the true and lawful representatives of the MCSA then the site belongs to Rantle and his church, and Applicants have no basis for refusing to comply with Rantle's demands. The dispute therefore translates into this simple question – who are the true representatives of the MCSA? Rantle and the other Respondents, or Bishop Abrahams and Rev. Senkhane (who administer the MCSA and its churches).

[14] I agreed with respect that this being so, rescission of this court's confirmation of the Rule on 7th May 2012 would be pointless, a waste of court time and costs. In the premises, as I found the Respondents were entitled to that the application for rescission of default judgment be dismissed with costs.

I so ordered.

T. E. MONAPATHI
JUDGE

For Applicants : Adv. Masiphole
For Respondents : Adv. Shale