

CIV/APN/8/2009

IN THE HIGH COURT OF LESOTHO**HELD AT MASERU****In the matter between:**

THOORA MAFALA Applicant

And

MOKETE KAMOHELO Respondent

CIV/A/9/2009

KOETLISI Applicant

And

RATIA AND 2 OTHERS Respondents

JUDGEMENT

Coram: Hon. Acting Chief Justice T. E. Monapathi
Date of Hearing: 1st April 2014
Date of Judgment: 1st April 2014

SUMMARY

Cases which parties are not keen to promote will be dismissed for lack of prosecution. The present cases were cases in which the court had bent backwards to accommodate the parties to enable them to argue these appeals. Demonstrably, in a clear indication of their unwillingness to do so, the appeals were not heard. This was an extreme case and abuse of process of the highest order. It was also viewed as discourteous.

CITED CASES - None

STATUTES - None

BOOKS - None

[1] These two (2) cases on appeal to the High Court are from the District of Leribe.

[2] These cases have been before my court on the Roll Call on more than ten (10) occasions. On a few times they had been set down by either the Appellant (Care of T. Mahlakeng and Co.-Attorneys) or by Adv. E. M. Teele KC on the other hand. On no occasion had the parties been prepared to proceed and have their Heads of Argument made.

[3] Originally the parties had complained about non availability of the record of proceedings from the Magistrate Court. Each party contended that he had put in effort to resolve this problem without success.

[4] On one of the occasions both parties were persuaded that the arguing of the appeal was not strictly dependent on the availability of the record. On perhaps if they filed Heads of Argument it would be revealed that there was no necessity of putting forward the record of proceedings because decisive points of law would be argued. Counsel agreed. This was never to be.

[5] Throughout or during the above incidents or in between those the appeal was dismissed for lack of prosecution on two /three occasions. After each occasion Counsel approached the court to have the appeal revived. This court agreed most reluctantly. They were revived by order of court.

[6] On the last occasion, after the last revival, the matter was placed on Roll Call strictly on the understanding that in the meantime Heads of Argument would be filed ready for argument. Again this was never to be. Indeed it was in vain.

[7] Today is yet another occasion when there is no appearance for either parties, no Heads of Argument are filed and no excuses have been put forward for this lack of prosecution. Sadly, I had to dismiss the appeals for this lack of prosecution. I was, again, forced into that decision.

[8] The above history is unusual, strange and incomparable for absence of courtesy and disrespect to the court. We hope it will not recur, outrageous and discourteous as it is. If it is not shameful, I do not know what it is. The real question would be what have Counsel gained in this kind of behaviour?

[9] I repeat that I have dismissed the appeals for what has been a demonstrable lack of prosecution.

T. E. MONAPATHI
ACTING CHIEF JUSTICE

For Applicant : Adv. Teele KC
For Respondents : Mr Mahlakeng