

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:-

MOLEBOHENG RAMOREBOLI

CIV/APN/322/2005

CIV/T/177/1999

APPLICANT

AND

**TS'OTLEHO MPHOU
THE SHERIFF OR HIS LAWFUL DEPUTY
MASTER OF HIGH COURT
COMMISSIONER OF LANDS
REGISTRAR OF DEEDS
ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT**

JUDGMENT

**Coram : Hon. Mahase J.
Date of hearing : Various dates
Date of Judgment : 16th March 2015**

Summary

Civil Procedure – Default Judgment granted – Application

ANNOTATIONS

CITED CASES:

- **Hamilton v. Van Zyl 1983 (4) S.A. 379 (E) at page 393 to 384**
- **Farmers' Co-op. Society (I.G) 1912 A.D. 343 to 350**
- **Papashane v. Papashane, CIV/APN/251/82 per Mr. Justice M.P. Mofokeng**
- **Mothuntsane and Others v. Selomo and Another C. of. A. (CIV) No.**

STATUTES:

- **High Court Rules, Legal Notice No. 9 of 1980**

BOOKS

- **Contract – General Principles; Van der Merwe and Others from page 380 and 235**
- **Law of Contract – R.H. Christie pages 59 and 507**
- **The Principle of the Law of Contract, A.J Kerr page 98**

- [1] This matter has come about as a result of the initial trial between the applicant and the first respondent which arose sometime in 1999 in CIV/T/177/99. The applicant has failed to provide reasons why she only had the matter attended to until this write of attachment was issued and served, some three years since default judgment was granted.
- [2] This is an application for rescission of a judgment of this Court entered by default against the applicant on the 23rd February 2004, in CIV/T/177/1999. The said default judgment was payment to first respondent by the applicant of the sum of M41,750.99.
- [3] In other words this matter has been before the courts of law since around the year 1999. The applicant who took no steps to inquire about progress in the matter cannot be heard to blame her lawyers after three years since case was launched against her.
- [4] Default judgment having been granted against the applicant, she successfully later applied for the rescission of same. They then entered into an agreement as to how applicant was to pay the said sum of money to the first respondent. She paid an amount of M30,000.00 and the balance was M11,750.79.

- [5] Once again parties negotiated for part payment of the said balance by applicant by monthly instalments of M1,500.00. Refer to annexure A, B, C, D, E and F of the respondent's opposing affidavit. To this end, it is not clear why she says this application is urgent.
- [6] It is apparent from the papers filed of record that the applicant defaulted on the said monthly payment of M1,500.00. Once again parties engaged with each other through letters to wit see annexures C, D, E, and F but to no avail as the applicant never honoured her part of the agreement.
- [7] Applicant having failed to liquidate that sum of M11,750.79 in the agreed monthly instalments of M1,500.00 did not respond to further and last correspondence from the first respondent's attorneys dated the 19th October 2001.
- [8] This attitude of the applicant left the first respondent no choice but for him to issue a writ of attachment against the applicant's immovable property for realization therefrom by public auction the outstanding sum of M11,738.79 together with interest at the rate of 18.5% per annum from the 23rd March, 2004 etc.
- [9] Once again, it is only when the applicant was served with a writ of attachment that she runs back to court to ask the court for rescission of judgment on the grounds that the High Court has no jurisdiction to have entertained and dealt with the first respondents writ of

attachment as due to the monetary amount claimed, it is only the Magistrates' Court which should have dealt with the matter.

[10] With the greatest respect, it is clear that there was the initial main claim of M41,750.79 as alluded to above which had been filed against the applicant by the first respondent.

[11] The judgment was granted by default against the applicant for her to pay that said sum of money in CIV/T/177/1999. This is a matter of common cause. That ultimately, entered into an agreement to the effect that the agreement to the effect that the applicant will pay to first respondent or his attorneys the outstanding sum of M11,738.79 by instalments of M1,500.00 monthly. This was after the applicant had paid to first respondent the sum of M30,000.00.

[12] I note, that originally, the matter was properly filed and prosecuted in the High Court which has jurisdiction to entertain it.

[13] When after the parties had agreed and negotiated that the balance be paid monthly as indicated above, the matter was not removed from the High Court. The jurisdiction of this court to deal with the matter was not altered, or changed by the fact that a balance of a lesser amount to M41,750.99 remained to be fully paid to the first respondent.

[14] The understanding of this Court is that the settlement proposal which was agreed upon by the parties herein centered around and was in respect of the outstanding amount of M11,738.79, which amount

remained outstanding after the sum of M30,000.00 out of M41,750.99 was paid. Surely this did not constitute a completely different cause of action such that the first respondent would have to go back to the Magistrates' Court to issue fresh summons against the applicant for her to pay same. That outstanding balance did not give rise to a new or fresh cause of action such that it could be dealt with in terms of the provisions of the section 6 of the High Court Act No 34 of 1978.

[15] Presuppose a fresh/new cause of action which predominantly and inherently and ordinarily falls squarely with the jurisdiction of the subordinate/Magistrates' Court; but which for certain reasons to be specified and or be justly explained may persuade the High Court Judge to have the matter removed from the Magistrates' Court to the High Court.

[16] The context in which the applicant has interpreted the said provisions of this Section in the circumstances of this case is misplaced. (This I say with the greatest respect).

[17] It is a matter of common cause that the first respondent accepted the offer proposed by the applicant as evidenced by correspondence referred to above in good faith and only after a substantial amount of the initial sum of money owed to him by the applicant had been paid.

[18] As a principle of the law, this settlement or compromise is an agreement whereby the parties have agreed to settle a dispute which

may or may not involve litigation and they have settled and agreed to have regulated their relations in a particular way.

[19] Put conversely substantially a compromise extinguishes any cause of action that may previously have existed between parties. On this basis and because a compromise does not depend on the original cause of action, a party is not entitled to go behind the agreement and raise defences to the original cause of action.

[20] Although reference and reliance is being frequently made by the applicant to proceedings in CIV/T/177/1999, the applicant has not annexed any copy of the said proceedings to her founding affidavit in support of this application.

[21] As a result this Court is not in a position to say whether or not what she alleges as having occurred in the said proceedings did in fact occur. In other words, some of her allegations in this application are not substantiated. For instance there is no notice of withdrawal filed by her former attorneys which she complains she was never notified about. There is also no documentary proof of the fact that her current attorneys of record were in fact formally substituted as such in terms of the provisions of Rule 15 of the Rules of this Court.

[22] Be that as it may, what is clear from the parties written submissions and their affidavits is that a default judgment was once granted against the applicant and was later rescinded so as to allow the plaintiff to defend herself. However, parties subsequently negotiated a settlement

and or a compromise which resulted from the parties correspondence as evidenced in annexures “A”, “B”, “C”, “D”, and “E” annexed to the opposing affidavit.

[23] The applicant has not challenged nor denied the existence of same nor has she offered any different explanation how those came about to be made on her behalf by her attorney or record, Adv. K.K. Mohau K.C. of Messrs G.G. Nthethe & Co.

[24] The applicant has not made any mention in her founding affidavit of the settlement which came about as a result of their negotiations. She only says that the negotiations fell through without elaborating what these negotiations were in respect of what. This the applicant should have done in the light of the contents of the correspondent between her attorneys and those of the first respondent.

[25] It has been made very clear in annexure “A” that the current amount outstanding including interest is M11,750.79. Reference is also made in this annexure to earlier correspondence to the first respondent’s letter in which the applicant’s counsel had earlier allegedly acknowledged the above.

[26] Surprisingly, nowhere in their letter dated the 20th August 2001 does applicant through her attorneys deny the above. Indeed, this has not been denied nor challenged in her replying affidavit. What the applicant does is to argue procedural impropriety about the fact that the first respondent has had his summons amended and revised his

claim downwards amended and revised his claim downwards to M11,738.79 and so on. This has never been the correct position nor was this ever the view of the first respondent.

[27] Deliberately, the applicant makes mention of the default judgment which was granted on the 23rd February 2004 without disclosing the full citation of the case in question, nor has she annexed a copy of that judgment to her papers so as to enable this Court to say what the full amount for which the default judgment entered against her was. This being motion proceedings, such a disclosure should have been made.

[28] As has already been alluded to above, the contents of annexures “A” up to “F” to the first respondent’s opposing affidavit and to the rest of their said affidavit, what the applicant alleges and submits in her founding and replying affidavit as well as in her written submissions is not tenable in law, nor is it supported by any documentary proof.

[29] In the premises, the applicant’s application should be, and is accordingly dismissed with costs to the first respondent. The other respondents have not indicated any opposition to the application since they did not file any prayers. Safely, it can be assumed that they will abide by the judgment of this Court.

M. Mahase

Judge

For Applicant: Adv. K.K. Mohau K.C

For First Respondent: Mr. J.J. Grundlingh

For Respondents

No. 2 up to 5: No Appearance