

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/T/810/19

In the matter between

**RETHABILE MOALOSI O.B.O
TEBOHO MOALOSI**

PLAINTIFF

AND

**MEDICAL SUPERINTENDENT
MACHABENG HOSPITAL**

1ST DEFENDANT

**PRINCIPAL SECTARY MINISTRY
OF HEALTH**

2ND DEFENDANT

ATTORNEY GENERAL

3RD DEFENDANT

Neutral Citation: Rethabile Moalosi O.B.O Teboho Moalosi v Medical Superintendent Machabeng Hospital & 2 Others (CIV/T/810/19) [2021] LSHC 112 (11 NOVEMBER 2021)

JUDGMENT

CORAM:

MOKHESI J

DATE OF HEARING:

25 AUGUST 2021

DATE OF JUDGMENT:

11 NOVEMBER 2021

SUMMARY

Civil Practice and Procedure: *The Plaintiff applying to have the defendant's plea filed more than a year late, without applying for upliftment of the bar, to be set aside as an irregular step- Held, the such a late filing of plea constitutes an irregular step and is accordingly set aside.*

ANNOTATIONS:

Legislation:

High Court Rules 1980

[1] **Introduction**

This is an application in terms of Rule 30 (1) of the High Court Rules 1980, that late filing by the defendant of their plea be set aside as an irregular step.

[2] **Factual Background**

On the 30 October 2019, the plaintiff issued summons against the defendants claiming damages on account of medical negligence occasioned to his son by the 1st defendant. The defendants did file their notice of appearance to defend the action, however, they did not file their plea as required by the Rules within 21 days. The plaintiff served upon them a notice to file plea, requiring them to file said plea within 3 days. This, the defendants did not heed as the 3 days lapsed without the plea being filed. In terms of the Rules, the defendants were automatically barred from filing their plea. After the time for filing had lapsed, the defendant's counsel issued correspondence to the plaintiff's counsel requesting that they enter into negotiations with the aim of settling the matter out-of-court. Mediation efforts did not succeed, as the defendants failed to turn up on every scheduled date. On the 12 May 2021, a year after they were requested to file their plea, filed their plea. It is this late filing of plea which prompted the plaintiff to launch the present application.

[3] This application is governed by the provisions of Rules 26 and 30 of the High Court Rules 1980.

Rule 26 provides that:

“26. (1) Any party who fails to deliver a replication or subsequent pleading within the time stated in Rule 24 shall be automatically barred.

(2) If any party fails to deliver any pleading, save as is stated in sub-rule (1), within the time laid down in these rules or within any extended time allowed in terms thereof allowed by agreement between the parties, any other party may by notice served upon the party in default, require him to deliver such pleading within three-days after the day the notice served upon him.

(3) Any party failing to deliver the pleadings referred to in the notice within the time required, or within such furthering period as may be agreed upon between the parties, shall be automatically barred from delivering such pleading.

(4)

(5)

(6) If there has a barring of any party from delivering a pleading in terms of sub-rule (3) herein, the court may upon application by such party on notice given to all other parties remove such bar and allow the party applicant to deliver such pleading within the time fixed by the order

(7)”

In Terms of this Rule, when the defendants filed their plea more than a year later without applying for upliftment of bar, they were in the wrong. They were automatically barred from filing such a plea. Faced with this scenario, the plaintiff was entitled to proceed in terms of Rule 30 to have the pleading set aside as irregular.

[4] Rule 30 provides that:

“30. (1) Where a party to any cause takes an irregular or improper proceedings or improper step any other party to such cause may within fourteen days of the taking of such step or proceeding apply to court to have it set aside:

Provided that no party who has taken any further step in the cause with knowledge of the irregularity or impropriety shall be entitled to make such application.

(2) Application in terms of sub-rule (1) shall be on notice to all parties in the cause specifying particulars of the irregularity or impropriety involved.

(3) If at the hearing of such application the court is of the opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part either as against all the parties or as against some of them, and grant leave to amend or make any such order as it deems fit, including any order as to costs.

(4)

(5)”

[5] Clearly when the defendants filed their plea after being automatically barred and without applying for upliftment of bar in terms of Rule 26(6) of the Rules of this court, this constituted an irregular step, and stands to be set aside.

[6] In the result:

a) The application succeeds in the following terms: -

- (i) The defendants' plea served upon the Plaintiff's attorneys on the 12th day of May 2021 is set aside as an improper step.
- (ii) That the pleadings are declared closed.
- (iii) The applicant is awarded the costs of suit.

MOKHESI J

For the Applicant: **ADV. MOKONE instructed by K. D. Mabulu
Attorneys**

For the Defendants: **No appearance**