

IN THE HIGH COURT OF LESOTHO

Held at Maseru

CIV/T/594/2013

In the matter between:

LEHLOHONOLO MASIENYANE

1ST APPLICANT

‘MAKABELO MASIENYANE

2ND APPLICANT

And

MALOTI MOUNTAIN BREWERY

1ST DEFENDANT

TEBOHO SOSA TSEPANE

2ND DEFENDANT

Neutral Citation: Masienyane and Another v. Maluti Mountain Brewery and Others [2021] LSHC 5 Civ (15 February 2021)

CORAM: S.P. SAKOANE J.

HEARD: 25 SEPTEMBER 2020

DELIVERED: 15 FEBRUARY 2021

SUMMARY

Civil procedure – application to set aside an irregular step or proceedings – service of notice to amend summons – defendant failing to object before expiry of 14 days – whether computation of the period for objection includes weekends – High Court Rules 1, 4(4), 30 and 33.

ANNOTATIONS

STATUTE:

High Court Rules No.9 of 1980

RULING

I. INTRODUCTION

[1] This is an interlocutory application brought in terms of Rule 33 of the **High Court Rules, 1980** to amend summons and pleadings. The plaintiffs filed a notice to amend together with the proposed amendment in Court before the lapse of the fourteen days within which the defendants were entitled to consider demurring or objecting.

[2] The defendants object to the application as an irregular step or proceeding and apply that it be set aside in terms of Rule 30.

Relief

[3] On 13 February, the defendants' attorney filed a Rule 30 application to set aside the filing of the proposed amendments as an irregular step or proceeding. The relief sought is couched in this language:

- “1. Setting aside the plaintiff’s Amended Summons dated 7th February 2018 which was served by the Plaintiff on the First Defendant on 7th February, 2018 as being an irregular step or proceeding;
2. Awarding costs of this application to the First Defendant;
3. Granting such further and/or alternative relief to the First Defendant as the Honourable Court deems fit.”

II. DISCUSSION

The facts

[4] The plaintiffs’ notice to amend together with the proposed amendments were served on the 1st defendant’s attorneys on 23 January 2018 and filed in Court on 24 January.

[5] The 1st defendant’s Rule 30 application to set aside the plaintiff’s notice of amendments was filed in Court on 13 February and served on the plaintiff’s attorneys the same day.

[6] The query raised by the 1st defendant is couched in the following terms:

“In terms of Rule 33 (2) the First Defendant had 14 (FOURTEEN) days from the date of the delivery of the Plaintiffs’ Notice of Intention to Amend, which was delivered on the 23 January, 2018 to object to the proposed amendment of the Plaintiff’s Summons and Declaration. The Plaintiffs’ Amended Summons and Declaration were delivered on the 7th February 2018, before the time allowed to the First Defendant to serve and file its Notice of Objection had expired.”

- [7] What emerges from the terms of the 1st defendant's objection is that it is conceded that it received the plaintiff's notice of intention to amend on 23 January. The amended summons and declaration were delivered to it on 7 February. The issue is whether the filing in Court was done in non-observance of the 14 days for the 1st defendant to consider raising any objection.
- [8] Computation of the 14 days must start from the day the notice of intention to amend was delivered. The 1st defendant's right to object to the proposed amendments must be exercised positively or negatively within those 14 days. Failure to raise an objection in writing within 14 days of the delivery of the notice to amend yields a deemed agreement to amend: Vide Rule 33 (3).
- [9] Following the deemed agreement to amend, the plaintiff would be within their rights to file the amendment in court within seven days after the expiry of the fourteen days: Vide Rule 33 (5).
- [10] Miss *Lephatsa* for the plaintiffs, submitted that the 1st defendant's attorneys were served with the notice to amend before same had been filed in court. The fourteen days period commenced on 23 January and expired on 5 February. This computation of days is inclusive of

Saturdays and Sundays. Miss *Taka* for the 1st defendant, counters by submitting that the calculation of the fourteen days her client was entitled to consider objecting does not include Saturdays and Sundays because such days are not court days as defined under Rule 1 of the **High Court Rules**.

[11] With this consideration in mind, she submitted further that the fourteen days expired on 9 February. For this reason, delivery of the amended summons on 7 February was before the expiry of the fourteen days and therefore irregular.

Service of process

[12] Rule 4 (4) provides days on which summons and notice of proceedings may be served as follows:

“No service of any civil summons, process, or notice or any proceeding in any civil action, other than the issue or execution of a warrant of arrest, shall be effected on a Sunday unless the court or judge directs such service.”

[13] This sub-rule answers the question on what days a notice of proceedings or summons can be served. It must be read with Rule 1 which provides for computation of court days in the following manner:

“‘days’ shall mean court days except that in the computation of time expressed in days prescribed by these rules and fixed by any order of court, Saturdays shall be included except those Saturdays which are public holidays. Provided that when the last day of the number of days

prescribed is a non-court day or Saturday the time shall end on the next court day following.”

[14] Thus, Saturdays are included in the computation of the fourteen days’ notice period for a party to respond negatively to a notice to amend.

[15] Therefore, in computing the fourteen days’ notice period, it is only public holidays and Sundays which are excluded. These Sundays are of 28 January and 4 February. This means that the fourteen days to be reckoned with ended on 6 February. Delivery of the amended summons on 7 February was then after the expiry of the fourteen days’ notice given on 23 January.

III. CONCLUSION

[16] By failing to raise an objection on or before 6 February, the 1st defendant is deemed to have agreed to the amendment according to Rule 33 (3). It follows that its objection is without merit.

Order

[17] In the result, the following order is made:

1. The objection is dismissed with costs.

S.P. SAKOANE
JUDGE

For the Plaintiffs: L.M.A Lephatsa

For the 1st Respondent: M. Taka