

**IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)**

HELD AT MASERU

CCT/0241/22

In the matter between –

MASERU ENTERTAINMENT COMPANY

APPLICANT

And

TITAN LENS PHOTOGRAPHY

RESPONDENT

**Neutral Citation: Maseru Entertainment Company v Titan Lens
Photography [2022] LSHC 179 Comm. (28 July 2022)**

CORAM: M. S. KOPO, J

HEARD: 27TH JULY 2022

RULING: 28TH JULY 2022

SUMMARY

Procedure – Rule 30 (1)- Is filing a plea after filing an application under it taking further step? - Urgency - what constitute

ANNOTATION

Books

Herbstein & Van Winsen. The Civil Practice of the High Courts of South Africa. 2009.

Cases

Jowell v Bramwell-Junes 1998 (1) SA 836

Killaney of Durban (PTY) LTD v Lomax 1940 NPD

Pettersen v Burnside 1961 (4) SA 93

Statutes

High Court Rules No. 9 of 1980

RULING

Introduction

[1] In brief, Respondent (Plaintiff in the main) in this matter launched summons in **CCT/0241/2022** against the present Applicant (Defendant in the main). For the sake of clarity, that matter will be referred to as the main action.

[2] Before Applicant could file a plea in the main action, it launched a Notice of Motion among others seeking to set aside as irregular the said summons in the main action. That Application will be referred to as the Rule 30 Application.

[3] Before the Rule 30 application could be argued Respondent then filed a Notice to file Plea in the main matter. Upon receipt of the said Notice to file Plea, Applicant then launched the present Application on an urgent basis. This application will therefore be referred to as the Urgent Application.

[4] In the Urgent Application, applicant moves this court for an order in the following terms

- a. Dispensing with the ordinary and other rules pertaining to modes and periods of service on account of urgency.
- b. Notice to file plea be stayed pending finalisation of this application.
- c. A Rule be issued returnable on a date and time to be determined by this court calling up Respondent to show cause, if any, why the proceedings in the main action cannot be stayed pending the outcome of the Rule 30 Application

d. The first two prayers to operate with immediate effect as an interim order.

[5] Respondent has opposed the Urgent Application on the following grounds

e. Lack of urgency

f. Abuse of court process

[6] On the 22nd day of July, the matter was before court and the court then directed both counsel to appear on the 25th and argue the urgency of the matter and whether there is any law preventing a party from filing a plea while such a party has challenged a pleading or procedure as irregular.

ANALYSIS OF THE LAW AND FACTS

[7] Rule 30 does not seem to have words similar to the ones used in Rule 29. Rule 29 has the following proviso;

Whenever an exception is taken to a pleading or whenever an application to strike out is made, no plea, replication or other pleading will be compulsory but may be delivered¹.

[8] Should Rule 30 be treated in the same manner as Rule 29 on the basis of the above proviso? This is important because, if that is the case, then the Respondent should not have issued a Notice to file Plea and as a result there would be no need for this application.

¹ Rule 29 (6) of the High Court Rules No. 9 of 1980

[9] On the contrary, Rule 30 has the following proviso;

Where a party to any cause takes an irregular or improper proceeding or improper step any party to such cause may within fourteen days of taking of such step proceeding apply to court to have it set aside:

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

[10] On the reading of these two provisions, it looks like the legislature intended for them to be treated differently. It is obvious therefore that if Applicant would take a further step, he would be precluded from advancing his application under this rule. A further step has been described as:

...one which advances the proceedings one stage nearer completion and which, objectively viewed, manifests an intention to pursue the cause despite the irregularity...²

[11] It becomes clear therefore that, was Applicant to file a plea, he would lose his right under the Application under rule 30. Mr. Leisanyane argued that Applicant was not precluded from filing a plea even if it challenges the summons as irregular. The above case and others³, seem to be against his argument.

² Jowell v Bramwell-Junes 1998 (1) SA 836

³ Pettersen v Burnside 1940 NPD, Killaney of Durban (PTY) LTD v Lomax 1961 (4) SA 93

[12] As Respondent filed a Notice to file Plea, I believe that Respondent was left with no option but to move urgently to seek an order that the Notice to file Plea be stayed. It is true that Mr. Leisanyane argued that Applicant should have applied for stay of the proceedings in the Application under Rule 30. However, I believe there was no need to do that under the circumstances in which the law is clear that no further step needed to be taken.

[13] The parties herein argued on the basis of the interim orders only. During arguments, I asked both counsel if, in the event that I find for the Applicant, would it still be necessary to grant only a rule and have the final relief be argued later. Advocate Leisanyane argued that there would still be need to come and argue if the Main action need to be stayed pending the outcome of the Application under Rule 30. However, on the day of the reading of the judgment Mr. Leisanyane conceded that he has presented his argument entirely.

[14] In conclusion therefore:

- g. the matter is indeed urgent;
- h. Order dispensing with the ordinary rules of court pertaining to modes and period of service on account of such urgency is granted;
- i. Notice to file plea is stayed pending finalisation of this application
- j. Both the above orders to operate with immediate effect; and
- k. *Rule Nisi* is granted returnable on 09th day of August 2022

M.S. KOPO J

Judge of the High Court

For Applicant: Adv. T. Potsane

For Respondent: Adv. L. Leisanyane