



Swaziland until a full bench of this court holds that the Government has purged its contempt. "

2.1. The court order is still in force and has not been reversed or set aside.

2.2. In breach of the aforesaid court order the Swaziland Government has sought to institute proceedings against the defendant wherein the government is the plaintiff. "

What I have before me therefore is an application in terms of rule 30 of the rules of this court. The rule requires that such an application be made within fourteen days after becoming aware of the irregular step. Without expressing any opinion on whether the issuing and service of summons (in other words, the institution of proceedings against

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the defendant) amounts to an irregularity or not, it appears to me that the application must fail because of two reasons. The fourteen days from the date the defendant became aware of the alleged irregular step expired on 7th November, 2003. The date upon which the defendant is to be taken to have become aware of the alleged irregular step has to be the date upon which the summons were served on the defendant, namely, 20th October, 2003. The application filed on behalf of the defendant purportedly in terms of rule 30 does not therefore comply with the requirements of rule 30 (1) which provides as follows;

"A party to a cause in which an irregular step or proceeding has been taken by any other party may, within fourteen days after becoming aware of the irregularity, apply to court to set aside the step or proceedings." My emphasis.

It is clear therefore that the application has been made way outside the fourteen days prescribed by the rule, from the date of the alleged irregularity.

Secondly, it is also trite in relation to such applications that when the irregularity is established the court has a discretion whether or not to grant the application and the court will generally not be inclined to grant the order if no substantial prejudice is shown to be occasioned to the applicant.' In this regard I need simply to refer to HERBSTEIN AND VAN WINSEN, THE CIVIL PRACTICE OF THE SUPREME COURT OF SOUTH AFRICA, 4th edition at page 560 wherein the principle is formulated as follows:

"It is clear that the court has a discretion whether or not to grant the application even if the irregularity is established. The attitude generally by the court is that it is entitled to overlook, in proper cases, any irregularity in procedure which does not work substantial prejudice to the other side. In fact, it has been held that prejudice is a prerequisite to success in an application in terms of rule 30. As was said by Schreiner J.A in TRANS-AFRICAN INSURANCE CO. LTD V. MALULEKA, 'technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditions and, if possible, inexpensive decision of cases on their merits.' The application may be dismissed with costs if no prejudice was caused by the irregularity. "

No prejudice has been shown at all which might be occasioned to the defendant as a result of the alleged irregular step taken by the Plaintiff's. Indeed it seems to me that it is not possible that any prejudice would be occasioned at all to the present defendant because of what the plaintiff's have done or failed to do in relation to a completely

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unrelated matter. In fact it may well be that Plaintiffs' counsel is right in his submission that the provisions of rule 30 have no application to the situation which appears to bother the defendant. The rule 30 application is in my view misconceived and is dismissed with costs.

ALEX S. SHABANGU

ACTING JUDGE