

IN THE COURT OF APPEAL OF BOTSWANA
HELD AT LOBATSE

Court of Appeal Civil Appeal No. 22 of 2004
(High Court Miscellaneous Application No. 421 of 2004)

In the matter between:

BOTSWANA BUS OPERATORS & FOUR OTHERS Appellant

Versus

ATTORNEY GENERAL Respondent

Mr. M. W. Makuyana for the Appellant
Mr. M. Modisenyane for the Respondent

J U D G M E N T

CORAM: P. H. TEBBUTT, J.P.
LORD R. I. SUTHERLAND, J.A.
N. J. McNALLY, J.A.

TEBBUTT, J.P.:

This appeal was enrolled in the present session, that is the January 2005 session, of this Court. Secondly, the date of hearing of the appeal was notified to both parties as being today, the 19th January 2005. Heads of Argument were filed by the appellant, but no Heads of Argument were forthcoming from the respondent. Yesterday, that is in the afternoon of 18th January, counsel for the Attorney General, Mr. Modisenyane, informed the court that the Attorney General was not in a position to proceed with the appeal today in the light of the fact that he had not had sufficient time to properly prepare his argument in order to have the

matter adequately argued before the Court today. He asked that the matter be postponed to the next session of the Court. He apologised to the Court for such inconvenience as this delay may have caused.

One of the other features of this matter that I must stress is that security for costs was only going to be paid today before the hearing of the appeal. The Court has been told from the bar by counsel this morning, that security, or a large proportion of that security was, in fact, paid yesterday.

This morning Mr. Modisenyane has again expressed his regret to this court for what he quite rightly described as a discourtesy to the court in regard to this matter. It is, in fact, a discourtesy and the Court must express its disapproval of the attitude of the Attorney General. This Court has said time and again - and I had occasion to repeat it once more at the opening of this session of this Court - that Heads of Argument are constantly filed out of time by practitioners in this jurisdiction. It puts the Court at a huge disadvantage and tremendous inconvenience. Work is allocated to the members of the Court who are to hear cases and those members of the Court are required to, and do, study those cases in depth and undertake all such research as is necessary to allow them to be on top of the case when the case is heard before them. By coming at the last moment and asking for a

postponement or asking for other indulgences because of the late filing of Heads of Argument not only inconveniences the Court considerably, but is, as I have already said, a discourtesy to the Court. I am constrained to make another further comment and this is something I will take^{up} with the ^{the} Attorney General. It is that unfortunately, Attorney General's staff are among the worst offenders in this regard. Heads of argument, particularly in civil matters, are regularly filed not only out of time, but often only a day or two before the appeal is heard.

I must also comment that the Rules of Court provide that security for costs has to be paid by a certain date. The Registrar should not accept matters where security for costs has not been paid timeously, but it has become a practice in this Court for security of costs frequently to be paid out of time and the Court allows practitioners and litigants the indulgence of having their appeals heard despite the late payment of such security. This too, is something that I will take up with the Registrar.

I think the time is now ripe when the Rules of this Court have got to be observed. I have experienced, over almost 11 years in this Court that the Court is treated - I will not go as far as saying with contempt, but certainly with complete disregard for its convenience. Rules are disobeyed constantly and it is then almost automatically expected that

this Court will condone it. This has got to stop and I shall take the necessary steps to ensure that this is so.

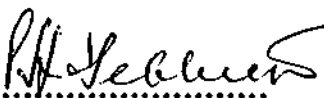
Reverting to this appeal, the parties have agreed that this matter should be postponed to the next session, that is the July session of this Court. This Court will agree to that course, but I wish to stress that this is the last postponement that this Court will allow in this appeal. The matter must come on at the next session.

Secondly, I wish to have it recorded that Counsel for the Respondent, the Attorney General, must file the Attorney General's Heads of Argument by no later than Friday, the 3rd June 2005 and although the appellant has filed full Heads of Argument so far, should counsel for the appellant wish to add anything to these heads, whatever further submissions he would wish to make must be filed in this Court by no later than Friday the 23rd June 2005.

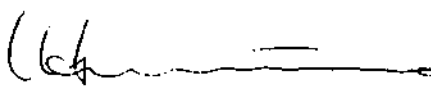
The Attorney General has tendered to pay the wasted costs of today and he is ordered to do so. These costs must be paid before this matter can come on in July 2005.

It is also recorded that the payment of Value Added Tax by the members of First Respondent will, by agreement, be suspended between this time and the outcome of this appeal in July 2005.

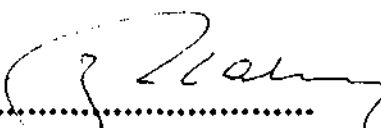
**DELIVERED IN OPEN COURT AT THE COURT OF APPEAL, LOBATSE
THIS 19th day of JANUARY 2005.**


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**P. H. TEBBUTT
JUDGE PRESIDENT**

I agree,


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**LORD R. I. SUTHERLAND
JUDGE OF APPEAL**

I agree


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**N. J. McNALLY
JUDGE OF APPEAL**