

BETWEEN: 1. LAUCALA POHIVA
2. MATENI TAPUELUELU
3. NUSIPEPA KELE'A

- Appellants

AND : WILLIAM CLIVE EDWARDS

- Respondent

S. 'Etika for the Appellants

W. Edwards for the Respondent

DECISION

[1] This is an application by the Appellants to set aside my judgment dated 5 June 2012. There is also an application to stay execution of the Magistrate's Court judgment which was the subject of the appeal.

[2] The following affidavits were filed:

- (a) First Appellant, 27 June 2012 ;
- (b) Second Appellant, 27 June 2012 ;
- (c) Respondent, 25 July 2012.

[3] As appears from the affidavits, the principal ground advanced by the Appellants in support of their application is that their former legal adviser failed to prosecute their appeal with due diligence.

[4] At the hearing of this application Mr 'Etika explained that he had only just received instructions from the Appellants. Having examined the papers he found them to be "in a mess". He urged the Court to set aside the judgment submitting that his clients should not be prejudiced by their former legal adviser's shortcomings.

[5] In answer Mr Edwards focused on the fact that even at this late stage the Appellants had not been able to place any arguable or particularised grounds of appeal before the Court. The Respondent's position was being adversely affected by a vague and unsupported allegation that the Magistrates' Court had erred.

[6] In my view the Appellants face two difficulties. The first is that the judgment of 5 June was delivered after hearing counsel for both the Appellants and the Respondent. It was in other words, not entered ex parte. Since it was a judgment entered after a hearing inter partes the Supreme Court has no jurisdiction to set it aside. Any appeal against the judgment must be filed in the Court of Appeal.

[7] The second difficulty is that, in civil matters at least "in general a party cannot disclaim responsibility for the acts of a Solicitor appointed to act for him" (see *MBf Bank Ltd v Mangisi* [2005] To. L.R. 396.

[8] I am not satisfied that the Appellants have shown that the Supreme Court has jurisdiction to set aside the judgment of 5 June 2012 or that there is merit in the application. It is accordingly dismissed.

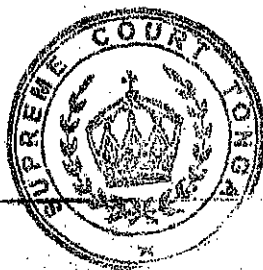
[9] On 8 June when delivering the judgment I also awarded the Respondent \$700 costs to be paid with 14 days. Whether or not these costs have been paid, I do not know.

[10] The Magistrates' Court awarded the Respondent \$10,000 damages on 17 June 2011. It was when the Respondent attempted to enforce that judgment that the appeal was lodged (see affidavit of the Respondent dated 9 February 2012). Under the provisions of Section 76 of the Magistrates' Courts Act the filing of an appeal operates to stay enforcement of the judgment appealed against. Now that the appeal has been dismissed and an application to set aside that dismissal has also been dismissed I find there is no arguable ground for staying execution of the Magistrates' Court judgment any further. The application for a stay of the judgment of the Magistrates' Court is accordingly also dismissed.

Result

- [11] (1) The application to set aside my judgment of 5 June is dismissed.
- (2) The application further to stay execution of the judgment of the Magistrates' Court entered on 17 June 2011 is also dismissed.
- (3) I will hear counsel as to costs.

DATED: 3 August 2012.




M.D. Scott
CHIEF JUSTICE