

IN THE HIGH COURT OF LESOTHO

In the Application of

NANDY KHALI

Applicant

v

EDWARD MOEKETSI KHALI

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice Mr Justice
T S. Cotran on the 25th day of June 1984

This is an application in which the applicant Mrs. Nandy Khali
(nee Phatela) seeks -

- 1 an order to vary three clauses of a deed of settlement dated 5th May 1982 (annexure A to the founding affidavit) which was made an order of the Court following upon the granting to her of a decree of divorce from the respondent, her former husband Mr. Edward Moeketsi Khali, and
- 2 an order to commit the respondent, her former husband Mr Edward Moeketsi Khali, to prison for contempt of Court.

With regard to the application for variation of the deed of settlement dated the 5th of May the applicant complains -

- (1) that whilst the respondent has hitherto been paying her maintenance for the children at the beginning of each month, in the month of January 1984 payment was made on the 14th, in the month of February on the 20th, in the month of March on the 15th and in the month of April on the 19th causing her and the minor children "great inconvenience and suffering" and that henceforth the respondent should make payments on the first day of the month at the office of the Registrar of the High Court,

/(2) that

- (2) that whilst the respondent was in fact "paying satisfactorily" for clothing for the children, he was "showing preference" towards one of them, the eldest. She wants M300 per annum per child in cash in lieu of the undertaking "to avoid unnecessary disputes",
- (3) that the respondent has defaulted on his undertaking to transport the younger child to school and she had to hire a taxi to take him there and back. She wants M25 per month for the fare

With regard to the application for committal for contempt of Court the applicant avers that the respondent has -

- (1) contravened clause 2(3)(c) of the deed of settlement of 5th May 1982 which required him to pay the water and sewerage bills and
- (2) failed to pay her the sum of M2,760 being the rent from property which in terms of another deed of settlement, reached upon the division of the estate dated the 14th February 1983 (annexure C to the founding affidavit) was to be hers

The respondent avers that there was no delay in the monthly maintenance cheques which were paid on the first of each month. He denies that he has preference for the eldest of his children and denies that he failed to take the youngest child to school.

The respondent says the applicant is trying to create "illusions" of preference to antagonise the other children. He elaborates this matter by saying that the applicant will not use the cash to clothe the children. The eldest is a girl now aged 16 and he simply gave her a job in his office (a firm of accountants) during her school holidays. As to the youngest child what happened was that the applicant made arrangements with one of her relatives

/who

who runs a taxi business to take the boy to school and he would be perfectly happy to take the boy daily as hitherto.

The respondent resists the application to commit him to prison for contempt. He admits that he has been in arrears in payment of the water bills but these were paid nevertheless though not timeously. He admits receiving a cheque for the rent of the property that was part of the joint estate which, by agreement, was to go to her, but he says that the applicant herself had informed him of its impending payment, and that when he did receive the cheque he tried to contact her on several occasions but was met with abusive language and rebuffs. He has lost a senior post in the government, has gone to prison on her account and he has just started to pick up the threads of his new life. He said (from the bar) that he has since remarried and apart from his three minor children from the applicant he has got two dependents.

In short he swears -

- 1 that applicant deliberately withheld encashment of the maintenance cheques to "build up a case",
- 2 that applicant in effect falsely accuses him of preferring one child to the others,
- 3 that she made alternative arrangements to take the boy to school on purpose so that the boy will not come into contact with him,
- 4 that the delay in payment of the water bills was not contempt and she had "no business to lodge" this complaint since the water supply was never disconnected.

Mr. Sello represented the applicant. The respondent had briefed an attorney who, for some reason or the other, withdrew, with the result that he conducted his own defence. The respondent has made serious allegations against the applicant and she had every
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opportunity to file an affidavit in reply to these allegations but she did not.

It is of course difficult in these circumstances to know whose typewriter is lying but the respondent's averment that the applicant wants to make "a business of this divorce" and that the object of the proceedings is his harrassment have not been denied. On the other hand the respondents allegations have a ring of truth, best summarised in his own words in the last but one paragraph of his affidavit. From the papers I have formed the opinion that the applicant has had a fair deal in consequence of the divorce but does not wish to give her former husband any rest. With the exception of the complaint about the non payment of the rent the other allegations were really without merit. She wants to use the law of contempt as a weapon of terror and I do not think this can be encouraged. In the result -

1. The first leg of the application to vary the deed of settlement dated the 5th May 1984 is dismissed. The respondent however will make payment of maintenance to the Registrar of the High Court but I order this only because he agreed to do it. Payment will be done on or before 5th of each month save that if it falls on a Saturday, Sunday, or a public holiday, on the day following.
2. The second leg of the application to commit the respondent for contempt of Court is also dismissed but the respondent is given six months grace from today to pay the rent he already received to the applicant. I warn the applicant however that I will not consider committal to prison unless she is able to persuade the Court in future that the respondent is deliberately flouting the settlement terms.

There will be no order as to costs. Time for appeal will run from
23rd July 1984

CHIEF JUSTICE
25th June 1984

For Applicant Mr Sello
For Respondent in Person } with copy of Judgment