

CIV\APN\147\92

IN THE HIGH COURT OF LESOTHO

In the matter of :

VIOLET KEKELETSO KOALI

Applicant

and

VINCENT MOITSEPI RATSOANE
 CANNON PETER PIET
 SIMEON MAHLAKENG
 JOSEPH TEBOHO MOILOA
 MORENA CHABASEILE JOBO
 HALEKHETHE MAKOPELA
 PULANE MAKHABA
 MOLAPO KOALI

1st Respondent
 2nd Respondent
 3rd Respondent
 4th Respondent
 5th Respondent
 6th Respondent
 7th Respondent
 8th Respondent

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
on the 10th day of January, 1995

This is an application for the following Orders, Firstly that the Respondents be committed to prison for contempt of Court. Secondly that the Respondents pay the costs of suit and Thirdly that there shall be further or alternative relief. The matter had been filed as an urgent application. I am satisfied that the Fourth Respondent (Joseph Teboho Moiloa, an Attorney of this Court), the Seventh Respondent (Pulane Makhaba) and the

Eighth Respondent (Molapo Koali who incidentally is the husband of the First Applicant) have nothing to do with the Application. The Fourth Respondent also never had anything to do even with the original application number CIV\147\92 in which judgment was made on the 14th March 1994. This is clear from his affidavit. It will be convenient to refer to the proceedings as the original application and the judgment as the original judgment. The Respondents appealed the original judgment which was duly enrolled before the Court of Appeal on the 26th July 1994 when the Court of Appeal made the following Order:

1. It is ordered that pending the outcome of the appeal appellants forthwith carry out the Order of Monapathi J made in terms of his judgment delivered on the 14th March 1994.
2. The appeal is postponed to the next session of this Court.
3. The appellants are to pay the wasted costs.

The First Respondent made it clear that there is no intention to proceed with the appeal. That is why it was not put on the roll of the next session beginning on the 9th January 1995. There is no doubt that the Respondents know about the

Order of the Court of Appeal. That is why part of the paragraph seven of the answering affidavit of the First Respondent reads:

" Our Attorney further informs us that the Order of the Court of Appeal in law a restatement of the High Court Order and not an Order passed after hearing the merits of the Appeal.

It is correct that our Attorney did explain to us the consequences of failure to abide by a Court Order though we have not been in contempt of any Order."

This Court Ordered for viva-voce evidence of the 1st Respondent and MANASE Nyabela to be led (to clarify certain aspects in their answering affidavits). Not only did it then become clear that they understood the meaning of the original judgments, these aspects were clearly understood by them:

- (a) That the original judgment pronounced the appointment of the Management Board of the Thaba-Khupa Ecumenical Centre (the Centre) by Christian Council of Lesotho as having been irregular.
- (b) That the Respondents (who were members of the Management Board before the original judgment) had to be replaced by a regular appointment in terms of the Sodepax and the Thaba-Khupa Ecumenical Centre's constitutions.
- (c) That the Management Board of the Thaba-Khupa Centre had to hand over to a new Committee.

- (d) That the Applicant (Mrs Koali) had to be re-instated by reason of the fact that she had been wrongly dismissed.
- (e) That the Thaba-Khupa Centre was the property of Sodepax.
- (f) That the Management Board should not stand in the way and should not interfere with the exercise of the duties of Mrs Koali as the Principal of the Thaba-Khupa Centre.
- (g) That Respondents were not to interfere with the occupation of the house by Mrs Koali as Principal.

It therefore became clear that both Ratsokane and Nyabela understood the meaning of the original judgment and the Order of the Court of Appeal that I have referred to in the beginning of this judgment. I do not think I was impressed by the two gentlemen as witnesses to the truth. These are some of the things that did not satisfy me. Firstly there is that confusion as to how the alleged new management Board came to be re-constituted which can only be untrue. It will be recalled that it is the self-same Management Board which was declared invalid that now continued to run the Centre without any apparent change. I do not believe that there was a removal and substitution of the Original Committee by a new one. There was no handing over. That there was an approach by the Management Board to Sodepax and that there were letters from the various Churches can only be but false. This is also against the background of the facts or contention by the selfsame Board of Management of the Thana Chape Centre that Sodepax had ceased to exist. It is clear that

Ratsoane, Nyabela and others are in collusion over this matter. More particularly this is so as regards the re-engagement of Mrs Koali. That is, they were not serious in wanting her to be re-engaged as Principal of the Centre despite this Court's Order.

The second aspect that did not satisfy me are the reasons why Mrs Koali was not re-engaged even after the passing of the original judgment. In terms of paragraph seven of the Founding Affidavit of Andrew Lekoekoe it became clear to me that he Lekoekoe, Matee and the First Applicant attended at the Thaba-Khupa Centre for one purpose only that it is to present the Applicant in order to enable compliance with the Court Order. The following paragraphs eight and nine demonstrate quite clearly that it was never the intention of the Applicants member of the Management Board to receive the First Applicant as the original judgment required those who were running the Centre to do. This more so when the First Applicant was accompanied by Lekoekoe (a member of Sodepax) and the local chief. Indeed it was only Manase and Maphasa who were present. The new director Makara was absent. On the 24th April 1994 the First Respondent was met by the First Applicant, Andrew Lekoekoe and Matee. The First Respondent understood clearly what they had come for. He spoke about their having noted an appeal to the Court of Appeal and that he would meet his fellow board members and suggested that the First Applicant and his companions return on the 1st

September 1994. On the 14th September Lekoeoe duly presented himself. This was apparently a day agreed upon. It does not appear then that he was accompanied by the First Applicant and Matee. There was no one to attend to him. This is supported by the affidavit of the First Applicant. I find that the First Respondent not only understood the meaning of the original judgment but he understood that steps had to be taken to solve the problem of the re-engagement of Mrs Koali. The reason why no steps were taken can only mean that they were not prepared to do so. This is clear when one takes into account that already Makara had been engaged as a director even up to the time of September 1994 about six months at the original judgment. If I order the First Applicant to go back to work with the same people whose credentials and status I do not for the present accept, it looks nonsensical. Its absurdity is clear.

That the Respondents were not prepared to accept the First Respondent back can only be confirmed by the attitude of the First Respondent in his answer to Lekoeoe's founding affidavit in paragraph eight. In part he says:

"In fact, First Applicant was already employed by Blue Cross Rehabilitation Centre from 1st February 1993, which fact I personally re-affirmed from the Admission Officer at Blue Cross J. M. Mojela. I annex hereto a fair copy of the affirmation by Mojela marked "BB" for this Court's perusal. The First Respondent had not resigned at Blue Cross so as to enable to do the work at Thaba-Khupa. I refer Your Lordship to the

nature of the Order given to her in her favour".

I would remark at the clearly forthright interest of the First Respondent in the matter of the First Applicant's employment. I do not see why as soon as the First Applicant was dismissed, she could not get employment somewhere in order to survive if not to mitigate her loss. Again I do not see how the Applicant's employment at the Blue Cross stood in the way of her coming back to the Thaba-Khupa Centre to re-engage herself. The attitude of the First Respondent and his colleagues is unmistakable. Their attitude is that of unwillingness to accept back the First Applicant.

This resolution annexure "CR" at page 46 of the record makes it very clear that the said annexure Committee of Sodepax is prepared "to give power and authority to Manase Nyabela to make representation and affidavits and whatsoever necessary on behalf of it to defend against the contempt claim of Violet Kekeletso Koali and Lekoekoe against Ratsokane and others in Civil Number 147\92 at the High Court of Lesotho." What I want to remark about at this stage is that it is the self-same Sodepax whose existence was being denied by the First Respondent and his Management Board in the original proceedings. Strangely enough Sodepax and the 1st Respondent's Management Board are at common purpose now. Furthermore nowhere does Manase Nyabela say in his

affidavit and in indeed in viva-voce evidence did Sodepax take any steps to contact the First Respondent or invite her to present herself at work. If I am wrong in contending that Sodepax had a duty to call the First Respondent I am certain that neither Sodepax nor the First Respondent and his management could have validly or at all terminated the First Respondent's employment merely for the reason that she was engaged somewhere else. She ought to have been called to answer before being terminated. I would therefore find every reason to order that Sodepax must allow the First Respondent to resume work and occupy the premises as I ordered in the original judgment.

I would make no finding on matters to do with to standing of the Second Applicant for the following reasons. Firstly I do not find that there has been sufficient proof that Lekoekoe has been substituted by said Serongoane or anyone else. I do not think Mr. Nyabela was convincing at all. In addition to being a most unsatisfactory witness he appeared to want to align himself with whatever he perceived to be in favour of the First Respondent. I have no doubt that Mr. Nyabela and his people want to do everything to entrench the First Respondent and his Management Board and to do away with the First Applicant despite what this Court ordered in the original judgment. Secondly there is pending proceedings in this Court in CIV\APN\269\94 which concern the membership or continued membership of the Second

Applicant in the Committee of Sodepax.

I am quite certain that the Respondents do not want to attach any significance to the Court of Appeal's Order which I have referred to in the beginning of this judgment. I took the view that what that Court did was to confirm the correctness of the High Court's judgment in as much as the operation of the original judgment had not been suspended by judgment. My understanding of the original judgment is very simple. Neither Sodepax nor the 1st Respondent's Management Board must stand in the way of First Applicant's re-engagement and most particularly Sodepax must take steps to have the First Respondent re-engaged into her former position and re-occupy the premises. I have in the course of my original judgment ruled that the appointment of the First Respondent Management Board by the Christian Council of Lesotho was irregular. To that extent I am not satisfied that there has been appointments by Sodepax and the various churches as both the Constitution of Sodepax and Thaba Khupa Centre provide.

While I may have had doubts about whether or not the Respondents and were mistaken about the original judgment and whether or not there was wilfulness or mala fides on the part of those Respondents the evidence of the First Respondent and Nyabela have cleared the doubt. I do not believe that on any

account judgments of this Court shall be frustrated by for the most spurious of reasons. This is more so when it is demonstrable that since March 1994 and until the time of the filing of this contempt proceedings nothing was done or if at all it was to frustrate the execution of this judgment. It is in the nature of the original judgment that it shall be enforced by way of contempt proceedings.

I refuse to accept that there is absence of clarity from the Orders as to what the Court wanted looking at its reasoning. There is nothing inelegant about the Orders as finally framed. It was clear from the body of the judgment first that the dismissal of the First Applicant was unlawful. Secondly that the appointment of the First Respondent's Management Board was irregular. The reasons cannot be separated from the orders as finally framed. I accept that Mr. Sooknanan is correct that his classification of the various types of interdicts for instance prohibitory or mandatory interdicts and so forth. I do not to accept that at all times judgment of judges in Courts of law are intended to fit into every such niche failing which they are nugatory. That would be against public policy and what the Courts are created for. Indeed most judgments do reach such academic or philosophical purity. That is not what judgments are intended for. That would amount to the work of academics. Judgments have practical implications which is the decision of

justice between man and man. That is why the Courts must be alive to machinations of parties to stultify the effects of judgments of the Courts.

In this matter it has been clearly demonstrated the full extent to which the Respondents (bar the three) I have referred to are guilty of contempt of Court. I have also found a lot of things that are troubling in their nature. One has to be able to reconcile the fact that Reverend Serongoane, Reverend Mochosi, Reverend Ranthamane, Reverend Tsikoane, Simon Mosae including Manase Nyabela (all who have made supporting affidavits to that of the First Respondent to the effect that they have been appointed or elected to the Executive Committee of Sodepax since 1990) with the statement of the First Respondent in paragraph six of his answering affidavit which is as follows:

Ad Paragraph 3

I admit that the Fifth to the Eighth Respondents are ex-officio members of the Board of Management of the Centre but deny that the owner of the Centre is the Sodepax and say that the Centre is owned by the Christian Council of Lesotho. The said Sodepax is now defunct. Its registration was unanimously revoked in December 1990 as it more fully appears in annexure One Volume 2 hereto

Not only was the existence of Sodepax denied but a fraudulent Constitution was substituted in order to run the Thaba-Khupa Centre. Why are all these things being done

I have not seen in any of the Respondents' affidavits anything to say that the Board of Management of Thaba Khupa Centre has been constituted afresh and who the new members are. I do not believe the First Respondent nor Manase Nyabela that there has been such fresh appointments. The only feeble attempt was a copy of what is alleged to have been a nomination by the Roman Catholic Church of the First Respondent to the Thaba Khupa Centre. This was not convincing in the absence of the original letter and other appointments. This was nothing but one of the Shenanigans (to borrow a word from one of the Attorneys) which were never ending in the matter. It was full of dubious manoeuvring all the way. This should not be allowed. "Thus, civil contempt proceedings exist in order that a Court order stemming from civil proceedings may be brought to a logical conclusion by imposition of penalty in order to vindicate the Courts' honour consequent upon the disregard of its order" (See Lawsa Vol. 3 paragraph 394, page 216). I repeat that I do not believe that there has been any appointment to the new Board of Management to the Thaba-Khupa Centre. The sooner that is done the better. Most importantly the Order for re-instating the First Applicant and her re-occupation of the premises have been unlawfully frustrated.

I therefore make the following orders:

- (1) The Five Respondents are imprisoned for a period of three (3) months. This is suspended on condition that they do not hinder or in anyway interfere carrying out or the taking into effect the following orders namely (2) and (3) and (4) below. The Orders to be effected within seven days.

- (2) That, the First Applicant shall revert to her former position as Principal of the Thaba Khupa Institute immediately and shall be removed only by due process of law.

- (3) The Five Respondents are declared to be non-members of the Thaba-Khupa Ecumenical Centre and may be nominated or appointed by due process of law.

- (4) The First Applicant shall occupy the premises at the Thaba-Khupa Centre allocated for the principal of the Centre and shall only be removed by due process of law.

- (5) The Five Respondents shall pay the costs of the application.

T. MONAPATHI
JUDGE

10th January, 1995

For the Applicants : Mr. K. Sello

For the Respondents : Mr. B. Sooknanan