

**CIV/T/292/99****IN THE HIGH COURT OF LESOTHO**

In the matter between:

**JULIA PHEKO t/a PHEKO BUILDING  
CONSTRUCTION****APPLICANT**

and

**LERATO SAMUEL MOTAUNG  
SAMUEL MOTAUNG****1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT****JUDGEMENT**

Delivered by the Honourable Mrs Justice K.J. Guni  
on the 17<sup>th</sup> Day of October 2000

These are the contempt of court proceeding in which the applicant seeks an order of this court - committing the two respondents to prison for a contempt of the judgement of this court, delivered on the 16<sup>th</sup> August 1999. The civil contempt is defined, in chapter 38, page 815 of HERBSTEIN and VAN WENSEN [The Civil Practice of the Supreme Court of South Africa] fourth edition, as “the wilful and *mala fide* refusal or failure to comply with an order of court”. The courts are a

civilised means used by all civilised nations for the settlement of disputes. The court orders are therefore the very last resort for the harmonious settlements of disputes. When the court order is disregarded, there arises a need to vindicate the court's honour and to compel the defaulting party to comply for the sole purpose of the maintenance of civilised manner of settlement of disputes.

The applicant herein, approached this court, by way of urgent and *ex-parte* motion proceedings on the 24<sup>th</sup> August 1999. The applicant had obtained a summary judgement on the 16<sup>th</sup> August 1999. The writ of execution was issued, pursuant to that judgement on 18<sup>th</sup> August 1999. As shown at paragraph 4 of the Supporting Affidavit of the deputy-sheriff - LIPHULO LIPHULO he and his colleague, one RABOY NTŠASA, armed with that writ of execution, were, on 21<sup>st</sup> August 1999, at the place of abode of the two respondents to execute against their moveable property the said writ.

There, at the respondents' residence, the two deputy-sheriffs - [LIPHULO LIPHULO AND RABOY NTŠASA ] introduced themselves. Deputy-sheriff LIPHULO LIPHULO showed the 1<sup>st</sup> respondent the writ of execution against her property and explained the contents thereof. The two deputy-sheriffs when introducing themselves to the two respondents, produced their identity cards. The

respondents were therefore sufficiently informed, regarding the identity of the deputy-sheriffs and the capacity in which they were acting. The 2<sup>nd</sup> respondent is alleged to have forcibly taken possession of the identity card of RABOY NTŠASA. He retained it. When this application was filed, the said identity card was still in the possession of the 2<sup>nd</sup> respondent. There is no need for the deputy-sheriffs to produce the letters of their appointment or to bring to the respondents the authority which appointed them.

The respondents did not pay the amount of the money shown on the writ. There was no moveable property indicated to the two deputy-sheriffs by the respondents. The deputy-sheriff LIPHULO LIPHULO started drawing up an inventory of the moveable property, he intended to seize . At that juncture LIPHULO was informed by the respondents that they will not allow him to execute against their property. They requested the two deputy-sheriffs to remove their good selves from their (respondents') property. In that process, the 2<sup>nd</sup> respondent is alleged to have pointed a small gun at the deputy-sheriffs who then departed from the premises.

The onus to prove contempt of the judgement or court order rests upon the applicant who, in order to succeed, in these proceedings, must discharge it. *Blacker v Carter* 1906 EDC 19. *Waterston v Waterston* 1946 WLD 334. It must

be established, by the applicant, that the order of court with which the respondents have failed to comply was either served on them personally or came to their personal notice somehow. *BOTHA v DREYER* (1880) I EDC 74. Deputy-sheriff LIPHULO avers, at paragraph 6 of his Supporting Affidavit, that he informed the respondents that he has come to execute the warrant of Execution against their property and he showed them the said warrant. That the respondent knew personally that there was a judgement against them, is in the common cause. At paragraph 3 of his Opposing Affidavit, SAMUEL MOTAUNG expressly admits of having knowledge that a Summary Judgement was granted, on the date alleged in the papers, for the first time when he was served with the papers. He also admit that the papers were served upon him. These said admissions are made perhaps inadvertently. I get this impression that the respondents are admitting without noticing that they are in fact admitting because the 2<sup>nd</sup> respondent in the very next paragraph, after making the said admission, he avers, “the two so-called deputy-sheriffs, who came to my house did not serve me with any writ or order of the court. They merely entered my house and started writing down or taking an inventory.” Previously, in paragraph 3, the very last sentence reads as follows: “I knew for the first time when being served with these papers that a summary judgement was granted on the said date.”

The respondents can blow hot and cold as regards the acquisition of their knowledge that there is this judgement against them but it is abundantly clear that service of “these papers” referred to by SAMUEL MOTANUNG - 2<sup>nd</sup> respondent herein, was effected upon them. When a person has information, which he has no reasonable grounds to disbelieve, to the effect that an order of court has been granted against him, he is bound to act as if that order has been duly served. *Burgers v Fraser* 1907 TS 318 at 320. The 2<sup>nd</sup> respondent in his own words, make an express admission, that he knew for the first time when being served with these papers that a summary judgement was granted on the said date [my underlining]. This was a direct answer to the allegation, made in the Founding Affidavit, that this court has on the 16<sup>th</sup> August 1999, granted summary judgement in the applicant’s favour.

What steps were then taken by the respondents once enriched with the knowledge that there is a judgement against them? There is nothing, from the affidavit of the 2<sup>nd</sup> respondent, which shows this court that the respondents complied with the court order.

According to the applicant, the office of her attorney informed her that the deputy-sheriffs were prevented from executing the warrant by attaching the respondents’

Which papers was he served with? How did he know from those papers that summary judgement had been granted? Can it be correct that he was not served with the writ or any court order? In conclusion, I must point out that there is not a shred of doubt in my mind that the respondents had full knowledge that there was a judgement against them. They deliberately with intend to defeat the course of Justice wilfully refused or failed to comply with that judgement. They are therefore found to be in contempt of the court order. Their behaviour and attitude towards the court order needs eminent and effective remedy. To have even deposed to this opposing affidavit and describing the deputy-sheriffs as the so-called merely shows how lightly they regard those entrusted with the responsibility to assist in the administration of Justice. In this circumstances this application must succeed. Therefore

It is ordered that:

1. The two respondents be apprehended and be committed to prison where the Director of Prison by this warrant is authorised to detain them for a period of three months each.
2. Their committal to prison is suspended for a period of one month on condition that they comply within that period of one month, with the terms of the judgement granted in favour of the applicant on 16<sup>th</sup> August 1999.

moveable property. The deputy sheriffs were prevented from drawing up an inventory of the items of moveable property which they intended to seize in execution of the said warrant. Deputy-sheriff LIPHULO at paragraph 5 and 6 of his supporting Affidavit, shows the court that on their arrival at the respondents' residence, they introduced themselves and produced their identity cards to the respondents. He then informed them (respondents) that he has come to execute the warrant against their property and showed them the said warrant. In reply to these allegations, the 2<sup>nd</sup> respondent makes denials which contradicts some of the allegations previously made by him. His affidavit is nothing but a compilation of ridiculous lies, which indicates that he is not just contemptuous of the courts but also has no respect for the truth. For example, a casual perusal of his affidavit reveals the following:

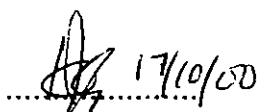
Paragraph 3.

“ I was not informed nor notified that the matter would be heard on on 16<sup>th</sup> August 1999. ....  
..... I knew for the first time when being served with these papers that a summary judgement was granted on that date  
[my underlining for the purpose of highlighting the contradiction]

Paragraph 4.

The two so-called Deputy-Sheriffs who came to my house did not serve me with any writ or order of court. They merely entered my house and started writing down or taking inventory and I queried ...”

3. They pay the costs of this application at attorney and client scale.

  
.....  
K.J.GUNI  
JUDGE

For Applicant: Mr Mphalane

For Respondents: Mr Mahlakeng