

**CIV/T/21/84**

**IN THE HIGH COURT OF LESOTHO**

In the matter between:-

**WALTER NTHAKO SEETSI**

**APPLICANT**

And

**MATHABO SEETSI**

**1<sup>ST</sup> RESPONDENT**

**THE MANAGER-ANGLO-GOLD**

**2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

Delivered by the Honourable Mr. Justice G N Mofolo  
on the 8<sup>th</sup> November, 2001

This is a case in which a long way back and in CIV/T/21/84 the 1st respondent was granted divorce against the applicant. Having granted divorce the Court ordered that applicant pay maintenance of the children in the amount of R70.00 per month. According to Mr Phafane the Applicant did not pay a penny towards maintenance as ordered at all and a writ was issued to the tune of M10,780.00. However on 3/4/ 2000 the 1<sup>st</sup> respondent lodged an application with this court for maintenance of the children to be raised from M70.00 per month to one thousand Maloti (M1,000.00) per month

per child and the court presumably on 8 May, 2000 had raised the maintenance from M70.00 to One thousand Maloti (1,000.00) per month per child, but as there were insufficient funds it was reduced to M450.00 per month per child; suffice it to say that I have seen a writ of execution in the sum of M10.780.00 which could well be a writ as mentioned by Mr Phafane. It was as a result of the order to raise amount of M70.00 to M1,000.00 per month per child that applicant has lodged an application with this court claiming an order as follows:-

- (a) Judgment granted in CIV/T/21/84 on the 19<sup>th</sup> July, 2000 shall not be rescinded.
- (b) The execution of judgment granted in CIV/T/21/84 shall not be stayed pending finalization of this application.
- (c) Applicant shall not be granted leave in CIV/T/21/84 to file opposing papers within a period to be determined by this Honourable Court.

(c) Costs of the application in the event of opposing the same.

(d) Further and /or alternative relief

The application was approved.

The applicant in his so-called supporting affidavit has deposed at para - 4.1

At the end of the month of August when I received my pay cheque I discovered a deduction of M100.00 under the title “maintenance Maseru”.

4 I immediately proceeded to the Time Office where I was informed that the deductions were made by virtue of an Order of Court dated 19 July, 2000.

5 I humbly submit that a deduction of M900.00 per month

leaves me with insufficient salary to support myself and my other dependants.

7 I have paid security pursuant to the rules of Court.

In her opposing affidavit 1<sup>st</sup> respondent claims that applicant was served with the application (see paras 4 and 5 above). At paragraph 5 the 1<sup>st</sup> respondent claims as applicant's employers claimed the amount of maintenance exceeded applicant's salary, the amount of maintenance had been reduced from M1,000.00 per month per child to M450.00 per month per child an amount of course being deducted from applicant's salary.

I have scrutinized applicant's salary slip and find that his basic salary was M2591.00 as on 21 February, 2000. Total deductions including the sum of M900.00 maintenance amount of M2499.00 leaving applicant with nett pay of M631.69. Deferred pay is in the amount of M822.00 and Mr Phafane has said this is applicant's money ranking with applicant's nett pay.

While I agree this is applicant's money, this is not what he puts into his pocket from month to month but earns after some time. Present salary is by no means sufficient for the needs of the applicant given the value of the rand and it would seem in order to stave off some of his obligations, it would be advisable to defer some of the applicant's commitments to the maturing period of his deferred pay.

I am concerned here with whether applicant makes a decent living out of R631.69 a month and whether the minor children of marriage are adequately covered by the M900.00 contribution from applicant's earnings. I am also mindful of the fact that maintenance of the minor children is a joint venture between father and mother.

In arriving at a final decision, I am inclined to eschew formalities preferring instead to decide in the light of what's best in the interests of the minor children not forgetting that the goose which lays golden eggs is not to be destroyed.


This Court has gone through the record of proceedings and finds that there was no service to the applicant and on this ground alone the Court has decided to set aside the

judgment.

This court being upper guardian of the minor children and their interest being paramount, the Court makes an order as follows:-

- 1 That the judgment granted against the applicant raising maintenance order from M70.00 to M1,000.00 per month per child as amended be rescinded.
- 2 That execution of the writ against the applicant be stayed pending the result of the application.
3. 1<sup>st</sup> Respondent serve applicant with the application for variation of maintenance from M70.00 to M450.00 per month per child immediately to enable 1<sup>st</sup> Respondent to file opposing papers within (14) fourteen days of receiving the same.

- 4 That applicant be and he is hereby granted leave  
in CTV/T/21/84 to file opposing papers within  
fourteen (14) days of service of the variation application.
- 5 The application is to proceed with post-haste urgency.
- 6 That costs be costs in the application.



**G.N. MOFOLO**  
**JUDGE**  
8<sup>TH</sup> November, 2001

For the Applicant: Mr Z. Mda  
For the Respondent: Mr Phafane