

CIV/APN/335/01

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**KOLO DIAMOND MINES (PTY) LTD****APPLICANT**

and

**SELOMO MONETHI  
 MOSALA TSELO  
 MONONGOAHA MPEETE  
 SERA TSEHLA  
 MOHLOLO MOLEFE  
 KHOTHATSO CHOPHO  
 NTSEARE LENGOME  
 MOLEFI LEFUMA  
 B J M VOSTER**

**1<sup>ST</sup> RESPONDENT  
 2<sup>ND</sup> RESPONDENT  
 3<sup>RD</sup> RESPONDENT  
 4<sup>TH</sup> RESPONDENT  
 5<sup>TH</sup> RESPONDENT  
 6<sup>TH</sup> RESPONDENT  
 7<sup>TH</sup> RESPONDENT  
 8<sup>TH</sup> RESPONDENT  
 9<sup>TH</sup> RESPONDENT**

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

Coram : Mr. Justice S.N. Peete

Date : 27<sup>TH</sup> March 2002

In these contempt proceedings the applicant was granted an interim order by my Brother **Lehohla J.** on the 20<sup>th</sup> September 2001. It was couched as follows:

**IT IS ORDERED THAT:**

1. That a **Rule nisi** issue returnable on the **25<sup>th</sup> day of September 2001, at 9.30 a.m.** calling upon the Respondents to show cause (if any) why:
  - a) The Rules as to notice and service shall not be dispensed with on account of urgency;
  - b) The first to eighth Respondents shall not be held in contempt of the Interim Court Order granted by His Lordship Mr. Justice Peete in this Honourable Court on **4<sup>th</sup> September 2001**;
  - c) The first to eighth Respondents shall not appear before this Honourable Court on the **25<sup>th</sup> September 2001 at 9.30 a.m.** to show cause (if any) why they shall not be committed to prison for contempt of court;
  - d) The first to eighth Respondent shall not be prohibited from being heard in proceedings pending before this Honourable Court under case number **CIV/APN/309/01** and **CIV/APN/335/01** until each of the first to eighth Respondents have purged their contempt of the Interim Court Order granted by His Lordship Mr. Justice Peete in this Honourable Court on **4<sup>th</sup> September 2001**;
  - e) The first to eighth Respondents shall not be ordered to pay costs of this application jointly and severally one paying to absolve the others;
  - f) Applicant shall not be granted such further and/or alternative relief;
2. That prayer 1 (a) operate with immediate effect as an Interim Court Order pending finalization hereof.

## **Background**

It would seem that on the 4<sup>th</sup> day of September 2001, this court (Peete J.) had previously granted an interim order couched as follows:

### **IT IS ORDERED THAT:**

1. The forms, service and time-periods prescribed by the Rules of Court be and are hereby dispensed with the matter is to be heard as on urgency.
2. The Sheriff, or his duly appointed Deputy be and is hereby authorized and directed to seize, attach and retain in his possession and/or under attachment pending the outcome of this application a certain **D8 Bulldozer** presently at **Kolo Ha Petlane** in the district of **Mafeteng** or wherever the same may be found the property of ninth Respondent, alternatively, property in respect of which the ninth Respondent has a beneficial interest, in order to found and/or confirm the jurisdiction of the Honourable Court in respect of the ninth Respondent.
3. The first to ninth Respondents be and are hereby interdicted and prohibited from entering the mining site at **Kolo Ha Petlane** in the district of **Mafeteng**, interfering with any of the Applicant's mining operations or using, removing and/or damaging any of the property, assets and/or facilities of the company.
4. The Respondents be and are hereby ordered to file their opposing affidavits if any on or before the **5<sup>th</sup> September 2001**.
5. The matter be heard on the **10<sup>th</sup> September 2001** at **9.30 a.m.**

It is not in dispute that the above-mentioned interim order was “personally served upon the 1<sup>st</sup> to 8<sup>th</sup> respondents and they even signed their names at the back of the order which sought to interdict and prohibit the respondents from entering the mining site at Kolo Ha Petlane in the district of Mafeteng. In his founding affidavit Peter Mosebo – a duly authorized official of applicant Company, states that on the 4<sup>th</sup> September 2001 in his presence the Deputy Sheriff served upon respondents and also explained the nature and exigency of the interim order which interdicted and prohibited them from entering the Kolo mining site. He further states that pursuant to this service the aforesaid respondents removed their personal belongings from the mine dormitories and had handed the keys to the Deputy Sheriff and “under the supervision of the Deputy Sheriff the respondents departed from the precinct of the mine”.

He goes on further to state that:

*“On Thursday 6<sup>th</sup> September 2001, I took six security guards to the mine with the view to protect applicants’ property pending the outcome of the main application. When I arrived at the mine I found to my surprise the second to eighth respondents back at the mine. An argument ensued during which I reminded the aforesaid respondents of the terms of the interim court order.... The respondents argued that they held a Rule nisi granted in their favour on 17<sup>th</sup> August 2001 in terms of which I was prohibited from entering the mine. They refused to accept my explanation that the Rule nisi relied upon by them expired on 27<sup>th</sup> August 2001 and that they were acting in contempt of an order of court and should depart from the mine immediately”:*

In his answering affidavit Selomo Monethi submits that:

*“he and other respondents cannot be held in contempt of court when we were acting under a bona fide misunderstanding that the interim order in our favour under CIV/APN/309/01 was still in place and had not lapsed until it would have been finally disposed off and that we did not act willfully with contemptuous intentions against an order of this Honourable Court.”*

He contends that the interim order granted to the applicant on the 4<sup>th</sup> September 2001 was obtained irregularly, erroneously and deceitfully and that he and his co-respondents had acted upon a *bona fide* belief that the court order was *“of no force and effect”*:-

The other respondents have duly filed supporting affidavits all saying they acted on *“a bona fide misunderstanding”*.

It is important to note that throughout their affidavits in response to the applicant’s allegation regarding contemptuous conduct, the respondents do not deny that they have occupied the mining site despite having been served with an interim court order on the 4<sup>th</sup> September 2001, instead they plead *bona fide* misunderstanding and they say they believed the said order to have been wrongly made by this court. That in brief is the substance of their defence to the contempt proceedings.

Perusal of the bulky papers brings to one's notice that there exists virulent litigation over the Kolo diamond digging site at Kolo Ha Petlane, one group claiming ownership over the site and indeed the present applicant is under a provisional order of liquidation granted by my Brother **Lehohla J.** on 20<sup>th</sup> September 2001 (Civ/Apn/370/2001). It is however not necessary to delve into the merits of various applications involved between various companies, societies and persons over the mining sights at Kolo.

The present inquiry is and should be limited to the issue of contempt. A civil contempt is a wilful and *mala fide* refusal or failure to comply with an order of court – **Herbstein and Van Winsen** – *The Civil Practice of the Supreme Court of South Africa-4ed-p815*. The main object of contempt proceedings is to compel compliance with the order granted by the court and also to vindicate the court's honour subsequent upon the disregard of its order (**Protea Holdings Ltd v. Wriwt** – 1978(3) SA 865 at 868). In the case of **Sparks v. Sparks** 1998(4) SA 714 it was held by **Satchwell J.** that once it was shown that an order had been granted by the court and that the respondent had received the same but had disobeyed it or neglected to comply with it, wilfulness would be inferred and the *onus* was on the appellant to rebut the inference on a balance of probabilities.

*“Generally, a person may not refuse to obey an order of court merely because (he believes) it has been wrongly made, for to do so would be seriously detrimental, if not fatal, to the authority of the court”.* (Herbstein & Van Winsen (supra) p. 816); see also **Culverwell v. Beira** – 1992(4) SA 490 where **Goldstein J.** had this to say,

*“Counsel was unable, however to refer me to any authority for the proposition that an order which is wrongly granted by this court can be lawfully defied and I know of none”.*

All orders of this court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside. Indeed if respondents would be permitted to be able to defy the orders of court with impunity contending that they believed such orders to be wrong, ‘the resultant chaos is no difficult to imagine’. The considerations of public policy of protecting the authority of the court far outweigh the private beliefs or misconceptions of the litigants. I am not going to say anything about the propriety or correctness of the Order I made on the 4<sup>th</sup> September 2001 not until application to have it set aside is made.

In these proceedings, the respondents were duly served with the interim court order on the 4<sup>th</sup> September 2001 and its full impact explained to them; they then vacated the mining site soon thereafter only to return to the site – perhaps having obtained some advise. Their return to the site was in defiance to the court order they had just received. In my view the

genuineness of their belief does not vitiate the wilfulness of their conduct. Indeed, it amounted to steadfast refusal to obey the court order. After the 13<sup>th</sup> September 2001 when **Hlajoane AJ** ruled that the **rule nisi** granted by his Lordship the Chief Justice had lapsed on the 27<sup>th</sup> August 2001, there was absolutely no basis upon which the respondents can expect to be believed that they had a **bona fide** belief after the 13<sup>th</sup> September 2001 that the order in question was still extant and enforceable.

It should also be noted that assuming therefore that the **rule nisi** lapsed on the 27<sup>th</sup> August 2001, there was no co-existing order when this court granted the interim order on the 4<sup>th</sup> September 2001.

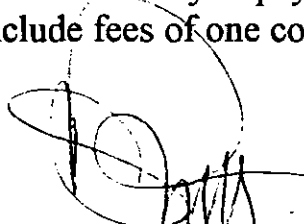
I must say I was not persuaded by Mr. Moruthoane's submission that the respondents had a genuine belief that they had the right to remain at the mining site and that the applicant had no valid right to evict them from the site.

I therefore come to the conclusion that the respondents have failed to discharge the *onus* on the balance of probabilities that their non-compliance was not wilful.



The following order is made:

1. The 1<sup>st</sup> to 8<sup>th</sup> respondents are guilty of contempt of the interim order granted by this court on the 4<sup>th</sup> September 2001.
2. The respondents are each fined M500.00 or in default of payment one month imprisonment wholly suspended on condition that they do not, during the existence of the interim order do any act prejudicial to that order.
3. The respondents are jointly and severally to pay the costs of this application, such costs to include fees of one counsel.



**S.N. PEETE**  
**JUDGE**

For Applicant: Advocate Louw

For Respondents: Advocate Moruthoane