

**IN THE COURT OF APPEAL OF LESOTHO**

**HELD AT MASERU**

**C of A (CIV) No.42/2010**

**In the matter between:**

LU BEN HUI	1 <sup>ST</sup> APPELLANT
WANG BIN	2 <sup>ND</sup> APPELLANT
ZHUANG XIAOHUOA	3 <sup>RD</sup> APPELLANT
LONG YAN WANG	4 <sup>TH</sup> APPELLANT
LONG YAN XIN	5 <sup>TH</sup> APPELLANT
GONG XIN GUAN	6 <sup>TH</sup> APPELLANT
FAN JIANG MING	7 <sup>TH</sup> APPELLANT
LESOTHO STONE ENTERPRISES (PTY) LTD	8 <sup>TH</sup> APPELLANT

and

ZHAI FENG FU

RESPONDENT

**CORAM:** Smalberger, JA

Scott, JA

Howie, JA

Heard 13 April 2011

Delivered 20 April 2011

## **Summary**

*Remittal to High Court for oral evidence.*

## **JUDGMENT**

**Smalberger, JA**

[1] This appeal was directed against (1) the judgment of the court *a quo* (Nomngcongo J) in which the learned judge held that the first, second and third appellants were guilty of contempt of court for wilfully failing to comply with the order of the High Court in case CIV/APN/253/2010 dated 8 September 2010, and (2) the sentence of 30 days imprisonment imposed on each of them.

[2] The contempt proceedings were brought by way of notice of motion. On the affidavits filed of record there are substantial material disputes of fact which bear on the question of the first, second and third appellants' guilt. That being so, and given the fact that the requisites of contempt have to be proved beyond reasonable doubt (***FAKIE NO V CC11 SYSTEMS (PTY) LTD 2006***

**(4) SA 326 (SCA)** Para 42), we raised with counsel for the parties whether this was not a matter which, in the interests of justice, should have been referred to oral evidence. After deliberating with each other counsel agreed that would have been the proper course to have followed. They also reached agreement on what an appropriate order would be. That agreement, with certain modifications, will be embodied in the order we propose to make.

[3] The following order is made:

1. The appeal is upheld.
2. The order of the court *a quo* committing the first, second and third appellants to imprisonment for 30 days for contempt of court is set aside.
3. The matter is remitted to the High Court for a hearing before a different judge, on a date to be arranged with the Registrar, of oral evidence on, and the determination of

the following issues arising from the respondents' application in the court below;

3.1 Whether the first, second and third appellants were aware of, and understood, the order of the High Court dated 8 September 2010.

3.2 Whether the first, second and third appellants were in contempt of the said order.

4. The Registrar of the High Court is requested to give priority to the matter on the roll.

5. There will no order as to the costs of appeal.

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**J. W. SMALBERGER**

**Justice of Appeal**

I agree

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**D. G. SCOTT**  
**Justice of Appeal**

I agree

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**C. T. HOWIE**  
**Justice of Appeal**

For the Appellant : Adv. M. P. Koto

For the Respondent : Adv. T. R. Mpaka