

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) 58/ 2011

HELD AT MASERU:

In the matter between:-

BISI THOMPSON

APPELLANT

and

UCHE UNOAHA

1<sup>ST</sup> RESPONDENT

IKE MONYENI

2<sup>ND</sup> RESPONDENT

OFFICER COMMANDING – MASERU

CENTRAL CHARGE OFFICE

3<sup>RD</sup> RESPONDENT

THE COMMISSIONER OF POLICE

4<sup>TH</sup> RESPONDENT

THE ATTORNEY GENERAL

5<sup>TH</sup> RESPONDENT

CORAM : RAMODIBELI, P  
FARLAM, J A

HEARD : 18 APRIL 2012

DELIVERED: 27 APRIL 2012

## JUDGMENT

Farlam, J A

On 9 August 2010 Chaka-Makhooane J granted an order in High Court case CIV/ T/ 253/ 10 against the appellant, the first defendant in that case Benjamin Orjiy, the second defendant, in which she ordered them, jointly and severally, to pay M500,000.00 as damages for defamation, together with interest and costs on the attorney and own client scale, to the first and second respondents.

On 10 September 2010 this order not having been complied with, the first and second respondents brought an application in which they sought, inter alia, orders (a) declaring the appellant to be in contempt of the order granted on 9 August 2010; (b) committing him to prison for a period of not less than 30 days for such contempt, alternatively ordering him to pay a fine of not less than M10,000.00 for such contempt.

On 19<sup>th</sup> October 2011 Chaka-Makhooane J granted this application, making the following order:

- “(a) The [appellant] is declared to be in contempt of an order of this court.
  
- (b) The [appellant] is to pay a fine of M10,000.00 failing which he shall be committed to prison for a

period not exceeding 30 days. The fine is to be deferred for 14 days from the date of the judgment.

(c) The [appellant] is to pay the cost of this in a higher scale.

(d) The order is still to be complied with.”

The appellant has appealed against this order on a number of grounds which were set out in his notice of appeal. Subsequently he filed a notice of his intention for the delay in filing the notice setting out these grounds.

The application for condonation was not opposed and is granted.

One of the further grounds raised in the notice is that the court *a quo* erred in law by as up granting the application in respect of an order for the payment of money.

A this point is clearly correct. The order sought to be enforced was a simple order *ad pecuniam solvendam*, i.e. for payment of a monetary sum, it is trite that such an order cannot be enforced by an order for committal: see, e.g. *Motaung and another v Pheko Building Construction LAC (2000-2004) 243* and *Metropolitan Industrial Corporation v Hughes 1969 (1) SA 224 (T)* at 227.

It is thus clear that the judge erred in granting the order that she did and the appeal must accordingly be upheld with costs.

The following order is made:

1. The appeal is upheld with costs.
2. The order made in the court *a quo* is set aside and replaced with the following; ‘The application is dismissed with costs.’

I.G. FARLAM

JUSTICE OF APPEAL