

CIV/APN/439/95IN THE HIGH COURT OF LESOTHO

In the matter between:

ALEXIS BOLAE MPATI

Applicant

and

C.D.G. TILSLEY

Respondent

J U D G M E N T

Delivered by the Honourable the Chief Justice Mr Justice
J.L. Kheola on the 22nd day of April, 1996

On the 29th day of February, 1996 the respondent was committed to prison for contempt of court for two months without the option of a fine. This sentence was suspended on condition that the respondent complied with the order of court within seven (7) days from the 29th day of February, 1996. The respondent was ordered to pay the costs of the application.

On the 15th day of March, 1996 an application was launched by the applicant seeking an order directing that a warrant of commitment to gaol for contempt of court be issued against the respondent in terms of the sentence imposed on him on the 29th February, 1996 and that the respondent be so committed forthwith. There was a prayer for costs.

It is common cause that the respondent failed to comply with the order of court within the period of seven days mentioned above because the deputy-sheriff had transport problems. He was unable to get a motor vehicle to travel to Monotsa where the shop in question is situated. It was suggested on behalf of the respondent that the deputy sheriff should travel by public transport from Maseru to Butha Buthe from there the respondent's counsel would provide transport for him to Monontsa. The deputy sheriff declined the offer saying that he could not travel in the respondent's vehicle and in the company of the respondent. He preferred to make arrangements for his own transport.

In his opposing affidavit the respondent alleges that the Registrar and the applicant's attorney informed his counsel by telephone that since the 29th February, 1996 until the 6th March, 1996 the deputy sheriff had not been seen anywhere.

On the 7th February, 1996 the respondent and his counsel decided that it would be better to deliver the keys of the shop to the Registrar so that she could give them to the deputy-sheriff. They regarded their move as constituting a symbolic delivery of the property. My only problem with this kind of delivery is that it meant that the respondent would not be there when the shop was opened. The deputy-sheriff would have to take an inventory in the absence of the respondent. That would probably create a dispute as to what was actually found in the shop. At any rate that did not happen because the keys given to the Registrar could not fit the locks.

In his opposing affidavit the respondent avers that on the 6th March, 1996 his counsel suggested to the Registrar that keys to the Monontsa shop should be handed over to the office of the Registrar as a sign of his willingness to hand the property over to the applicant. On the following day he took the keys to the Registrar together with Annexure "A" which was copied to the applicant's attorney.

The respondent avers that on the 27th February, 1996, he drove to Monontsa shop in the company of his employee one Khabele Tsabana. Because of the suspicion that he had about mischief being carried out at the shop he decided to collect the police. Warrant Officer Nqosa accompanied them to the shop. On arrival they discovered that the latch that holds the door to the shop was sewn and the shop was open. He then reported to the police. He has filed a supporting affidavit which supports his story.

On the 13th March, 1996 he again drove to Monontsa shop to find out what the position was. This followed a report which had been made to his counsel by the applicant's attorney. He found that the door was still open and the locks to the wool-shed had been changed. He locked the shop with a lock and replaced the two wool-shed locks.

On the 14th March, 1996 he took the new keys to the Registrar.

The Registrar has confirmed that she has two sets of keys

which were handed over to her office by the respondent.

The respondent avers that there is also a possibility that the locks that he had put had been changed in the meantime. He goes on to say that the fact that he handed over two sets of keys to the Registrar, there was always the possibility that the Registrar gave out the wrong set of keys to the applicant. This last possibility suggested by the respondent does not make sense because the second set of keys was given to the Registrar after the first set of keys had failed to open the shop. At that time the applicant and the deputy-sheriff had already been to the shop with the wrong keys. When a report was made to the respondent's counsel that the first set of keys could not open, the respondent went to Monontsa and changed the locks. On the 14th March, 1996 the second set of keys was given to the Registrar.

The first so called a possibility that the locks were changed is not a possibility but a fact because on the 13th March, 1996 when the respondent went to the Monontsa shop accompanied by one Khabele Tsabana the door to the shop was still open and the locks to the wool-shed had been changed.

The shop and wool-sheds in question have remained unattended for a very long time. On the 29th February, 1996 when I committed the respondent to prison for contempt of court and conditionally suspended the imprisonment for seven days, I was under the impression that the applicant and the deputy-sheriff would tell the respondent the date on which they would accept the

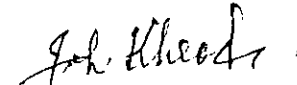
property from the respondent. Unfortunately they could not agree on any date because the deputy-sheriff had no vehicle to go to Monontsa.

The respondent's counsel made several telephone calls to the Registrar because he wanted to comply with the order before the expiry of seven days stated in the committal order. The deputy-sheriff could not be found or seen anywhere until the period of seven days expired. In a desperate attempt to comply with the court order before seven days expired, the respondent took a set of keys to the Registrar. Those keys could not open because the locks to the wool-shed had been changed and the door of the shop had been opened.

It seems to me that the respondent cannot be blamed for what happened. It is obvious that there is a person or persons who tamper with the locks at the shop premises.

The application for the issue of a warrant committing the respondent to prison is refused on the ground that the applicant has failed to prove that the respondent wilfully disobeyed the court order.

In the result the application is dismissed. There will be no order as to costs because the respondent has not applied for them.


J.L. KHEOLA
CHIEF JUSTICE

22nd April, 1996

For Applicant - Mr. Sello
For Respondent - Mr. Nchee.