

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/563/2009

In the matter between:-

MPHEKELELI HOOHLO

APPLICANT

AND

‘MAMAPHOESA HOOHLO

RESPONDENT

RULING

Coram : Hon. Mahase J.
Date of hearing : 3RD December, 2012
Date of Ruling : 3rd December, 2012

Summary

*Civil Procedure – Husband and wife – Access by a party to parties’ minor child –
Contempt of Court – Civil imprisonment as a result of such contempt.*

ANNOTATIONS

CITED CASES:

**Maseru Football Club v. Lesotho Sports Council and Others 1981 (2)
LLR at p527**

STATUTES: **High Court Rules, Legal Notice No. 9 of 1980**

BOOKS: None

[1] Facts of this case have been clearly and extensively outlined in the judgment of this Court dated 1st March 2010. Contents of same are incorporated herein. I only wish to point out that the respondent, ‘Mamophoesa Hoohlo

(born Motinyane) has since March 2010 been in flagrant disregard and in contempt of the order of this court and that to date she continues and persists being contemptuous with impunity.

- [2] She was to appear in court for contempt of a court order on the 29th November 2010 but she avoided going to jail because one of the many lawyers she had briefed one after the other, to wit Adv. Teele K.C. had assured the court that his client had complied with that order of court.
- [3] However she once again continued in this behaviour by denying applicant, the biological father of her child from having access to their child. Refer to contents of written submission filed on behalf of the applicant dated the 22nd November 2012.
- [4] Consequently and after hearing argument on the merits for and against the application for her committal to jail, which application was now being opposed by Adv. V.V.M. Kotelo, this Court found respondent guilty of contempt and had her committed to jail for seven days beginning the 30th November 2012.
- [5] It must be stressed and emphasized that in this particular application, there are only two parties; namely Mphekeleli Hoohlo and 'Mamaphoesa Hoohlo.
- [6] There has never to date, been joinder of any other parties to same. However, and to the dismay of this court, it was informed by Advs. Shale and Ramafole K.C. on the 3rd December 2012 that 'Mamaphoesa Hoohlo has been released from jail forthwith on Sunday the 2nd December 2012 by or

per an order of my brother Peete J.; which order was granted on urgent ex parte basis without the present applicant nor his counsel having at all been afforded a hearing of any kind.

- [7] Very unfortunately, as I was in court this very morning, and as Advs. Shale and Ramafole K.C. were addressing me, the said order of my brother Peete J. had not been brought to my attention for reasons best known by one Adv. Motinyane, the sister to the respondent in this application now before me (not before Peete J.). I was informed further that a new or another file being the same CIV/APN/563/2009 had been opened on the 2nd December 2012, with some two other respondents introduced in this file. This was about before this Court as counsel argue before me on the 3rd December 2012.
- [8] As had indeed always been her attitude, the respondent had ignored the Rules of this Court pertaining to representation; to wit Rule 15 of the Rules of this Court she had not caused Adv. Shale to file a notice of withdrawal of her brief from Adv. V.V.M. Kotelo. Also no notice of substitution of Adv. Shale had been filed of record.
- [9] However, and correctly so, when confronted by court about the above issue, Adv. Shale conceded that neither a notice of withdrawal of respondent's former counsel nor that of his appointment as an attorney/counsel of record for 'Mamaphoesa Hoohlo had been filed before this Court.
- [10] He was frank, candid and indeed honest as he disclosed and conceded that even though he has with him the notices of withdrawal and appointment

same had not yet been filed in court nor had they been served upon Adv. Ramafole K.C.

[11] He also informed this Court that he was never involved nor did he deal with the application which was moved on the 2nd December 2012 before my brother Peete J.

[12] He further informed this Court that he was only briefed and or that he received instructions only on the morning of 3rd December 2012. That he came to court only because the order of court of the 2nd December 2012, said counsel should be in court at 11 a.m., although he did not know whether it was Peete J's or Mahase J's court.

[13] That having so received same, he advised respondent herein to first sort out any outstanding issues with her former counsel Adv. V.V.M. Kotelo before he could file and have papers for his appointment served.

[14] Clearly this was never done because as Adv. Ramafole K.C. submitted and correctly so, Adv. Shale was improperly before this court. Neither Adv. V.V.M. Kotelo nor her client 'Mamaphoesa Hoohlo were before court. The story does not end up here, as this court was being addressed by Advs. Shale and Ramafole K.C., the application allegedly moved before my brother Peete J. on Sunday the 2nd December 2012 had not been availed to this Court and as such papers therein were not in the court's file.

[15] Indeed as Adv. Ramafole K.C. submitted, and correctly so, until such time that such papers/application was filed and availed to court formally and until

such time that provisions of the Rules of this Court regarding service, and representation of parties etc had been complied with, there is no application allegedly dated the 2nd December 2012 before this Court. This court fully subscribed to this view.

[16] Ultimately, this Court declined to give Adv. Shale an audience before it because of none compliance with the provisions of the Rules of this Court as explained above. Adv. Shale graciously and politely conceded that, that was indeed the correct principle of the law and he was excused from further remaining in court.

[17] It is a matter of common cause that Adv. Motinyane is a Crown counsel attached in the office of the Attorney General and in the Criminal Section, and answerable to the office of Director of Public Prosecution.

[18] How she came to be involved as an attorney/counsel of record in this CIV/APN/563/2009 wherein Mphekeleli Hoohlo and ‘Mamaphoesa Hoohlo are parties still a mystery. She is not a private attorney or private counsel. She should never have been given audience in court in the capacity of counsel for her own sister as long as she is a crown counsel. The same remains so for as long as Adv. Motinyane remains a crown counsel whether she is attached in the Criminal or Civil Section.

[19] The points raised in limine by Adv. Ramafole K.C. have all been correctly taken and are all upheld. Same is true and applies to Adv. Tšepo Mothibeli who is now employed by the Lesotho National Development Corporation

(L.N.D.C), and who has alleged drafted the notice of motion and the certificate of urgency in CIV/APN/563/2009 before my brother Peete J.

[20] The basis upon which these two advocates got themselves involved in the alleged CIV/APN/563/2009 before my brother Peete J. are highly questionable and borders on unethical conduct, misrepresentation, fraud and constitute a conflict of interest. Indeed one my add, are illegal actions by both of them.

[21] They both have no audience before this Court in their private and individual capacities. Tšepo Mothibeli purports to act on behalf of Adv. V.V.M. Kotelo. This is clearly wrong and unacceptable. He cannot in law act on behalf of another advocate as an advocate has to be instructed by an attorney.

[22] Beside the above, it is common cause that adv. V.V.M. Kotelo has refused to accept any service of court process regarding the application which has been irregularly filed and dealt with on the 2nd December by my brother Peete J. and which applications has cited different parties from the original application under which ‘Mamaphoesa Hoohlo was committed to jail.

[23] Indeed, it is undenied and a matter of common cause that without any application for joinder of the 2nd and 3rd respondents in the application before Judge Mahase, the parties remain Hoohlo v. Hoohlo. However in this irregularly filed application, there has been cited two other respondents; namely Commissioner of Prisons and Attorney General. In this application before Peete J. parties are completely different from that before the court

preceded over by Hon. Mahase J. There is no explanation why a new file using the old number had to be re-opened before Peete J., except that applicant and her alleged counsel were deceiving Peete J.

[24] This Court (Mahase J.) does therefore not understand why and how Peete J. without even having read and acquainted himself with the contents of the judgment/order of this Court dated 1st March 2010 and 30th November 2012 purported to order that respondent, ‘Mamaphoesa Hoohlo be released from prison forthwith.

[25] It would be interesting to know how my brother Peete J. arrived at that decision; in the light of the fact that Adv. Motinyane has deliberately, with the assistance of Tšepo Mothibeli engaged in activities which border on fraud, misrepresentation, irregular, unlawful tactics so long as they could get Adv. Motinyane’s sister out of jail in total disregard of a formal order of this Court by which ‘Mamaphoesa Hoohlo was committed to jail for having been in contempt of an order of this Court for close to three years since March 2010 to date – November 2012.

[26] Adv. Ramafole has argued further that aside from the above shown irregularities, the purported notice of appeal attached to papers in the file before Peete J., were a draft copy of an unsigned notice of appeal and as such there was no appeal filed before my brother Peete J.

[27] Indeed that is so in the light of the fact that it is bizarre that they purported to note an application for condonation of filing late appeal while for the last two or three years respondent has not done so, nor did she ever challenge the

proceedings before Mahase J on any acceptable recognized legal grounds. She just sat back and persisted in her contemptuous behaviour. There is also a clear conflict of interest by Motinyane.

[28] It is the considered view of this Court that because of the irregularities and illegalities referred to above coupled with the clear and intentional abuse of her office in appearing before and arguing this application, Adv. Motinyane should never have been given any audience by this Court nor by my brother Peete J. In the premises the said interim order of the 2nd December 2012 is a none starter and has no bearing on the order of this Court, per Mahase J dated the 30th November 2012.

[29] In fact, if it were to be interpreted otherwise, that would amount to a review of the decision of Mahase J. by Peete J. This is unacceptable. It should have never happened nor should it be countenanced by any Court.

[30] No High Court Judge has the right or power to review or change or amend an order or judgment of another High Court Judge. It is trite law that it is only the Court of Appeal of Lesotho; the Highest Court of the land which can do that on appeal properly and formally filed and served up on all interested parties.

[31] It is for the above reasons that this Court did, on the 3rd December 2012, order for the re-arrest of the respondent in CIV/APN/563/2009 before Mahase J for her to serve the imposed jail term for her contempt and for her persistent disregard of an order of this Court dated 1st March 2010.

[32] Should the above not be done we will be making mockery of the justice system and bringing into disrepute the whole administration of justice in this country much to the detriment of law abiding citizens, and to the peril of the Rule of Law in this jurisdiction. Courts of law should not be seen to be undermining the administration of justice and not to be upholding the Rule of law.

[33] The above are reasons underlaying the order I issued on the 3rd December 2012 for the re-arrest and recommittal to jail of the respondent in the application; CIV/APN/563/2009 before and dealt with by Mahase J.; and not any other bogus CIV/APN/563/2009.

[34] My remarks and observations of the 3rd December 2012 are incorporated herein,

[35] Costs are awarded to Mphekeleli Hoohlo.

M. Mahase

Judge

For Applicant - Adv. Ramafole K.C.

For Respondent - No Appearance