

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the Matter Between:

‘MAKEBISA MAGNELENE KHABO

Applicant

And

‘MANTEFELENG JANKIE

Respondent

JUDGEMENT

Coram : Hon. Mr. Justice T. E. Monapathi
Date of Hearing : 26th September 2012
Date of Judgement : 14th March 2013

SUMMARY

CITED CASES

STATUTES

Civil Practice of the Supreme Court of South Africa Van Winsen et al, 4th Edition.

[1] The ruling in this matter was delivered on the 14th March 2013.

[2] This is fairly short matter involving the issue of the revival of a judgement.

[3] It is common cause that the Applicant was given a final order by consent in a matter of CIV/APN/399/2000 as long ago as the 25th October 2000. The order in question was served on the Respondent on the 3rd January 2001.

[4] It is however in dispute as to whether and how such an order was executed. The Applicant claims it was not, as borne out by a return of service.

[5] On the other hand the Respondent maintains that the order was complied with in that the Applicant was not only allowed to bury her husband in addition she was given the keys to the property that belonged to her.

[6] However, all in all the Applicant claims that since the judgement had lapsed, she wants it revived so that she could go on with the execution. She contends that since the order in question was granted by consent there would be no prejudice if the judgement was revived. The Applicant further says that the execution of the judgement to be revived in that relates to a certain property that belongs to her.

[7] The Respondent vehemently opposes the application for revival on many grounds. The Respondent contents that the judgement that is sought to be revived had been fully complied with so that it would serve no purpose to revive it.

[8] Further that the judgement in question was not a revival judgement as contemplated by the Rules as it was not a judgement sounding in money.

[9] Respondent submits that one could not issue a writ on a judgement that is not sounding in money. The Respondent claim that the only avenue available to the Applicant was to institute contempt proceedings.

[10] There was a further point to the effect that the order sought to be revived by the Applicant was vague and lacked specificity. This point was conceded by the Applicant's Counsel in that the order the way it was couched had problems.

[11] The Respondent therefore contended that the court can only revive a superannuated judgement if it is satisfied that such a judgement can be enforced, and that if there is no such a possibility such a judgement should not be revived.

[12] The Respondent also claims that an inordinate delay by the Applicant in bringing this application was also an outright abuse of court process and must not be allowed by the court.

[13] The Applicant claims that Rule 57 (1) of the High Court Rules also come to the aid of claims not sounding in money. That the Applicant could not institute contempt proceedings on a judgement that had superannuated.

[14] I agree that Rule 57 of the High Court Rules in fact contemplates a judgement sounding in money. Once this finding is made it then follows that this application is misconceived. Herbstein and Van Winsen, in *The Civil Practice of the Supreme Court of South Africa* 4th Ed. P. 756 point out that:

“When a judgment is one *ad factum praestndum*, sc an order to do some act, for example pass transfer, remove an obstruction or vacate premises, the judgement creditor cannot seek its enforcement by levying of a writ, his remedy is to apply for committal of the judgement debtor for contempt of court.”

[15] Revival of judgements is governed by Rule 57 which is couched as follows:

“57 (1) after the expiration of three years from the day on which a judgement or order has been pronounced, no writ of execution may be issued pursuant to such judgment or order unless the debtor consents to the execution of a writ or unless the judgement has been revived by the court.

(2) A judgement shall not be revived by the court unless the debtor has received not less than seven days notice that application to the court will be made for the revival of such judgement.” (My underlining).

[16] It was correctly submitted that which is illustrated in the words underlined in about Rule 57 (1) illustrated that only judgements *ad pecuniun solvendam* that are envisaged under Rule 57 and not judgements *ad factum praestandum*.

[17] This application was dismissed with costs.

T. E. MONAPATHI
ACTING CHIEF JUSTICE

For Applicant : Adv. T. Mokoko
For Respondent : Mr. S. Phafane KC