CIV/T/567/06

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

MALETSOELA NKHASI	Applicant
And	
TSEPO TAASO	1st Respondent
NAMAKOE NKHASI	2nd Respondent
DEPUTY SHERIFF (LIPHOLO)	3rd Respondent
LAND ADMMINISTRATION AUTHORITY	4th Respondent
LOTI BRICK (PTY) LIMITED	5th Respondent

JUDGEMENT

Coram	**:**	**Hon. Mr. Justice T. E. Monapathi**
Date of hearing	**:**	**6th November 2012**
Date of Judgement	**:**	**26th February 2013**

SUMMARY

Where vexatious applications follow one after another it is a clear demonstration of abuse of process of court. That would normally attract punitive costs depending on the circumstances. A debt arising from the delict of one spouse can be claimed

from the joint estate to the detriment of the other spouse. The application to rescind or review the judgement did not succeed.

CITED CASES

Zeman vs Quickleberge Labour Court SA 2010/2010 ZALC 181
Mofokeng v General Accident Versekering BPK 1990 (2) SA 712, (WL.D)

STATUTES

Rule 12 (1) of the High Court Rules 9 of (1980)
Rule 46 (1) of the High Court Rules 9 OF 1980
Rule 47(3) of the High Court Rules
Rule 4(b) of the High Court Rules

[1] Applicant is execution debtor's (Second Respondent) wife. Applicant contends that she rightly acted as of urgency. In my view there is no urgency whatsoever in this application. The Applicant had known at all material times that the immovable property in issue was still under judicial attachment. She knew that the appeal she had entered against Judge Guni's ruling on 28 January 2010 was withdrawn and that *Rule Nisi* granted on the 20th February 2010, pending the sale in execution, had since lapsed. Thus the Deputy Sheriff could proceed with the sale. There is yet another problematic issue.

[2] Again, there has been a multiple of urgent *ex parte* applications brought by the Second Respondent and the Applicant herein. They all sought to rescind, and or obtain leave to rescind and stay the execution of the attached property. All but one of them were dismissed by the court with costs awarded to the Fifth Respondent. In

one of them Applicant failed respond to the order given by this court on February 2010 until the order lapsed.

[3] It was therefore correctly submitted that this was an abuse of court process which the Court always warns against. The Court on its own has stipulated that:

> "…. when the Court finds an attempted made to use for ulterior purposes machinery devised for the better administration of justice, it is duty of the Court to prevent such abuse."

[4] As shown in the present case, all the urgent applications were always brought up whenever a sale was set to continue but were never seen through by the Applicant. It went (Respondents submitted that) without saying that they were all brought up to frustrate and prevent the execution of the attached property. This is totally unacceptable. I agreed with respect that this was the Applicants' tendency.

[5] When speaking about costs Respondents cited the case of ***Zeman vs* Quickleberge Labour Court SA 2010/2010 ZALC 181**. In that case it was held that the conduct of the conduct of a respondent in avoiding this obligation to the applicant and avoiding consequences of a previous order of court warrants a punitive costs order. It is generally so. I agreed.

[6] Regrettably it was not the contention of the Applicant that she will suffer irreparable harm if the house in issue was transferred to First Respondent. Further that she will have no where to stay with the children. And that she has not been afforded substantial hearing by the court. And furthermore that she had not been cited in the execution of the judgement. I thought that no irreparable harm was shown when considering the length of time when the house was under attachment.

[7] The Fifth Respondent correctly submitted that all these contentions are misconceived including this one that Applicant was not served with papers. It could be so. It was her husband who was sued. So she could not have been heard as she clearly did not have *locus standi in judicio.* I agreed with First Respondent.

[8] This court was referred to the provisions of the ***Rule 12 (1) of the High Court Rules 9 (1980)*** . In terms of this rule, any person entitled to join an action as plaintiff or as defendant may apply to the Court for leave to intervene before judgement is granted in the matter. As is evident herein judgement has already been given long time ago and Applicant has failed to exercise her rights even when given a chance to do so.

[9] Secondly, Applicant admitted that she was married to the Second Respondent in community of property. Thus she is bound by the liability of her spouse. The position of the law is that:

> "….. a debt arising from the delict of one of the spouses can be claimed from the joint estate even to the detriment of the spouse who is not a party to the commission of a delict."

This settles the problem in my view.

[10] It was hotly disputed whether the process of execution was followed. Fifth Respondent further submitted that the execution was correctly followed to the last step. Upon granting the default judgement, the Third Respondent served the writ of execution against the movable property of the Second Respondent but found none. He accordingly filed a *nulla bona* return as per the Rules of Court I concluded that. In no way was it demonstrated as to how there was any impropriety. There was none. See ***Rule 46 (1) of the High Court Rules 9 of 1980 and ZEM vs Quickleburg (supra)***

[11] Another writ of execution against the immovable property was issued wherein the property was attached. The notice of attachment was duly served on all parties, as directed by the Rules of this court. See ***Rule 47(3) of the High Court Rules*** and 6.7 of Fifth Respondents' Answering Affidavit. Again no impropriety was shown.

[12] Respondents submitted that the procedure for the sale in execution of the attached property had always been followed at all material times. However, it was forever obstructed by various applications brought by the Second Respondent and the Applicant. Despite all these the property had always remained under judicial

attachment as it should have been. In my view this was amply demonstrated. See Para 13 of the Fifth Respondent's affidavit**.**

[13] With regard to the latest sale which the Applicant now seeks to set aside. It was on the ground that it was improper, as the 2nd Respondent was never served on the Applicant personally on the 22 July 2007 hence constituted a proper service. In any view the sale could not be faulted. See: Return of Service dated 22 July 2007 and ***Rule 4(b) of the High Court Rules***

[14] In the premises, it is therefore correctly submitted that the application be dismissed with costs. It is so dismissed with costs. I reluctantly granted costs on the ordinary scale. I however bore in mind the demonstrable abuse of process. See the remarks of Van Zyl J in ***Mofokeng v General Accident Versekering BPK 1990 (2) SA 712, (WL.D)***.

T. E. MONAPATHI
JUDGE

For Applicant : Mr. Habasisa
For Respondent : Miss Malope