CIV/APN/317/2012

IN THE HIGH COURT OF LESOTHO

In the matter between:

TANKI THAMAE	**Applicant**
vs	
DISTRICT AGRICULTURAL OFFICER	**1st Respondent**
DIRECTOR OF FIELD SERVICES	**2nd Respondent**
PRINCIPAL SECRETARY OF THE MINISTRY OFAGRICULTURE AND FOOD SECURITY	**3rd Respondent**
MINISTRY OF AGRIC AND FOOD SECURITY	**4th Respondent**
PRINCIPAL SECRETARY OF PUBLIC SERVICE	**5th Respondent**
ATTORNEY GENERAL	**6th Respondent**

JUDGMENT

Coram:	**Hon. Hlajoane J**
Dates of Hearing:	**13th August, 2012, 14th March, 2013, 8th May, 2013.**
Date of Judgment:	**10th May, 2013.**

Summary

Application for contempt of Court – Must first prove that the order was brought to the attention of the Respondents proof that the order was disobeyed – Both willfulness and mala fides to be inferred – The onus on the Respondents to rebut the inference – This being an Application, Respondents having failed to rebut the inferences of willfulness and mala fid in the papers filed of record – Respondents allowed some time to purge their contempt.

[1] Applicant in this case filed an Application against the respondents on the 25th June 2012. The papers were duly served on the respondents on the 3rd and 6th July 2012 respectively. The Deputy Sheriff filed his return of service dated 3rd July, 2012. The original copy also bears the date stamp impressions of the respondents and some signatures on them.

[2] The prayers as set out in the Notice of Motion were the following:-

(a) Directing respondent to pay to applicant an amount of M67,599.90 (sixty seven thousand five hundred and ninety nine maluti) being arrear salaries from 25th day of August, 2010 up to 25th day of May 2012 and to continue to pay him monthly salary from the month of June 2012 up until such time he retires or ceases to be a civil servant.

(b) Directing respondent to pay mountain allowance in the amount of M229.00 (two hundred and twenty nine maluti) per month starting from the 25th August, 2010 up to date of payment and to continue to pay the said amount whilst applicant remains stationed in the mountains.

© Directing the respondent to stop interfering with applicant's salary in any manner whatsoever except by due process of law.

(d) Directing respondent to reinstate applicant in his position without any loss of benefits accruing by virtue of his employment.

(e) Costs of suit.

[3] The respondents despite service of the papers on them never filed any intention to oppose. The applicant then set the matter down for default judgment which was duly granted on the 13th August, 2012.

[4] That final Court Order was served on the respondents on the 22nd August 2012 and the 11th September 2012 respectively as evidenced by the return of service filed of record and date stamps impressions by respondent on the original order.

[5] The respondents on the 5th September, 2012 filed an application for stay of execution and rescission. The application was opposed and the applicant filed his answering papers on the 12th September, 2012. The answering papers were served on the respondents same day.

[6] The next day, the 13th September, 2012 the respondent filed a Notice of Withdrawal of the matter which was served on the applicant the same day. On the same date the applicant filed Notice of Intention to oppose the Notice of Withdrawal. The Notice also served the same day the 13th September, 2012.

[7] On the 24th October, 2012 the Applicant then filed an Application for contempt, which appeared to have been filed after it had already been served on the respondents on the 23rd October, 2012. The respondents opposed the Application on the 31st October, 2012 and served the applicant on the 1st November, 2012. The respondents filed opposing affidavit on the 12th November, 2012 which they served on 13th November, 2012.

[8] The applicant then filed the replying papers on the 20th November, 2012 and were served on the respondents the same day. It would be interesting at this juncture to mention that after the respondents were on the 13th September, 2013 served with the intention to oppose their withdrawal, they the same day filed yet another

application for stay of execution and rescission, but this time under a different case number. The prayers in that application were the very same ones as in the other application they had withdrawn.

[9] The second application was opposed on the 25th September, 2012. There was a set down filed by the respondent for hearing on the 26th April 2013 but they never appeared in Court on that day but only came on the 30th April 2013.

[10] An interim order was granted for stay pending finalization if the matter and dispensation. This was despite the fact that in this application the applicant had filed a notice of set down for the 14th March, 2013 which had been served on the respondents on the 10th December, 2012.

[11] When counsel for the applicant appeared before Court on the 14th March, 2013 and showed to the Court that since the application for rescission was never pursued that the judgment that was given against the respondents on the 13th August, 2012 was still valid. That what the respondents had to do was to appear before Court to answer case of contempt. The matter was postponed to 8th may, 2013.

[12] On the 8th May 2013 both counsel were before Court to argue the matter. It was the applicant's case that the set down for the 26th April 2013 was fro a deficient application CIV/APN/443/2012 and

not the present application. So that he still insisted that the default judgment that was granted still stands.

[13] In response to what applicant's said counsel for the respondents argued that they had had a conversation with applicant's counsel about the two files but that of course was denied by applicant's counsel.

[14] These being application proceedings parties must stand or fall by what is contained in their papers.

What the respondents' counsel said was some new information known only to herself as not contained in the papers. It would therefore not be unreasonable to conclude that what the respondents wanted the Court to do would be an abuse of Court process.

[15] The respondents clearly withdrew their application for stay of execution and rescission. When they realized that their withdrawal was being opposed they opened yet another file with a different case number but same prayers. No explanation in the papers as to why they did that and wanted the Court to hear fresh argument not contained in their papers.

[16] A rescission application has to bear the same case number for the judgment sought to be rescinded. The respondents seemed to have

been playing a delaying tactics by given the same case a different case number instead of dealing with the opposition to withdraw.

[17] Applicant's counsel gave out requirements for an application for contempt to succeed:

- that an order was granted against respondents
- that respondents were either served with the order or informed of the grant of the order against them and had no reasonable grounds for disbelieving the information
- that respondents have either disobeyed the order or neglected to comply with it Vide Herbstein and Van Winsten[1].

[18] In their grounds for rescission the respondents have shown that applicant is unfairly demanding huge sums of monies but have not denied that they owe him. Neither have they denied that they unilaterally stopped applicant's salary.

[19] Relying on some authorities applicant's counsel submitted that the respondents must be taken to be in willful default and are being *malafide*. The conduct of the respondents portrays some deliberate disobedience of the order of Court and *mala fide* to be inferred from such conduct.

Consolidated Fish Distributors (Pty) Ltd v Zive & Others[2]

Haddow v Haddow[3].

[1] Civil Practice of Superior Courts in South Africa 3rd Edition at 657.
[2] 1968 (2) S.A. 517

[20] Under the circumstances of this case I would not agree more with the submission that the respondents must be held in contempt as the Application for stay and rescission was withdrawn and when they sought to bring another Application it was made under a different number thus misleading the Court by what clearly must be looked at as a delaying tactics.

[21] The default judgment that was granted on the 13th August 2012 still remains the judgment in the matter.

Ppd 5/06/13

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[3] 1974 (2) S.A. 181 at 183