

CIV/APN/101/2014

IN THE HIGH COURT OF LESOTHO

In the matter between:

JESSIE RAMAKATANE

Applicant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

1st Respondent

THE ATTORNEY GENERAL

2nd

Respondent

THE MINISTER OF JUSTICE

3rd Respondent

**THE MINISTER OF LAW AND
CONSITUTIONAL AFFAIRS**

4th Respondent

JUDGMENT

Coram:

Hon. A. M. Hlajoane

Date of Hearing:

17th June, 2014.

Date of Judgment:

12th August, 2014

Summary

Application for contempt of Court – Two Extradition Applications having been consolidated but that fact withheld from the Court during argument for application for cancellation of same – Once consolidated there is only going to be one decision affecting both.

HELD: That since Extradition Applications for events of 2007 and 2009 were consolidated, the decision given in CIV/APN/205/2013 affected them both.

HELD; Further that applicant correctly pleaded Res Judicata as a decision has already been made in his favour.

Annotations

Statutes

Books

Cases

- 1. Moru v Attorney-General (2000 -2004) LAC 374 at 377**
- 2. R v Pope and Le Roux 1952 (3) S.A. 409 at 414 ©**

[1] This is an Application in which the applicant is asking the Court to cancel the application to the South African authorities and the

consequent warrant leading to his extradition from South Africa into Lesotho concerning the events of 2009.

- [2] The applicant is also asking for this Application to be consolidated with the contempt of Court Proceedings in CIV/APN/205/13 as the parties therein are the same and the cause of action is substantially the same.
- [3] Based on what has been said above it would be best to refer to what transpired in CIV/APN/205/13 where the parties were the present applicant as the applicant in that case and the respondents were the same respondents as in this case.
- [4] In CIV/APN/205/13 the applicant had complained that people whom they had fled the country together had been granted amnesty, but he had been left out. Applicant even referred to the offences which they were alleged to have committed as political offences.
- [5] But the respondents in the answering affidavit, unlike what the applicant has alleged to have referred to the offences as political, refer to them just as criminal offences which would not qualify for seeking any political asylum. It would seem that all the same the Government of Lesotho considered them as political offences hence the amnesty.

[6] Still in CIV/APN/205/13 the respondents in the answering affidavit at page 9 of the record para 5 thereof averred that the applicant's extradition involved both 2007 events and 2009 events.

[7] In this Application the respondents still in their answering affidavit have shown at para 5.9 thereof that the two Extradition Applications for both 2007 and 2009 were consolidated and heard together in Gauteng. The two Applications were to be heard before Randburg Magistrate Court, and applicant was made to attend remands there.

[8] Respondents at para 8 of the answering affidavit in explaining what they understand consolidation to mean said;

“the two matters were simply consolidated for purposes of hearing, but they remained separate matters.”

The dictionary meaning of consolidate from Concise Oxford Dictionary is “combine into one whole”.

[9] As applicant pointed out in his heads the respondents in CIV/APN/205/13 referred to the events of 2009 without informing the Court that in fact the 2007 events had been consolidated with the alleged 2009 events. The Court was denied the opportunity of making a comprehensive finding of the two

consolidated Extradition Applications, hence why the Court came to the decision that such events were not substantiated.

[10] The Court on looking at the annexures to the answering affidavit in this Application, realizes that the respondents already had at their disposal all the information relating to the events of 2007 and 2009 at the time when CIV/APN/205/13 was argued but such material was withheld from the Court for reasons best known to respondents.

[11] The applicant wants to plead *res judicata* in these proceedings.

The principles in such a plea being that;

- (i) the prior action must have been between the same parties.
- (ii) the prior action must have concerned the same subject matter.
- (iii) that prior action must have been founded on the same cause of action.

[12] The applicant referred to the decision in **Moru v Attorney-General**¹ where the Court was considering a plea of *res judicata* with the headnote deciding that,

“Instituting a successive claim which is similar to an earlier claim such latter claim is not permissible.”

The Court had further said,

¹ (2000 – 2004) lac 374 AT 377

“The general rule is that plaintiff must claim all the relief he is entitled to claim in respect of a single cause of action in one action.”

Applicant *in casu* has been denied that opportunity.

[13] The applicant further referred to the case of **R v Pope and Le Roux**² where it was held that;

“although there was a difference between the two indictments, in substance the dispute was the same and accordingly that - - - the exception of res judicata would be upheld.”

But in our case the two Applications were for extradition not anything different, and the two were consolidated.

[14] This case is thus centered on whether or not the decision in CIV/APN/205/13 should be taken to have related to both events of 2007 and 2009. Respondents have shown that the two Extradition Applications were consolidated and considering the meaning of consolidation both Applications became one. So that the decision that was made in CIV/APN/205/13 automatically affected the present Application.

[15] There has been an attempt by the 1st respondent's office to circumvent the move that had been taken of consolidating both Extradition Applications. At Annexure “A” attached to the 1st

² 1952 (3) S.A 414 ©

respondent's answering affidavit, the message conveyed to the Director General, Department of Justice and Constitutional Development, Pretoria has been that Extradition Application for 2007 events be withdrawn and proceed with that for 2009 events.

[16] Looking at the date when Annexure "A" referred to above was made, the 29th January, 2014, this was way after the decision in CIV/APN/205/13 was made, the 12th September, 2013. The Court has already shown above that since the two Applications had been consolidated the decision in CIV/APN/205/13 affected both 2007 and 2009 events as there had remained only one Application for both.

[17] The applicant has correctly pleaded *res judicata* as the decision has already been made in CIV/APN/205/13. It cannot be correct to say that after the two Applications were consolidated they remained separate. It was very unprofessional to have withheld the issue of consolidation from the Court when CIV/APN/205/13 was argued.

[18] I still recall when the Court kept on asking about any documentary proof for 2009 Application from the respondents as they had done with 2007 Application but they were never made available.

[19] The Application thus succeeds in terms of Prayer (1) of the Notice of Motion with costs.

On the contempt of Court Proceedings, because there has at any rate been a belated compliance with the order of Court in CIV/APN/205/13 per the deed of settlement signed by counsel on both sides dated 14th June, 2014, respondents are not going to be held in contempt.

[20] Following on the decision in CIV/APN/205/13, that decision *mutatis mutandis* applies to this case as the Extradition Applications had been consolidated.

A. M. HLAJOANE
JUDGE

For Applicant: Adv. Ntlhoki KC

For Respondents: Mr L. Letsie