IN THE HIGH COURT OF LESOTHO
(HELD AT MASERU)

CIV/APN/338/2017

In the matter between:-

MATLI MPUTSOE	**1ST APPLICANT**
MAMOTJOKA RAMPETA	**2ND APPLICANT**
MOEKETSI MOHAPI	**3RD APPLICANT**
RETHABILE TLEBERE	**4TH APPLICANT**

AND

P.S. MINISTRY OF DEVELOPMENT AND PLANNING	**1ST RESPONDENT**
MINISTER OF DEVELOPMENT AND PLANNING	**2ND RESPONDENT**
ATTORNEY GENERAL	**3RD RESPONDENT**

RULING

CORAM : Honourable Justice Makara
HEARD : 29 August, 2018
DELIVERED: 29 August, 2018

ANNOTATIONS

CITED CASES

1. **Trans-African Insurance Co. Ltd v Maluleka in Trans-African Insurance Co. Ltd v Maluleka**
2. **Afrisun Mpumalanga Pty Ltd v Kunene NO and others 1999 (2) S.A 599 (T) at 611 D -F**

STATUTES & SUBSIDIARY LEGISLATION

1. **Herstein and Van Vinsent The Civil Practice of the High Courts in South Africa 5th edition**

MAKARA J.

Introduction

[1] An imprimatur of the present contempt case is that on the 5th day of December, 2017, this court granted the application in terms of which the respondents were directed to pay:

1. (a) 1st applicant an amount of M21, 997.37
   2nd applicant an amount of M21, 997.37
   3rd applicant an amount of M22, 641.93
   4th applicant an amount of M22, 641.93

   (b) That the 2nd respondent was ordered to guarantee that 1st respondent complies with prayer (a).

2. That respondents pay Costs of suit at attorney and client's scale.

[2] The judgement was granted by default following failure of the respondents to file notice of intention to oppose and or any opposing affidavit thereof. It should suffice to be recorded that *ex facie* the contempt application papers, the respondents have hitherto failed to comply with the order by in the main, paying the moneys contemplated in the judgment. Thus, the impasse has triggered the present proceedings.

[3] At their commencement, the respondents raised a point of law in terms of which they contest the procedural appropriateness of

resorting to the contempt application. A graver-man of their argument is that the approach amounts to a transgression of Rule 30(2) of the rules of this court. It runs:

> Application in terms of sub rule 1 shall be on notice to all parties in the cause specifying particulars of the irregularity or impropriety involved.

[4] According to them, the rule denotes that contempt proceedings can only be resorted to where they are premised upon a factual state of affairs excluding a pursue of a pecuniary interest. In seeking to illustrate the part reference was made to a postulation in **Herstein and Van Vinsent**[1].

[5] In addition, they cautioned about the indispensability of the compliance with the rules of this court in order to dispense justice. Reliance was here anchored upon the words by Schreiner JA in **Trans-African Insurance Co. Ltd v Maluleka**[2] that:

> No doubt parties and their legal advisers should not be encouraged to become slack in the observance of the Rules, which are an important element in the machinery for the administration of justice. But on the other hand technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits.

[1] The Civil Practice of the High Courts in South Africa 5th edition volume 2 page 1106

[2] 1956 (2) SA 273 (A)

Conclusion:

[6] It was suggested that respondents would suffer prejudice if the irregular step taken is not set aside but simply ignored. The case of **Afrisun Mpumalanga Pty Ltd v Kunene NO and others**[3] was invoked for the proposition. It was stated in that case that:

> The prejudice that is referred to is prejudice which will be experienced in the further conduct of the case if the irregular step is not set aside. There is no prejudice if the further conduct of the case is not affected by the irregular step and the irregular step can be simply ignored.

[7] It was counter argued by the applicants that the respondents have misconceived the procedural imperatives in raising the point of law. To illustrate the point they invited the court to the wording of the rule with emphasis on the inscription that the objection itself should have been initiated by way of a notice of motion. The implication is that there should have been compliance with the normal rules governing the content, the form and time frames provided for in the notice of motion. The court takes judicial notice that this has not been the case.

[8] It emerges to the court that what is of material significance to it is that the applicants are judgment creditors in terms of the judgment of the 5th day of December 2017 and that it should be honoured.

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[3] 1999 (2) S.A 599 (T) at 611 D -F

[9] This holds more particularly when the respondents did not oppose the application. This is a clear case where the court should not legalistically enslave itself to the rules. Instead it should strive towards the attainment of substantial justice. In any event, the applicants are allowed by common law to seek a remedy through contempt application. The rules cannot override common law principles.

[10] In the premises, the legal point raised by the respondents fails. Their attitude is regarded as being dilatory and lacking in merits, consequently the applicants are entitled to costs.

E.F.M. Makara
JUDGE

For Applicant : Adv. Falatsa instructed by E.M. Sello Attorneys
For Respondent : Adv. Brown from Attorney General's Chambers