

# IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/94/20

In the Matter Between:-

'MALEROTHOLI MOLAPO

APPLICANT

AND

TEBATSO MOLAPO

1<sup>ST</sup> RESPONDENT

STATION COMMANDER  
MABOTE POLICE STATION

2<sup>ND</sup> REPONDENT

ATTORNEY GENERAL

3<sup>RD</sup> RESPONDENT

---

## JUDGMENT

---

CORAM : MOKHESI J

DATE OF HEARING : 25<sup>th</sup> SEPTEMBER 2020

DATE OF JUDGMENT : 25<sup>TH</sup> SEPTEMBER 2020

### Summary:

**CIVIL PRACTICE:** *The applicant applying for contempt of court against the respondent for defying an order of court- Contempt of*

*court principles re-stated and applied- The respondent found to be in contempt.*

**Annotations:**

*Fakie N.O v CCII Systems (PTY) Ltd 2006 (4) SA 326 (SCA)*

## **MOKHESI J**

**[1]** This is an application for contempt of court. The facts of this case are straightforward: The applicant was a plaintiff in a divorce case instituted against the respondent. A decree of divorce was issued by this court on the basis of the respondent's malicious desertion, on the 20<sup>th</sup> February 2019, and ancillary prayers which were subject of a Deed of Settlement were made an order of court, and were to the following effect:

- 1. Plaintiff to retain the matrimonial home on condition that she only holds it in trust for the parties' children and she will not dispose of it and or encumber it with debt.*
- 2. The parties' motor vehicle, Toyota Tazz be awarded to defendant.*
- 3. Defendant be awarded some (not half) of the sleeping blankets together with some (not half) of the cooking pots and cutlery.*

**[2]** Since this order was issued by Makara J on the date alluded to above, the 1<sup>st</sup> respondent has refused to comply with it to date, prompting the applicant to launch this application on the 16<sup>th</sup> March 2020. In effect, the 1<sup>st</sup> respondent is refusing to vacate the house as ordered. This application was served personally on the 1<sup>st</sup> respondent on the 20<sup>th</sup> March 2020, with the Notice of Motion stating that it will be moved on the 2<sup>nd</sup> April 2020, but due to

COVID – 19 Lockdown, the application could not be moved as anticipated.

**[3]** On the 08<sup>th</sup> September 2020, the applicant served upon the 1<sup>st</sup> respondent's counsel, a Notice of set down to the effect that the matter has been set down for hearing on the 21<sup>st</sup> September 2020. On that date (21/09/20) Adv. Mosokotso for the applicant appeared before court. There was no appearance for the respondents, and reluctant to grant the application I issued an order in terms of which I directed that it be served upon the 1<sup>st</sup> respondent personally calling upon him to appear personally to explain why he cannot be committed to jail for contempt of court. It must be stated that it was not necessary for this court to have done this, but I felt the 1<sup>st</sup> respondent being a lay person should at least appear personally before court to give an explanation. It should be recalled that he had only filed his notice of intention to oppose, two to three months after he was served with the application. Instead of the respondent appearing personally before me to explain his contempt, a second Notice of Intention to oppose was filed by Adv. M. Mphakoanyane for the 1<sup>st</sup> respondent, and attached to it was the 1<sup>st</sup> respondent's answering affidavit, filed eight (8) months after he was served with the application. And no application for condonation for non-compliance with the rules has been made. Undoubtedly, the 1<sup>st</sup> respondent and his counsel have little or no regard for the rules, and this coming from the officer of this court is lamentable and troubling. Disregard of the rules in

this matter is blatant. But these notwithstanding the I turn to consider whether the merits of this application.

**[3]** The question to determine is whether the applicant has made out a case for contempt of court beyond a reasonable doubt. In the off-quoted decision of ***Fakie N.O v CCII Systems (PTY) Ltd 2006 (4) SA 326 (SCA)*** at para. 42 Cameron JA laid out the bases for a conviction of contempt of court as follows:

*"(a) The civil contempt procedure is valuable and important mechanism for securing compliance with court orders and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.*

*(b) The respondent in such proceedings is not an 'accused person' but is entitled to analogous protections as are appropriate to motion proceedings.*

*(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and willfulness and mala fides) beyond a reasonable doubt.*

*(d) But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to willfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance*

*was willful and mala fide, contempt will have been established beyond reasonable doubt.*

*e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.”*

**[4]** It must be stated that failure or refusal to obey court order must be both willful and *mala fide*. If the alleged contemnor is merely being unreasonable, contempt will be lacking in the absence of *mala fides* and willfulness:

*“...[T]he offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.” (Fakie **ibid** at para.10)*

**[5]** Reverting back to the facts of this case, therefore, this court had issued an order in terms of which the applicant was to retain the matrimonial home and this as said earlier was a result of settlement between the parties; the 1<sup>st</sup> respondent was personally served with the court order, and has from the 20<sup>th</sup> February 2019 to date- almost eighteen months later- failed to comply with it as he still stays in the matrimonial home despite him and the applicant no longer being husband and wife. His explanation that the he did not move out of the house because the applicant has not transferred ownership of the vehicle to him is disingenuous. He

kept quite all this time without any demur about the applicant's non-compliance, only to raise it when confronted with his non-compliance. His disobedience is both *mala fide* and willful and not merely unreasonable. In the result, I find that the applicant has proved beyond a reasonable doubt that the 1<sup>st</sup> respondent is guilty of contempt of court.

**[6] Order:**

(a) Under *further and/or alternative relief*, it is declared that the 1<sup>st</sup> respondent is in contempt of court order dated 20<sup>th</sup> February 2019.

(b) That the 2<sup>nd</sup> respondent is ordered forthwith to apprehend and bring the 1<sup>st</sup> respondent before court to be dealt with in accordance with the law, for his contempt.

---

**M. MOKHESI J**

**FOR THE APPLICANT: ADV. T. MOSOKOTSO INSTRUCTED  
MAAPESA MOHAU ATTORNEYS**

**FOR THE RESPONDENTS: NO APPEARANCE**