

**IN THE HIGH COURT OF LESOTHO**

**Held at Maseru**

**CIV/APN/0170/2022**

In the matter between:

**THE COMMISSIONER OF POLICE**

**1<sup>ST</sup> APPLICANT**

**THE ATTORNEY GENERAL**

**2<sup>ND</sup> APPLICANT**

And

**MOLIEHI DLAMINI**

**1<sup>ST</sup> RESPONDENT**

**MOKHETHI DAMANE**

**2<sup>ND</sup> RESPONDENT**

**LEBAKA MATIEA**

**3<sup>RD</sup> RESPONDENT**

**KOPANO RAMOKHORO**

**4<sup>TH</sup> RESPONDENT**

**NGAKA LENKA**

**5<sup>TH</sup> RESPONDENT**

**MOJELA GUGUSHE**

**6<sup>TH</sup> RESPONDENT**

**THABANG MAIME**

**7<sup>TH</sup> RESPONDENT**

**LECHESA LEPHEANE**

**8<sup>TH</sup> RESPONDENT**

**POLOKO SEKHOHOLA**

**9<sup>TH</sup> RESPONDENT**

**REFILOE KHELELI**

**10<sup>TH</sup> RESPONDENT**

**MOOROSI KALANE**

**11<sup>TH</sup> RESPONDENT**

**SEBONGILE CEKWANE**

**12<sup>TH</sup> RESPONDENT**

## **RULLING**

Neutral citation: Commissioner of Police and Another v Moliehi Dlamini & 11 Ors (No.1) LSHC 159 CIV (11 July 2022).

**CORAM:** T.J. MOKOKO J

**HEARD:** 06 JULY 2022

**DELIVERED:** 11 JULY 2022

## **SUMMARY**

*Stay of execution pending appeal – Principles applicable thereof.  
Noncompliance with court order – Its implications on the stay of execution of judgment pending appeal.*

## **ANNOTATIONS**

### **Cases**

1. *Alexander v Joki and others* 1948 (SA) 269
2. *Alexander vs Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694
3. *C of A (CIV) NO. 32/2022*
4. *Department of Transport vs Tasima (Pty) Ltd Limited* 2017 (2) SA 622 (CC)
5. *Fakie No vs CCII Systems (PTY) Ltd* (653/04) [2006] ZASCA 52;2006 (4) SA 326 (SCA) at Para. 42
6. *Isaac Jefty Smith v Minister of Interior* 1974- 1975 LLRR 366
7. *Kalahari Salt Works (Pty) and Others vs Bonne Fortune Beleggings Bpk* 1973 (4) SA 471 at 471 at 476-477
8. *Moriya v. Lesotho Evangelical church CIV/APN/25/97*

### **Statues**

1. *Lesotho Mounted Police Service Act of 1998*

## **Introduction**

This is a ruling of this court on an interlocutory application for stay of execution of judgment pending the appeal. Applicant approached this court on urgent basis, claiming the following prayers.

1. Dispensation with the ordinary rules pertaining to form, notice and periods of service on account of urgency of this matter.
2. That a rule nisi be issued, calling upon the respondents, to show cause if any; why
  - a) The Honourable Court cannot grant leave to suspend or stay the execution of the order in CIV/APN/0170/2022, pending determination of the appeal in C OF A (CIV) NO. 32/2022.
  - b) Costs of suit in the event of opposition.

## **Background**

[1] On or around the 4<sup>th</sup> July 2022, applicant herein instituted an application for stay of execution of judgment pending appeal in **C of A (CIV) NO. 32/2022**. The brief history of this matter is that, around the 1<sup>st</sup> May 2022, the respondents commenced their Police recruitment training programme at Police Training College. However, on the 13<sup>th</sup> May 2022, applicant herein addressed a uniform letter to the respondents, informing them that a vetting process undertaken by the Lesotho Mounted Police Service, revealed that they were not persons of a satisfactory character, therefore cannot become efficient Police Officers. They were then requested to furnish reasons, why the Commissioner of Police may not terminate their appointment in terms of *section 31 (1) (a) of the Lesotho Mounted Service Act of 1998, read with Regulation 3 (1) (c) of the Lesotho Mounted Police Service (Administration) Regulations of 2003*.

[2] Pursuant to this letter, the respondents penned down a letter, dated 16<sup>th</sup> May 2022, requesting to be furnished with the vetting report, to enable them to make the requested representations. In response to this letter, the Commissioner of Police, in his letter dated 16<sup>th</sup> May 2022, informed the respondents that, the vetting reports revealed that the respondents are members of a notorious criminal gang and they bear tattoos characteristics of that group on their bodies. Respondents were advised that the vetting reports contain sensitive security information, hence classified and as such, cannot be consumed by them. The respondents were then given a deadline of the 25<sup>th</sup> May 2022, at 08:00 hours, to submit their representations.

[3] On the 24<sup>th</sup> May 2022, respondents then approached this court on urgent basis. This court granted the respondents a rule nisi, in terms of which the applicant was interdicted from discharging the respondents from the Police Training College, and that the requirement to submit their representations to the Commissioner of Police, on the 25<sup>th</sup> May 2022, was held in abeyance pending finalisation of the application. However, on the 25<sup>th</sup> May 2022, the Commissioner of Police, went ahead to discharge the respondents from the Police Recruitment programme, on the ground that they had failed to submit the requested letters of their representations, as such they had waived their right to be heard. The Commissioner of Police stated that when he discharged the respondents, he was not aware of the court order, granted on the 24<sup>th</sup> May 2022 (**Makhetha J** order). He stated that he became aware of the court order, on the 27<sup>th</sup> May 2022. As a result of termination of their appointment, the respondents then approached this court on urgent basis, challenging termination of their appointment. On the 29<sup>th</sup> June 2022, this court granted the respondents' application, by declaring termination of their appointment as Police Recruits as unlawful.

[4] The respondents did not submit their letters to the Commissioner of Police as instructed, because they were armed with the Court Order, which suspended the submission of the letters of representation to the Commissioner of Police. On the other hand, the Commissioner of Police, on the 25<sup>th</sup> May 2022, discharged the respondents on the ground that they failed to furnish the Commissioner of Police with their letters of representation. It was the Commissioner of Police's submission, that when he discharged the respondents from the recruitment programme, he was not aware of the Order of court granted on the 24<sup>th</sup> May 2022. It is a matter of common cause that despite being aware of the court order of **Makhetha J**, on the 27<sup>th</sup> May 2022, the Commissioner of Police did not reverse his decision against the respondents.

[5] On the 6<sup>th</sup> July 2022, an application for stay of execution was heard, and the court issued an ex tempore order, and the court is now delivering its ruling and reasons in the matter.

### **Stay of Execution Pending Appeal**

[6] In the case of **Morija v. Lesotho Evangelical church<sup>1</sup>**, **Peete J** as he then was, at page 3 had this to say:

“In Lesotho, under Rule 6, the noting of an appeal does not per se suspend execution and it is for the judgment debtor to make an application for leave to stay the judgment pending the outcome of his noted appeal; and consequently he bears the onus to convince the court to exercise its judicial discretion in his favour. Usually the affidavit must allege and show good reasons why the execution of judgment must be stayed pending the outcome of the appeal- for example the applicant must show that the execution of judgment shall occasion him irreparable harm (**Isaac Jefty Smith v Minister of Interior<sup>2</sup>**) and that he has reasonably

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<sup>1</sup> CIV/APN/25/97

<sup>2</sup> 1974- 1975 LLRR 366

good prospects of success, and it can also be shown that the balance of convenience favours preservation of status quo and that execution is likely to place the applicant in an irreversibly worse position from which he enjoyed before judgment- **Alexander v Joki and others**<sup>3</sup>, where it was held that the court should be slow to grant an order which would cause a judgment under appeal to have immediate operative effect...The court ultimately has to consider whether it would be possible to restore the status quo ante if the appeal were upheld- **Kalahari Salt Works ( Pty) and Others vs Bonne Fortune Beleggings Bpk**<sup>4</sup>”.

[7] In the case of **Alexander vs Cambridge Credit Corp**<sup>5</sup>, the court<sup>6</sup>, enumerates a number of other relevant principles;

- a) The onus is upon the applicant to demonstrate a proper basis for a stay which will be fair to all parties.
- b) The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.
- c) The Court has a discretion involving the weighing of considerations such as balance of convenience and the competing rights of the parties.
- d) where there is a risk that if a stay is granted, the assets of the applicant will be disposed of, the court may refuse a stay.
- e) The court will not generally speculate upon the appellant’s prospects of success but may make some preliminary assessment about whether the appellant has an arguable case, in order to exclude an appeal lodged without any real prospects of success simply to gain time.

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<sup>3</sup> 1948 (SA) 269

<sup>4</sup> 1973 (4) SA 471 at 471 at 476-477

<sup>5</sup> Ltd (1985) 2 NSWLR 685 at 694

<sup>6</sup> Page 694-695

### **Court order in CIV/APN/0169/2022**

[8] In consideration of the present application for stay of execution of the judgment, pending appeal, this court was mindful of the court order that was granted by my sister Makhetha J on the 24<sup>th</sup> May 2022. It is a matter of common cause that the present application is in respect of the order of this court in CIV/APN/0170/2022, granted on the 29<sup>th</sup> June 2022. It was of great concern to this court that, the court order in CIV/APN/0169/2022, despite its service on the applicant on the 27<sup>th</sup> May 2022, has not been complied with. This court in consideration for this application, considered whether if it were to grant this application, would that order achieve the desired results of this application, while the court order in CIV/APN/0169/2022, is still alive and not complied with.

### **Non-Compliance with the Court order- CIV/APN/0169/2022- implications on the Stay of Execution of Judgment Application**

[9] This court holds a strong view that the court order in CIV/APN/0169/2022 that was granted on the 24<sup>th</sup> May 2022, against the current applicant, has serious implications on the current application for stay of execution of the judgment pending appeal on the following grounds.

- i. That if this court was to grant this application, the stay of execution of the judgment pending the appeal, would not serve any purpose because, the applicant would still have to comply with the court order in CIV/APN/0169/2022.
- ii. That if this court was to grant this application, fully aware that the applicant has blatantly failed to comply with the other court order (CIV/APN/0169/2022), this court would be perceived as perpetuating disrespect and non-compliance with its own court orders.

- iii. That this court should express its displeasure towards applicant for his non-compliance with the court order- CIV/APN/0169/2022.

[10] In the case of the **Department of Transport vs Tasima (Pty) Ltd Limited**<sup>7</sup> **Khampepe J.** had the following to say on the non-compliance with the court orders:

“Allowing parties to ignore court orders would shake the foundations of the law and compromise the status and constitutional mandate of the courts. The duty to obey court orders is the stanchion around which a state founded on the supremacy of the Constitution and the rule of law is built.”

And in paragraph 186:

“... the legal consequence that flows from non-compliance with a court order is contempt. The essence of contempt lies in violating the dignity, repute, or authority of the court. By disobeying multiple orders issued by the High Court, the department and corporation repeatedly violated the court’s dignity, repute, and authority and the dignity, repute and authority of the judiciary in general.”

## **Conclusion**

[11] This court has found that the application for stay of execution of the judgment pending appeal, even if it were to be granted, would not achieve its purpose, because applicant is still faced with compliance with another order of this court in CIV/APN/0169/2022, granted on the 24<sup>th</sup> May 2022.

[12] I hold a view that if this court was to grant this application, while on the other hand the applicant has blatantly failed to comply with the court order of this court, this court would be failing in its mandate to protect and preserve the

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<sup>7</sup> 2017 (2) SA 622 (CC)

court's dignity, repute and authority of the judiciary in general, as the court would be perceived as condoning applicant's contemptuous behaviour. This court holds a strong view that, if it were to allow the applicant to disobey the court order of this court (CIV/APN/0169/2022), that would shake the foundations of the law and compromise the status and constitutional mandate of the courts. (**See Department of Transport vs Tasima (Pty) Ltd**) *Supra*.

[13] This court felt that it should express its displeasure towards the applicant for his contemptuous conduct, by ensuring that there is compliance with the concerned court order. This court holds a strong view that non-compliance with the court order of this court, since the 24<sup>th</sup> May 2022, has actually violated the dignity, repute and authority of this court, and the authority of the judiciary generally. (**See Department of Transport vs Tasima**) *Supra*. This court therefore concludes that it will not entertain this application unless and until the applicant has complied with the order of this court in CIV/APN/0169/2022, on the legal principle that a party who comes to court must do so with clean hands. The contemporary approach to application for contempt of court was stated in the decision of **Fakie No vs CCII Systems (PTY) Ltd**<sup>8</sup> wherein **Cameron JA** said that the civil contempt procedure is a 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. This court therefore decided that applicant should purge his contempt in respect of the court order-CIV/APN/0169/2022, before applicant could be heard in this matter.

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<sup>8</sup> (653/04) [2006] ZASCA 52;2006 (4) SA 326 (SCA) at Para. 42

## **Order**

The Court makes the following order.

1. Applicant is directed to comply with the Order of **Makhetha J.** in CIV/APN/0169/2022 granted on the 24<sup>th</sup> May 2022.

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**T.J. MOKOKO**  
**JUDGE**

**FOR THE APPLICANTS:**

ADV. SEHLOHO

**FOR THE RESPONDENTS:**

ADV. SETLOJOANE