

LESOTHO / JUDGMENT

**Ntjelo Petje & 6 Others V P.S Ministry of Forestry
and Environment in RE: Moorosi Matela & 12
Others V The Government of Lesotho & 6 Others
(CIV/APN/197/2019) [2025] LSHC 135 (9 June 2025)
[2025] LSHC 135**

COURT
High Court

CASE / FILE NUMBER
CIV/APN/197/2019

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**IN THE HIGH COURT OF LESOTHO
HELD AT MASERU
CIV/APN/197/2019**

In the matter between:

NTJELO PETJE
'MATHABO SEILANE
'MALETUKA SHOAPHA
THABANG MOTINYANE
JONE HLOJENG
'MALILLO MALEFANE
'MALINEO KOETE
AND
1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT
6TH APPLICANT
7TH APPLICANT
P. S. MINISTRY OF FORESTRY AND
ENVIRONMENT
1ST RESPONDENT
MINISTRY OF FORESTRY AND
ENRIRONMENT
THE ATTORNEY GENERAL
2ND RESPONDENT
3RD RESPONDENT
IN RE
MOOROSI MATELA AND 12 OTHERS
APPLICANT
AND

THE GOVERNMENT OF THE KINGDOM OF
LESOTHO
P. S. MINISTRY OF TOURISM
1ST RESPONDENT
2ND RESPONDENT
MINISTRY OF TOURISM, ENVIRONMENT
3RD RESPONDENT
P. S. MINISTRY OF PUBLIC SERVICE
PUBLIC SERVICE COMMISSION
MINISTRY OF PUBLIC SERVICE
ATTORNEY GENERAL
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT

CORAM:

MOKHESI J
HEARD: 30 APRIL 2025
DELIVERED: 09 JUNE 2025
Neutral Citation: Ntjelo Petje & 6 Others v P. S. Ministry of Forestry and
Environment & Others [2025] LSHC 132 (CIV) (09 JUNE 2025)
SUMMARY
CIVIL PRACTICE: Application for contempt of court- Applicable principles
applied- Court found the 1st respondent not guilty of contempt of court in respect of
all the applicants but for the 1st applicant- The 1st respondent ordered to purge her
contempt in respect of the 1st applicant.
ANNOTATIONS

Legislation:

Public Service Act 2005

Cases:

South Africa
Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA)
Secretary of the Judicial Commission of Inquiry into allegations of State Capture,
Corruption and Fraud in the Public Sector including Organs of State v Zuma and
Others 2021 (5) SA 327 (CC) (29 June 2021)
Swissborough Diamond Mines (Pty) and Others v Government of R. S. A
and Others 1999 (2) SA 279 (TPD)
England
Ansah v Ansah [1077] 2 ALL ER 658 (CA)

JUDGMENT

[1]

Introduction

This is an application for contempt of the order of this court. There is no need to repeat the facts of this case as they can be gleaned from the judgment Moorosi Matela & 12 others (CIV/ APN/197/2019) [2019] LSHC 113 (14 November 2019). Suffice it for present purposes to surmise that the applicants are part of the applicants who had instituted litigation against the respondents

seeking a number of reliefs including reinstatements into positions to which their fixed term contracts of employment related, had lapsed by effluxion of time. This relief was rejected by the court. The relief to which the present application relates which was acceded to by the court, was the order directing 2nd and 6th respondents, inclusive, to facilitate the engagement, appointment and employment of the applications as permanent and pensionable public officers under the 2nd respondent Ministry. The respondents launched an unsuccessful appeal against the judgment of this court. The Court of Appeal judgment was handed down on 30 October 2020.

- [2] The applicants contend that to date the 1st respondent has failed to comply with the order of this court despite several reminders from their legal counsel regarding non-compliance.
- [3] The Principal Secretary in the Ministry of Forestry and Environment deposed to an affidavit explaining the steps her Ministry has taken to comply with the court order: She avers that the respondents were always willing to comply with the court order and have already done so as on the 20 September 2024 culminating in the Public Service Commission making the decision to invite 2nd, 4th, 5th and 6th applicants for interviews in respect of four vacant positions of Office Assistants, Grade A. The minutes of Public Service Commission meeting number 10086 of 20 September 2024 was attached as annexure “MX1”. Also, part of annexure “MX1” are the minutes of the Public Service Commission meeting number 11007 of 22 October 2024 in terms of which the Commission decided to amend the minutes of meeting Number 10091 to read that the four applicants mentioned in the preceding sentences were appointed on 01 June 2021. In effect the four applicants’ appointments were back dated. The 4th applicant declined the work as he is now employed by Polihali Mining. Only three applicants accepted the offer. The 3rd and 6th applicants could not be engaged as they had reached the retirement age of Sixty (60) years in the Public Service at the time of the judgment of the Court of Appeal. However, conspicuous by absence from the averments of the 1st respondent is any mention of the 1st applicant (Ntjelo Petje). I deal with this issue in due course.
- [4] The 1st respondent averred that the order of this court could not be executed within eight months as the respondents noted an appeal in 2020. This coupled with the onset of the Covid-19 pandemic restricted movement, and work could only be performed when the restrictions were uplifted. The 1st respondent averred that the order of this court was fully complied with. [5] Part of Annexure “MX1” to the 1st respondent’s answering affidavit is a letter which was written by the 1st applicant (Ntjelo Petje) to the Public Service Commission on 13 October 2021 in which he was complaining about being given a position as a messenger. He was asking to be “reinstated to the position I held previously of Field Ranger before presume with any work activities (sic)”. However, the contents of this letter are not dealt with in the answering affidavit of the 1st respondent and its relevance has not been articulated. It appears as though this court is being asked to speculate on the context and relevance of this letter, and that is not how motion proceedings are pleaded. It is important for pleaders to bear in mind the following trite principles when annexing documents to their affidavits, as articulated in *Swissborough Diamond Mines (Pty) and Others v*

Government of R. S. A and Others 1999 (2) SA 279 (TPD) at 324: “Regard being had to the function of affidavits, it is not open to an applicant or respondent to merely annex to its affidavit documentation and to request the court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met.”

- [6] Regarding the issue of reinstatement which the 1st applicant is alluding to, it is important to record that the applicants’ prayer for reinstatement was rejected by the court in the exercise of its discretion with the only remaining substantive order being that: “(b) The 2nd to 6th respondents (inclusive) are directed and ordered to finalize the process of creating and grading position for the applicants within eight months from the date of this judgment, and that upon finalizing the said process, to employ the applicants as permanent and pensionable public officers under the 3rd respondent Ministry.”
- [7] The law. The courts of law stand at a very critical position as arbiters of the disputes between man and man, hence the orders which they make must be followed religiously whether one perceives them as correct or wrong. In case where their orders are not obeyed at tool which is at their disposal is the proceedings for contempt. Contempt proceedings serve to protect the rule of law and the authority of the court. At paras. 27 and 87, the court in *Secretary of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC) (29 June 2021) stated: “[27] Contempt of Court proceedings exist to protect the rule of law and the authority of the judiciary. As the applicant currently avers, “the authority of courts and obedience of their orders – the very foundation of a constitutional order founded on the rule of law – depends on public trust and respect for the courts.” Any disregard for this court’s order and the judicial process requires this court to intervene.... [87]...Here, I repeat myself: court orders must be obeyed. If the impression were to be created that court orders are not binding., or can be flouted with impunity, the future of the judiciary, and the rule of law, would be bleak...” [8] In as much as contempt proceedings are instituted by a litigant to enforce the orders of the court, the proceedings are not necessarily between the parties, it is a matter between the court and the party who has disobeyed its orders (*Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para. 38). The test for contempt was stated in this case to be the following, at para. 10: “These requirements – that the refusal to obey should be both wilful and mala fide, and hat unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with a broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the 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 intend.”

- [9] Contempt of Court proceedings are mostly about ensuring that the contemnor purges his/her contempt than sending him or her to prison for violating the dignity and reputation of the court (*Ansah v Ansah* [1077] 2 ALL ER 658 (CA) at 643 a/b-c). It is only in case where the contemnor refuses to purge his or contempt that a more drastic measure of imprisonment will be resorted to.
- [10] Discussion On the facts of the case I am satisfied that the 1st respondent has largely complied with the orders of this court. It should be recalled that judgment in the main application was handed down on 14 November 2019. The respondents were dissatisfied with the outcome and lodged the appeal against this judgment. The judgment of the Court of Appeal was handed down on 30 October 2020 after which the respondents set in motion processes to comply with the orders of this court as they were unsuccessful on appeal. It should be stated as well as can be seen that the order of this required collaboration between various Ministries and departments of Government. It should be stated that the 1st respondent does not have statutory authority to appoint and grade public servants as that authority falls squarely on the Ministry of Public Service and Public Service Commission (see Section 6 and 10 of the Public Service Act 2005), hence the need for collaboration. The ultimate absorption of some applicants into the Public Service on permanent and pensionable status was done in October 2024.
- [11] At the time of delivery of the judgment of the Court of Appeal the 3rd and 6th applicants had reached their 60 years, and therefore were out of the reckoning as the mandatory retirement age in the public service is 60 years. It should be stated that grading positions involves budgetary considerations. The Minister of Public Service is bound by Section 10 of the Act to seek concurrence of the Minister of Finance before she/he goes ahead with grading positions. So, the exercise involved a lot of players who are not necessarily housed under the same Ministry. The delay to comply with the court order, especially taking into consideration that the world was thrown into complete paralysis by the on-set of Covid-19, means that the pace with which the court orders could be complied with was a bit slow, is to be appreciated. I accept that to show that the respondents were not deliberate in timeously complying with the court order, the appointment of the willing applicants was backdated to 01 June 2021.
- [12] What however, I find baffling is the participation of the 4th applicant in these proceedings as he declined the offer to be appointed in the public service for the reason that he is now employed by Polihali Mining. I can only guess that his involvement is fuelled by the misconception that they were to be re- instated into the positions they held, which is not the case as the main judgment made it plain that such an order is untenable as there were no positions into which they could be re-instated.
- [13] As regards the 1st applicant (Ntjelo Petje) apart from the letter which I made mention of in terms of which he was complaining about not being re-instated into his position of a Field Ranger the facts around him are murkier as no mention about him is made in the answering affidavit of the 1st respondent. It is clear therefore that with regard to him there has not

been compliance with the order of the court, and for these reasons an appropriate order will be made. The 1st respondent with regard to this applicant is in contempt of the order of this court.

- [14] In the result the following order is made: (i) The 1st respondent is ordered to purge her contempt by complying with the order of this court in respect of the 1st applicant within four (4) months of receiving the service of this court order; (ii) Failure to comply, at the lapse of the period mentioned in (i) above, shall entitle the 1st applicant to approach this court on the same papers duly augmented for appropriate relief; (iii) The 1st applicant is awarded the costs of suit; (iv) The application in respect of the 2nd to 7th applicants is dismissed with costs.

MOKHESI J For the Applicants: Advocate T. Potsane instructed by K. J Nthontho Attorneys For the Respondents: Advocate L. P. Moshoeshoe from the Attorney General's Chambers 11

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