



## HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

## JUDGMENT

Case no: I 3956/2009

In the matter between:

**STANDARD BANK NAMIBIA LIMITED****JUDGMENT CREDITOR/APPLICANT**

and

**AUGUST MALETZKY****JUDGMENT DEBTOR/RESPONDENT**

**Neutral citation:** *Standard Bank Namibia Limited v Maletzky* (I 3956/2009) [2013] NAHCMD 68 (12 March 2013)

**Coram:** PARKER AJ

**Heard:** 12 February 2013

**Delivered:** 12 March 2013

**Flynote:** Contempt of court – Civil contempt of court – Civil contempt of court is proved where act complained of is done willfully and is done in derogation of the court's dignity or due administration of justice.

**Summary:** Contempt of court – An act done in derogation of the court's dignity or in derogation of due administrative of justice is civil contempt if done willfully – In instant case respondent/judgment debtor refused or failed to obey a court order – General principle underlying civil contempt in *The Minister of Education and the Government of the Republic of Namibia v The Interim Khomas Teachers Strategic Committee and All Persons Forming Part of the Collective Body of First Respondent and Others* Case No. LC 166/2012 (Unreported) applied – Upon applying the general principle court found that the respondent/judgment debtor's refusal or failure

to obey the 31 July 2012 is contempt of court – Accordingly, respondent/judgment debtor found guilty of contempt of court.

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**ORDER**

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- (a) The respondent/judgment debtor is found guilty of contempt of court.
- (b) Imposition of sentence is to stand over until I have heard evidence or statements in mitigation of sentence.

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**JUDGMENT**

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PARKER AJ:

[1] The provenance of the present proceedings lies in an order granted on 31 July 2012 by my Brother Kauta AJ ('the 31 July 2012 order') in the following terms:

'1. The Rule 45(12)(h)(i) and (j) application is postponed for a full financial enquiry on the **27 SEPTEMBER 2012** at **10H00**; the Respondent is warned to appear in this court on that date.

2. The Respondent is ordered to provide to the Applicant the following documents on or before the **29 AUGUST 2012**:

- (a) His monthly pay slips for the past year;
- (b) His bank statement for the past year;
- (c) His monthly income and expenses for the past year.

3. The Respondent is ordered to pay the costs of this application, such costs to include one instructed and one instructing counsel.'

[2] The aforementioned proceedings before my Brother Kauta AJ were rule 45 (of the rules of court) proceedings. The rule 45 proceedings were fully argued. Judgment was granted in that regard culminating in the 31 July 2012 order. It is important to note that a fully reasoned judgment was delivered in the proceeding on 31 July 2012. The present contempt proceedings arise from the failure or refusal of the respondent/judgment debtor to obey the 31 July 2012 order.

[3] In the course of events, on 17 January 2013 in proceedings presided over by my Brother Damaseb JP, Mr Van Vuuren, counsel for the applicant/judgment creditor, and the respondent/judgment debtor, acting in person, appeared. After hearing Mr Van Vuuren and the respondent/judgment debtor, my Brother Damaseb JP came to the following conclusion:

‘Mr Maletzky *prima facie* I am satisfied you are in contempt of Court, you did not comply with a Court Order and that is a very, very serious matter. It is not a question of whether you have informed the other side about what you intend or did not do, the Court is entitled to know why you are not complying with its Order.’

The learned Judge President continued:

‘I want a transcript of these proceedings produced and I want to have full argument on this issue because Mr Maletzky I am and I mentioned it, *prima facie* satisfied that you are in contempt of a Court Order and I want you to take that seriously. [--- Yes My Lord.] And I want you to address me properly on all those issues. You know what the concern is that I have expressed?’

[4] It follows – as a matter of course – that the purpose of today’s proceeding (ie 12 February 2013) is for Mr Van Vuuren and the respondent/judgment debtor to address this court ‘on all those issues’. Thus the burden of this court in the present proceedings is to hear sufficient explanation which the respondent/judgment debtor may put forth for not obeying the 31 July 2012 order so as to persuade this court not to hold that the aforementioned *prima facie* view of my Brother Damaseb JP should become conclusive. It follows that I am not interested in, and I should not concern myself with, what happened or did not happen to the respondent/judgment debtor on

any other day, eg 8 November or 22 November 2012 which the respondent/judgment debtor as the respondent/judgment debtor submitted before this court. Indeed, the Warrant of Arrest issued by the court on 27 September 2012 speaks for itself. It commanded the Deputy Sheriff for the District of Windhoek 'to apprehend' the respondent/judgment debtor –

'and bring him before this Court at 10h00 in the forenoon on **25<sup>th</sup> day of October 2012 to answer to a charge of Contempt of Court** for failure to appear in Court on 27<sup>th</sup> day of September 2012 as set out in the Applicant's Rule 45 Notice, the Respondent/Judgment Debtor was warned on the 31<sup>st</sup> day of July 2012 to appear in Court, and to abide the judgment of this Court thereon: .... '

[5] From the papers filed of record, including the transcript of the hearing on 17 January 2013, and submissions by Mr Van Vuuren and the respondent/judgment debtor, it is beyond all doubt that the respondent/judgment debtor, as Mr Van Vuuren submitted, has refused or failed to obey the 31 July 2012 order; and that constitutes contempt of court. The respondent/judgment debtor does not controvert Mr Van Vuuren's submission. I did not hear the respondent/judgment debtor that, *pace* Mr Van Vuuren, he did obey the 31 July 2012 order.

[6] I applied the general principle of civil contempt of court in the recent case of *The Minister of Education and The Government of the Republic of Namibia v The Interim Khomas Teachers Strategic Committee and All Persons Forming Part of the Collective Body of the First Respondent and Others* Case No. LC 166/2012 (judgment on 5 December 2012) (Unreported). There, I stated:

'[6] The general principle is that a party to a civil case against whom a court has given an order and who intentionally refuses to comply with the order commits contempt of court. And in this regard it has been said that contempt of court procedure is a means of enforcing performance of a judgment. See *Cape Times Ltd v Union Trades Directories (Pty) Ltd and Others* 1956 (1) SA 105 (N). Thus, punishment for civil contempt per se must always be for the purpose of coercing the offender to do or refrain from doing something in accordance with an order obtained against him or her, and not be merely punitive.'

[7] In the instant proceeding it is my firm view that the respondent/judgment debtor's failure or refusal to obey the 31 July 2012 order is willful (see *The Minister of Education and The Government of the Republic of Namibia*); and no acceptable and sufficient facts have been placed before the court by the respondent/judgment debtor to explain the willful failure and refusal to obey the 31 July 2012 order. Thus, I find that the respondent/judgment debtor's act is done in derogation of the court's dignity or in derogation of due administration of just, and the act is done willfully.

[8] What the respondent/judgment debtor placed before this court relating to the events bearing on 8 and 22 November 2012 (or any other dates) are irrelevant in the present proceedings: they *may* (and I emphasize 'may') be relevant when an appropriate sentence is being considered for the respondent's/judgment debtor's contempt of court. It needs hardly saying that the 31 July 2012 order was granted before those dates: those dates do not relate to the 31 July 2012 order.

[9] Thus, the irrefragable fact, as I have said previously, is that the respondent/judgment debtor has not obeyed the 31 July 2012 order: he has, therefore, willfully set at naught and treated with contempt the 31 July 2012 order made by the court. In sum, the 31 July 2012 order has been contumaciously set at naught and the offender (the respondent/judgment debtor) cannot square it with the applicant/judgment creditor who has obtained the order and save himself from the consequences of his contumacious act. (See *The Minister of Education and Another v The Interim Khomas Teachers Strategic Committee and All Persons Forming Part of the Collective Body of the First Respondent and Others* para 10.)

[10] For all the foregoing reasoning and conclusions I conclude that the conduct of the respondent/judgment debtor must be condemned as contumacious of the 31 July 2012 order by finding him guilty of contempt of court. His conduct is clearly willful, as I have found previously.

[11] Accordingly, I find that a case has been made out for the *prima facie* view of my Brother Damaseb JP to become conclusive. I, therefore, find the respondent/judgment debtor guilty of contempt of court, and so I commit him for



APPEARANCES

PLAINTIFF :                   A Van Vuuren  
                                  Instructed by Behrens & Pfeiffer, Windhoek

DEFENDANT:                   In person