
FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 5528/2010

Ex Parte

In the matter between:

THE LAW SOCIETY OF THE FREE STATE

Applicant

and

FUSI STEPHEN MACHEKA
MOLISE CECIL CHABANE

1st Respondent
2nd Respondent

CORAM:

EBRAHIM, J *et* LEKALE, J

JUDGMENT:

LEKALE, J

HEARD ON:

9 FEBRUARY 2012

DELIVERED ON:

23 FEBRUARY 2012

INTRODUCTION AND BACKGROUND

[1] On the 23rd June 2011 the respondents were found guilty of contempt of court orders removing them from the roll of attorneys. The imposition of sentences was, however, delayed pending submissions, by the parties, of written representations on appropriate punishment.

[2] The respondents have since submitted their representations while the applicant, on its part, effectively left the determination of a suitable sentence in the hands of the court.

[3] The matter now serves before us for the determination and imposition of appropriate sentences.

FIRST RESPONDENT'S REPRESENTATIONS AND SUBMISSIONS

[4] The first respondent, effectively, submits that caution and discharge is appropriate as a sentence. In substantiation of this contention he points out that he has undergone a drastic moral and lifestyle change since the conviction insofar as he is now a born-again Christian and the chairperson of the Mens' Congregation in his new church. He is 42-years old and married with three children who attend school. His wife is an educator. He currently does some odd jobs such as serving as a taxi driver earning R1 400,00 per month. The crime was committed mainly as a response to the needs of the community, which continued to demand his services even after

he was struck-off the roll of attorneys. His personal circumstances outweigh, by far, the nature of the offence and the interests of the community. He, however, requests the court not to over-emphasise one factor over the others when it determines the issue.

SECOND RESPONDENT'S REPRESENTATIONS AND SUBMISSIONS

[5] The second respondent implores the court to impose a suitable sentence regard being had to his personal circumstances and the fact that no-one suffered damages or prejudice as a result of the commission of the offence herein. He is an unemployed thirty-eight-year old family man with two small children who attend school. His wife is also unemployed and they rely on contributions from members of their extended families to make ends meet. He is a very useful member of his community and serves as a coach for an amateur soccer team as well as chairperson of a popular burial society.

APPLICANT'S CONTENTIONS

[6] Mr Williams, for the applicant, submits to the effect that fairly

long periods of imprisonment suspended, in whole, for maximum periods of five years, at the most, are suitable as sentences. In support of this contention, he refers to the object of contempt proceedings as well as the absence of remorse on the part of the respondents, among others. In conclusion, he submits that the respondents should carry the costs, inclusive of the costs relating to the proceedings of the 17th November 2011 which were postponed at their instance.

APPLICABLE PRINCIPLES

[7] As correctly submitted for the applicant, the object of contempt proceedings, related to wilful refusal or failure to comply with orders of court, is the imposition of a penalty in order to vindicate the honour of the court following the disregard of its order and to compel, where appropriate, compliance therewith.

(See **PROTEA HOLDINGS LTD v WRIWT AND ANOTHER** 1978 (3) SA 865 (WLD) at 868A - D) citing **FERREIRA v BEZUIDENHOUT** 1970 (1) SA 551 (O) with approval).

[8] The parties are, effectively, in agreement that the crime of civil contempt is very serious insofar as it involves “**contumacious**

disrespect for judicial authority”. (See **FAKIE NO v CCII SYSTEMS (PTY) LTD** 2006 (4) SA 326 (SCA) at 344, para [40]).

- [9] Although all applications for committal for civil contempt carry the threat of imprisonment, courts are generally loath to restrict the personal liberty of the individual in such matters and, if a period of imprisonment is imposed, it is usually or often suspended. (See **PROTEA HOLDINGS LTD v WRIWT AND ANOTHER** *supra* at 872B – C and the unreported decision of this court in **PROKUREURSORDE VAN DIE VRYSTAAT v PIETER JACOBUS BRITZ**, case number 510/2003 delivered on the 16th October 2003.)

FINDINGS

- [10] We are satisfied that the personal circumstances of the respondents are substantially the same and, as such, it is not appropriate to distinguish between them for the purposes of these proceedings.

- [11] In our view, caution and discharge, as prayed for by the first

respondent, is inappropriate as a sentence herein regard being had to the circumstances surrounding the commission of the crimes, the background of the respondents as well as their standing vis-à-vis the court when the orders were made. The respondents have practical legal background and disregarded orders which struck them off the roll of practising attorneys. They were officers of the court until and when the relevant orders were made. That they engaged in contemptuous conduct against the orders of the court which, in the first place, admitted them as its attorneys aggravates their guilt and amounts to a slap in the face for the court. Caution and discharge would, therefore, overemphasise the personal circumstances of the respondents and pay lip service to other relevant factors.

- [12] In the light of the respondents' personal circumstances, a fine would only add to the woes of members of their families, immediate and extended, who have had to suffer the humiliation and the embarrassment associated with the respondents' fall from grace.

- [13] Direct imprisonment is also not appropriate regard being had to, *inter alia*, the fact that they are first offenders and there exists no evidence of any damage caused to members of the public as a result of the respondents' conduct.
- [14] In our judgment, a sentence which reflects both the court's disappointment and the community's disapproval while, at the same time, vindicating the court's honour and correcting the respondents' conduct is appropriate in the circumstances. Such a sentence would, in our opinion, not only salvage the court's esteem in the eyes of the public, but would also drag and keep the respondents out of the shameful pit into which their crimes have thrown them. It would afford them an opportunity to purge themselves of the professional revulsion which their former colleagues and the general legal fraternity, most probably, harbour against them. In this regard, it should be recalled that civil contempt is essentially a manifestation of scornful rejection of the rule of law. It generally makes a mockery of judicial authority. Left unchecked it has the potential to promote anarchy. In its worst form it is to judicial authority what sedition is to the authority of the government of a

state.

[15] Finally there is no cause before us to warrant a departure from the general rule regarding costs.

ORDER

[16] In the light of the above the following proves to be an appropriate sentence for each respondent and is ordered accordingly:

- **6 months imprisonment wholly suspended for 3 years on condition that each respondent is not found guilty of civil contempt committed during the period of suspension.**

[17] The respondents are, further, ordered to pay the applicant's costs, inclusive of the costs of the postponement of the 17th November 2011, jointly and severally, the one paying, the other to be absolved.

L. J. LEKALE, J

I concur.

S. EBRAHIM, J

On behalf of the applicant:

Adv. A. Williams
Instructed by:
Phalatsi & Partners
BLOEMFONTEIN

On behalf of the respondents: In person

c/o Hadebe Attorneys
BLOEMFONTEIN

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