

IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASE NO.: 3240/05

In the matter between

PETRUS JACOBUS JANSEN VAN VUUREN

Applicant

and

BAHLE SIBANDZE

Respondent

HEARD ON: 10th AND 13th FEBRUARY 2006

JUDGMENT DELIVERED ON: 28th APRIL 2006

CORAM: P.Z. EBERSOHN J.

FOR APPLICANT: ATT. S. MASUKU

FOR RESPONDENT: ATT. S. MDLADLA

JUDGMENT

EBERSOHN J:

[1] In this matter the applicant obtained an order from this court which reads as follows:

" 1. The rules of Court as regards to service and time limits be dispensed with and this matter is heard as an urgent matter.

2. The respondent is ordered to within 48 hours of the granting of this order to repair at his own costs and expense the damage to the canal which conveys water over his farm to the applicant's farm Lusthoff Farm 79A, Shiselweni district and to allow the water to freely flow to the applicant's said farm.

3. The respondent is interdicted from ever again, directly or indirectly, interfering with the canal and the flow of the water therein, from damaging it again and from preventing the water therein from flowing uninterruptedly to the applicant's farm Lusthoff 79A, Shiselweni district.

4. The respondent is ordered to pay the costs of the application on the scale of attorney and client, and the costs of counsel, in so far as it may be applicable, is certified.

[2] It appears when the order was served on the respondent he indicated to the Deputy Sheriff that he was not going to comply with the said order.

[3] The applicant then brought the current application to have the respondent committed to prison for contempt of court.

[4] In paragraph 3 of the answering affidavit the respondent scandalized the applicant and accused the applicant of abusing the court processes. He, however, did not give any further particulars thereof. The same was done in paragraph 10 of the answering affidavit. In paragraph 11 he blatantly lied with regard to the facts of the matter. In paragraph 16 thereof the respondent admitted diverting the applicant's water and he states the following in this regard:

"The Respondent would like to state that in fact the diversion serves purpose for the rest of the community which I was responsible.(sic)".

There was no reference to any people utilizing the water in the main application and I find that the respondent was trying to draw a red herring across the trail and to mislead the court.

[5] This court is now presented with a situation where the respondent is in direct contempt of the court and instead of mending his ways timeously he has now thrown down the gauntlet and is challenging the court's authority with regard to the order the court has made against him.

[7] In **Consolidated Fish Distributors (Pty) Ltd v Zive and Others** 1968 (2) SA 517 (C) Baker AJ stated that in cases of disobedience of a court order mala fides is implied, this matter is also not a minor matter but a is in fact a very serious matter . There is also the attempt to mislead the court and there is thus the direct challenge to the authority of the court. I am in agreement

with that point of view.

[8] This is a case where the court must assert its authority and show that the court is able to exert its authority. I have considered the option of a fine but have decided against it. This is not a case where the respondent attempted to mend his ways but is a case where the respondent is directly challenging the authority of the court.

[9] I accordingly make the following order:

1. The respondent is committed to prison for contempt of court for a period of 10 months, without the option of a fine, six months of which are suspended for three years on the following conditions:
 - (a) that the respondent causes at his own expense to have the furrow repaired and to have the water flow uninterruptedly over his property in future to the applicant's property within 7 days from the date of this order; and
 - (b) that the respondent is not convicted of contempt of court committed during the period of suspension.
2. The Royal Swaziland Police are hereby ordered to arrest the respondent forthwith and to deliver him to the appropriate prison.
3. The respondent is to pay the costs of this further application on the scale of attorney and own client.

**P.Z. EBESOHN
JUDGE OF HIGH COURT**