IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) DATE DELIVERED: 30/5/2014

30/5/14

Case numbers: 29654/14
27095B/14, 29704A/14, 29705/14, 29655B/14

In the matters between the applicants

M E A HANI

K IRSHAD

B C IHENACHO

A HUSSAN

H A HAYILE

and

THE MINISTER OF HOME AFFAIRS	First Respondent
THE DIRECTOR GENERAL OF HOME AFFAIRS	Second Respondent
THE HEAD OF LINDELA REPATRIATION CENTRE	Third Respondent
THE DIRECTOR OF DEPORTATION	Fourth Respondent

JUDGMENT

BAM J

1. In view of the fact that the issues in the five matters are similar in fact and law, I intend to deal with it simultaneously in this judgment.

2. The applicants were detained at the Lindela Repatriation Centre. The reasons for their detention are not relevant in so far as this judgment is concerned. On 9 May 2014, the Court attending to urgent applications, made orders, after the matters

became settled, including that the applicants should immediately be released from detention. The applicants were represented by Mr Makapan, their attorney of record, and the respondents by Mr Masakoameng of the State Attorneys' offices. The orders were handed down at about 12h15.

3. At 15h05, on the same day, copies of the orders were Emailed to Mr Masekoameng, Ms B Seboga, Deputy Director Legal Services of the respondents, and officers of the third and fourth respondents, Mr Grundling, Mr Jackson, Mr Maletswa, Ms Qaba, Ms Jongwana and Ms Tenga. A copy was also hand delivered to the State Attorney's offices. The Email requested the recipients to advice the officials at Lindela to release the applicants in accordance with the Court order. It was also indicated on the Email that the attorneys wanted to have the applicants released immediately.

4. At 15h59, Mr B Seboga, the applicant's Deputy Director Legal Services, referred to above, directed an Email to the Lindela officials, with the following request:
"Please release these applicants as per the court order of today the 9th May 2014.
Please note that we do not want to find the Department in trouble for non compliance with the Court Order herein."

5. Mr Makapan's personal attendance at Lindela, late afternoon, stretching to 21h30, of 9 May, to have the applicants released, was of no avail. All Mr Makapan's endeavours were allegedly deliberately frustrated by the officers at Lindela.

6. Despite the fact that the respondents were aware of the court order in question, and that the officials at Lindela were requested by Mr Seboga to release the applicants, and despite Mr Makapan's endeavours, the applicants were not released in terms of the Court order. Not surprisingly this conduct of the respondents, in blatantly ignoring the Court order, prompted Mr Makapan to lodge an urgent application on Monday, 12 May 2014, at 12h00, seeking an order finding the respondents in contempt of the order in question, and to suspend any sentence on condition that the respondents comply with that order.

7. The applications were served by hand on the State Attorney at 9h15 on 12 May and Emailed to Mr Masakoameng and the officers of Lindela.

8. On 12 May, at 12h00, the matters were duly called. They were not opposed, but were stood down until 14h00 on 13 May 2014 to afford the applicants the opportunity to furnish the Court with the names of the respondents, in order to render any contempt order effective.

9. When the matters were called on 13 May 2014 at 14h00, Mr Makapan informed the Court that the applicants have been released in the meantime, and that he would proceed to apply only for appropriate costs orders. Mr Bofilatos SC, then appearing for the respondents, indicated that the costs order would be opposed. The matters were then stood down until 16 May 2014.

10. Mr Bofilatos' arguments for opposing the costs orders, were as follows:
    (a) The applicants' attorney should have served the orders to release the applicants, made on 9 May, on the respondents by Sheriff. That was not done. The respondents could therefore not have been expected to comply therewith;
    (b) The order that the applicants should be released immediately should not be literally interpreted. In view of the administrative issues involved the State should be allowed to attend to all those issues before releasing any person.
    (c) The urgent applications for the contempt orders were also not served on any of the respondents, but instead delivered to the State Attorney. The service on the State Attorney does not comply with the Rules;
    (d) The applicants were not entitled in law to bring applications for contempt orders in the circumstances.

11. Ad the arguments in 10(a) and (c):

    It was common cause that on 9 May 2014, both parties were represented; the respondents were represented by Mr Masekoameng, from the State Attorney's office, that the matters were settled and that a draft order was handed up and made an order of court.

    It can be assumed that Mr Masekoameng was instructed by the respondents in that regard.

    The applicants' attorney Emailed the order to all relevant officials, as alluded to above, as well as Mr Masekoameng, and hand delivered it to the offices of the State Attorney.

The respondents were therefore clearly aware of the order, to which their legal representative have agreed, to release the applicants immediately.

The contention that service of the order on the State Attorney was insufficient in that it should have been served on the respondents by the Sheriff, is without merit. Service by hand, or electronic mail, on the State Attorney is provided for in Rule 4A .

Mr Bofilatos' argument, in my view, is therefore ill founded and totally without substance.

12. Ad argument in 10(c):

The word *"immediate"* means exactly what it says. It clearly implies that the court order in question should have been complied with as soon as the contents thereof became known to the respondents. I have already alluded to the relevant circumstances. The submission that *"immediate"* should be interpreted to mean *"within a reasonable time"*, apparently even after several days, in order for the State to attend to the administrative issues, is in my view, to say the least, without merit and even ridiculous.

The respondents, more specifically the third and fourth respondents, elected to blatantly disregard the Court order, even after having been alerted to the consequences by their own Deputy Director of Legal Services.

13. Ad argument in 10(d):

In submitting that the applicants were not in law entitled to a contempt order against the respondents, Mr Bofilatos relied on *Fakie NO v CCII Systems (Pty) Ltd* 2006(4) SA 326 SCA. A careful reading and appreciation of Fakie's case, stating the law in regards to contempt applications, reveal that the applicants were undoubtly entitled to lodge a contempt application, especially in view of the fact that, at the least, the third and fourth respondents, were, *prima facie mala fide* in not complying with the court order to release the applicants. In this respect the onus rested on the repondents to prove that they were not *mala fide.*

Mr Bofilatos' argument is therefore without substance.

14. It follows that the applicants were indeed forced to bring the contempt applications and that the respondents should therefore be ordered to pay the costs. However, in view of the fact that the first and second respondents were not directly involved, in my opinion only the third and fourth respondents should be ordered to pay the costs. In the circumstances I also agree with the contention of Mr Makapan that a punitive costs order would be justified. In view of the fact that the third and fourth

respondents are intrinsically the same department, there is no reason to order them to pay the costs jointly and severally.

15. Accordingly I make the following order in each of the above matters:

The third and fourth respondents are ordered to pay the applicant's costs on the scale of attorney and client.

A J BAM JUDGE OF THE HIGH COURT
19 May 2014