

IN THE HIGH COURT OF LESOTHO

In the matter between:-

ATTORNEY-GENERAL

Applicant

and

THE MAYOR - MASERU CITY COUNCIL

Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 24th day of April, 1991

On the 13th November, 1990 the applicant launched an urgent ex parte application for an interdict and obtained a Rule Nisi couched in the following terms:-

- "1. That a Rule Nisi is hereby issue against the Respondent returnable upon a date determinable by the above Honourable Court, to show cause if any, why

- (i) He shall not be ordered to desist from interfering, in any manner whatsoever, with the exercise of the powers of the Maseru City Council by the Interim Town Clerk, pursuant to Government Notice No. 135 of 1990.
  - (ii) He shall not be ordered to surrender vehicle registration number Y 1580 Toyota Cressida together with the keys thereof, to the Administration Department of the Maseru City Council.
2. That the forms and service provided for in the Rules of court be dispensed with and this matter be disposed of at such time and place and in such manner and in accordance with such procedure as the court or judge may deem fit.
  3. Costs of suit on attorney and client scale.
  4. That prayer 1 (i) and (ii) is to apply with immediate effect as an interim court-order.
  5. Such further and/or alternative relief as the above Honourable Court may deem fit.

and that the affidavit of Mphosi Matete annexed hereto will be used in support thereof."

To-day is the extended return day of that rule.

It is common cause that on the 19th September, 1990, exercising the powers vested in him under section 80 (1) (d) of The Urban Government Act No.3 of 1983, the Minister of Interior, Chieftainship Affairs and Rural Development appointed a two - man Commission of Inquiry whose members were Messrs. Lebereko Lethobane, as a chairman and S.T. Mota, as a member.

The terms of reference of the Commission appear in Government Notice No. 117 of 1990 and they are as follows:

"1. The Commission shall,

- (a). Investigate the causes which culminated in the purported withholding of the interim Town Clerk's remuneration by members of the Maseru City Council;
- (b) Look into the overall responsibilities and activities of the Mayor vis a vis those of the Town Clerk with a view to determining which of the two is overstepping or abusing his powers in the course of his activities;
- (c) Identify the causes of apparent management problems at the Maseru City Council;
- (d) Make appropriate recommendations on the measures to be taken in the light of its findings so as to curb the prevailing instability in the operations of the Maseru City Council; and
- (e) Make recommendations on any other matter relevant to the purpose of the investigations which the Commission may deem relevant to the inquiry.

2. The provisions of the Commissions Powers Proclamation, 1955 shall apply to this Commission.

3. The Commission shall make a written report of its findings and recommendations to the Honourable Minister of the Interior, Chieftainship Affairs and Rural Development within one calendar month from the date of the publication of this notice.

On the 6th November, 1990, exercising the powers vested in him by section 80 (4) (a) the Minister of Interior, Chieftainship Affairs and Rural Development (Minister) suspended the Maseru City Council from exercising its powers as such until the Commission of Inquiry referred to above shall have reported and its report received and considered by the Minister.

The Minister conferred upon the Interior Town Clerk, Mr. Malefetsane Nkhahle the right to exercise the powers of the Council and ordered the Council to surrender all the property in its possession to the Administration Department of the Maseru City Council.

The suspension appears in Government Notice No. 135 of 1990. It reads as follows:

"In exercise of the powers conferred on me by section 30 (4) (a) and 33 of the Urban Government Act 1983, I

Mphosi Matete  
Minister of the Interior and Chieftainship Affairs.

1. (a) suspend the exercise by the Maseru City Council of the powers conferred upon it by the Urban Government Act 1983 or any other law until the Commissioner of Inquiries report has been received and considered by me;
- (b) confer upon Mr. Malefetsane Nkhahle, the Interim Town Clerk, the right to exercise the powers of the Maseru City Council during the suspension of its powers.
2. The Maseru City Council shall surrender all property of the Maseru City Council to the Administration Department of the Maseru City Council.
3. The Councillors shall continue to receive their allowances."

In his founding affidavit the Minister avers that notwithstanding the terms of the Notice referred to above, the respondent continues to disrupt, inhibit and interfere with the proper administration of the Council as presently headed by the Interim Town Clerk by,

inter alia, openly refusing to hand over or to surrender the motor vehicle Reg. No. Y 1589 Toyota Cressida together with its keys to the Administration Department of the Council. The said motor vehicle is the lawful property of the Council. The Minister avers that it has come to his notice that the respondent is intending to convene what he calls a meeting of the Council on the 13th November, 1990. Such meeting is unlawful. He avers that he has reasonable apprehension that unless interdicted, the respondent will continue to call these unlawful meetings to the prejudice of the whole administration of the Council.

The Minister further avers that he moved this application on urgent basis because the prevailing atmosphere created by the said unlawful conduct of the respondent is not at all conducive to good administration; over and above that the respondent wrongfully and unlawfully keeps and uses the said vehicle for his own personal affairs.

In his answering affidavit the respondent alleges that in the exercise of his powers under section 30 (4) (a) of the Urban Government Act No. 3 of 1983, the Minister acted mala fide and abused his statutory powers in the following respects:

(a) The Commission of Inquiry was appointed on the 19th September, 1990 and was enjoined to make a written report within one month of publication of the Notice yet after a month, and without a complaint of obstruction by the Council, the Minister decides to suspend the Council pending an overdue report of the Commission;

(b) The terms of reference of the Commission of Inquiry are inter alia to investigate the council including its dispute with the Town Clerk, the Council's chief employee yet the Minister suspends the council and confers its powers on its employee in the same controversial individual;

(c) The Interim Town Clerk is an interested party in the report of the Commission of Inquiry and his appointment in the official or private capacity of an individual is a biased settlement of the problem sought to be investigated. I annex documentation highlighted and marked (MC1-6). The conflict of interest between the Maseru City Council and his employee now appointed to replace the council;

(d) The affidavits of Malefetsane Mkhahle, Leshapa Ts'osane expose the entire bias of respondent's employees.

The respondent avers that the Council wanted a proper handing over to the so-called Interim Town Clerk who had been locked in a power struggle with the employer Council for a long time.

Section 30 (4) reads as follows:-

"The Minister may, pending the report of the Commission or if a council fails to comply with the terms of an order made by him under subsection (3) (a), in addition to any other powers conferred upon him under this Act -

- (a) suspend the exercise by the council of any of the powers conferred upon it by this Act or any other law for such period as he may think fit;
- (b) dissolve the council; or
- (c) in his discretion appoint or direct the election of new councillors; and

during such period, or as the case may be, pending the appointment or election of new councillors, confer upon any person or persons the right to exercise any powers so suspended or the powers of the council so dissolved."

Mr. Hlaoli, attorney for the respondent, submitted that the application is misconceived as the applicant has no justiciable interest in it. The applicant can only represent the Government of Lesotho in civil proceedings, not his own. The Attorney-General has applied in own name rather than as legal representative of Government in civil proceedings. This is irregular and the Court can discharge the Rule and dismiss the application with costs on this ground alone.

I do not agree with the above submission because section 3 (2) of The Government Proceedings and Contracts Act No.4 of 1965 that 'Save as may otherwise expressly be provided by law, actions or other proceedings by His Majesty in His Government of Lesotho shall be instituted by and in the name of the Principal Legal Adviser' (now Attorney - General). The Attorney - General has the right and locus standi to institute any proceedings by the Government in his name.

Mr. Hlaoli submitted that the Minister abused the powers vested in him by the statute in that he effectively <sup>intervened</sup> on behalf of the Interim Town Council in his dispute with the Council which is the employer of the Interim Town Clerk. The suspension of the Council and the subsequent appointment of the Commission of Inquiry was a ploy to intervene on behalf of the said Interim Town Clerk.

The above allegations are very serious charges against the Minister and ought to have been supported by very strong evidence because the section under which he acted, i.e. Section 80 (4) of The Urban Government Act No.3 of 1983 empowers him to appoint such a Commission if he is otherwise of the opinion that an investigation should be made into the affairs of the Council. It is common cause that there was what one may call power struggle between the Interim Town Clerk and the respondent or Council. This misunderstanding culminated to the purported withholding of the Interim Town Clerk's remuneration by members of the Maseru City Council. The misunderstanding between the Maseru City Council and the Interim Town Clerk is clearly set out in Annexures "MC2" and "MC1" which are annexed to the respondent's answering affidavit. The Minister could not sit back and ignore the disturbing state of affairs prevailing in the Maseru City Council. He had to do something to find out exactly what was going on and the only way open to him was to exercise his powers under section 80 (4) of The Urban Government Act 1983.



The allegation that the Minister acted mala fide and abused the powers vested in him by a statute by appointing the Interim Town Clerk to exercise the powers of the Council during its suspension, has no substance at all. The Minister was well aware of the fact that there was a friction between the Interim Town Clerk and the Council, but the work of the Council could not be brought to a standstill while the investigations were continuing. The residents of Maseru were still entitled to the services of the Maseru City Council. If the Minister suspended both the Council and its Interim Town Clerk the services provided by the Council would probably come to a standstill or be severely disrupted because there would be no senior officer in the administration department of the Council.

The investigations are being done by a Commission of Inquiry whose chairman is a lawyer who, because of his training is likely to be impartial and objective when considering the evidence adduced before the Commission. The Minister has no part to play in the investigations. After the completion of the investigations the Commission will submit its report and recommendations to the Minister. He will be free to accept or to reject the recommendations.

It was submitted that the report is overdue and that the Minister abused his powers by suspending the Council despite the fact that the Commission has failed to submit its report within the

time stipulated in the gazette that appointed them. Section 80 (4) of The Urban Government Act of 1983 provides in no uncertain terms that pending the report of the Commission the Minister may suspend the Council. It is common cause that the Commission's report was pending when the Minister suspended the exercise by the Council of its powers. I reject the submission that he abused his powers.

It was submitted on behalf of the respondent that the enjoyment of use of the car and housing form part of the allowance of the respondent as member of the Council. I think that is correct but the car was placed at the disposal of the respondent to enable him to perform his official duties and not his personal businesses or affairs. This allegation appears in paragraph 7 of the Minister's founding affidavit and the respondent has not challenged this allegation in his answering affidavit.

The matters appear to have been very urgent because the value of the car depreciates by use. The respondent was using the car for his own personal affairs and could have travelled anywhere with it. The application was also urgent on the ground that the respondent was causing problems in the administration of the council by convening a meeting of the Council after the suspension of the exercise by the Council of the powers conferred upon it by law. He avers that he wanted to do a proper handing over of the property of the Council to the Interim Town Clerk. I do not think that the handing over of the car required any unusual procedure other than giving the car and its keys to the person appointed to receive it and probably signing a document indicating that the car has been handed over.

The respondent took no action to challenge the suspension of the Council but at the same time wanted to continue having the possession of a car that had to be used by the Interim Town Clerk. Did he expect the Council to buy another car so that the Interim Town Clerk could exercise the new powers conferred upon him? That was unreasonable. The mere fact that the members of the Council continued to receive their allowances (salaries) during the suspension does not mean that members could keep the property of the Council which had to be used by a person who was appointed to exercise the powers of the Council during its suspension.

In the result the Rule Nisi was confirmed with costs on the 24th April, 1991 and the reasons for the confirmation have been given above.

J.L. KHEOLA  
JUDGE

1st May, 1991.

For Applicant - Mr. Mohapi  
For Respondent - Mr. Hlaoli.