C. of A (CIV) No.9/93
CIV/APN/308/93

IN THE LESOTHO COURT OF APPEAL

In the matter between

M.M. OPERATIONS SERVICES (Pty) LTD	1st Appellant
PAUL MOKHETHI	2nd Appellant
SELLO MATETE	3rd Appellant

and

Security Lesotho (Pty) Ltd	Respondent

HELD AT :
MASERU

CORAM:

BROWDE, J.A.
STEYN, A.P.
KOTZE, J.A.

J U D G M E N T

BROWDE J.A.

On 23rd July, 1993 the Respondent brought an application before the High Court with a certificate

of urgency from Counsel and was granted a rule nisi returnable on 9th August, 1993. The rule called upon the appellants to show cause in terms of Prayer 1(a) of the notice of motion why they should not be interdicted from carrying on business of providing security services in opposition to or competition with the Respondent for as long as the 2nd and 3rd Appellants were in the employ of the Respondent.

They were also called upon (in terms of Prayer 1(b)) to show cause why the appellants or anyone of them should not be interdicted from interfering with or influencing customers or clients of the respondent as well as its employees to abandon the respondent and work with the appellants."

The rule was granted on an ex parte application and operated as in interim interdict pending the determination of the application on the return day.

Appellants anticipated the return day and filed affidavits on 28th July, 1983 in answer to the matters raised in the founding papers.

After arguments on both sides, the rule was confirmed with costs.

The points raised on appeal before us were the following:-

(i) It was contended by Mr. Mafantiri for the appellant that it was necessary for the respondent, if it wished the court to dispense with forms as to service and periods required by the rules of court, to have included a prayer to that effect.

The High Court Rule which deals with urgent applications is Rule 22. That rule provides that the court or judge may dispose of such applications in such manner and in accordance with such procedure as the court or judge may deem fit. The rule has two peremptory provisions, the first requiring the applicant to set forth in detail the circumstances which he avers render the application urgent and the second requiring every urgent application to be accompanied by a certificate of urgency from counsel or attorney. The latter two requirements were carried out by the applicant and the learned judge a quo exercised his discretion in allowing the matter to be dealt with as a matter of urgency. Consequently, I am of the opinion that there is no substance in the first point raised by the appellant.

(ii) The second point argued by Counsel for the appellant concerned the question whether or not the employment of the 2nd and 3rd appellants ceased on the giving of notice by them, it being common cause that on the 14th July, 1993 the two appellants purported to give notice of resignation from the respondent's employ.

The matter appears to have been argued in the court below on the basis that the appellants contended that because on 14 July, 1993 there were periods of leave due to them respectively that they could regard themselves as no longer being employed; while the respondent contended that notice had to be given so as to terminate at the month's end following the delivery of the notice. That question seems to be answered by Section 63 of the Labour Code Order, 1992 which provides that for contracts of employment without reference to limit of time either party may terminate the contract by giving one month's notice where the employee has been continuously employed for one year or more. "Month" is defined as meaning a period "commencing on any date in a calendar month and expiring at the end of the day preceding the corresponding date in the succeeding calendar month".

As I read the affidavits, however, it seems to me that whether or not the period of notice ended on the

13th August, 1993 (the notice was delivered on 14th July) or at the end of August is irrelevant since the conduct of the appellants which was objected to by the respondent is alleged to have occurred prior to the giving of the notice (which is not denied) and when the application was brought the notice period, on either version, had not expired. Mr. Mafantiri submitted that because of the leave that was due to the appellants their employment ended when notice was given. There is no substance in this submission. The mere fact that the appellants may technically have been on leave (which I do not think was the case) does not mean that they were not still in the respondent's employ.

In my judgment, therefore, the Court a quo was correct in confirming the rule insofar as Prayer 1(a) of the notice of motion was concerned.

With reference to Prayer 1(b), however, Mrs Makara who appeared on behalf of the respondent conceded, quite correctly in my view, that the relief granted by the learned judge a quo was too wide since it could be construed as preventing the appellants from competing with the respondent even after the completion of their employment. This would make an unjustifiable inroad into the freedom of the appellants to compete fairly with the respondent.

Consequently prayer 1(b) is altered by adding the words "during their employment by the applicant" after the word "interdicted".

Apart from that amendment the appeal is dismissed and, as the respondent has substantially succeeded, the appellants must pay the costs.

J. BROWDE
JUDGE OF APPEAL

I agree

J.H. STEYN
ACTING PRESIDENT

I agree

G.P.C. KOTZE
JUDGE OF APPEAL

Delivered at Maseru This 28th day of July, 1994.