

IN THE HIGH COURT OF LESOTHO

In the matter of:

THABO NATHANE MONARE

Plaintiff

v

D3 CONSTRUCTION (PTY) LTD

Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on
the 11th day of March, 1994

Court doesn't agree with Mr. Snyman's submission that there is no difference between the broad terms in Attridgeville Town Council & Another vs Livanos t\ a Livanos Brothers Electrical 1992(1) SA 296 AD case and the present one we are dealing with here.

From what was read to the Court, it became very clear that the terms in that case are much broader and I don't think one should concentrate on the phrase "if any dispute" in support of the argument that the clause in the instant case is equally broad - that is taking a rather constricted view of things. There would always be danger in taking things in isolation.

I was very clear in my mind that what was stated, especially as one went further in the reading of the clause in Livanos's case surely is much broader than what we have here. The two sets of clauses compared in the submissions are clearly not co-extensive even if the one in the instant case is prefaced by the phrase "if any dispute" above.

On that basis the court is not prepared to view with favour the submission that this court has no jurisdiction in this matter.

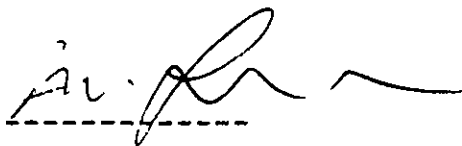
However, on the other side the plaintiff's case seems to be lame too, to the extent that it appears that when it was brought before this court it was premature.

To that extent I think things just cancel out each other nicely in the circumstances.

In other words this court has jurisdiction. At the same time the plaintiff has brought his case before court prematurely in the light of the fact that clause 7 makes a requirement for the parties to refer to an arbitrator in terms of what is set out in that clause.

In the circumstances this is the Judgment of the court the matter should be referred to arbitration. On the other hand this court feels that it has jurisdiction in this matter, and I hope the arbitration will tackle the matter in such a manner that it won't be necessary that any of the parties should come before this court, but if they should come they will be welcome.

No order as to costs.

A handwritten signature in black ink, appearing to be 'A. R.', written over a horizontal dashed line. The signature is fluid and cursive.

J U D G E

11th March, 1994

For Plaintiff: Mr. Pheko

For Respondent Mr. Snyman