

IN THE HIGH COURT OF LESOTHO

In the matter between:

LESOTHO CO-OPERATIVE HANDICRAFTS LTD	1ST APPLICANT
LESOTHO POULTRY CO-OPERATIVE UNION LTD	2ND APPLICANT
LERIBE DISTRICT CO-OPERATIVE UNION LTD	3RD APPLICANT
PHELA-U-PHELISE CO-OPERATIVE UNION LTD	4TH APPLICANT
MAFETENG DISTRICT CO-OPERATIVE UNION LTD	5TH APPLICANT

and

THE MINISTER OF AGRICULTURE	1ST RESPONDENT
THE REGISTRAR OF CO-OPERATIVES	2ND RESPONDENT
ATTORNEY GENERAL	3RD RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi
Acting Judge on the 18th day of May 1994

This is one of the number of cases connected with Co-operatives movement in this country. I need to point out that in the background there has even been a Commission of Inquiry into the Co-op Lesotho Ltd. (Co-op Lesotho) This application is primarily about Co-op Lesotho. In this matter Mr. Sello appeared for the Applicants and Mr. Mohapi of the Office of the Attorney General appeared for the Respondents.

The Applicants claim, which was originally moved as an

urgent ex parte application for a *Rule Nisi* requiring Respondents to show cause why:-

- "(a) The agreement entered into between attorneys A. T. Monyako, T. Mohapi and S.A. Redelinghuys in a matter referred to as Civil Application 157/93 shall not be declared null and void and set aside and the judgment entered in consequence thereupon shall not be rescinded.
- (b) The 2nd Respondent shall not be interdicted from acting on the report of one Mary Steward.
- (c) A document entitled "Mandate Granted By Order of the Honourable minister of Agriculture..." signed by one Lesole Jane and Reid Ntokoane as well as one entitled "Co-op Lesotho Limited Divestiture Implementation shall not be declared null and void.
- (d) The Registrar of Co-operatives, the 2nd Respondent herein, shall not be interdicted from liquidating Co-op Lesotho except by due process of law.
- (e) The Government of Lesotho or any of its servants shall not be interdicted from selling or otherwise disposing

of the assets of Co-op Lesotho except by due process of law.

(f) The Respondents shall not be ordered to pay the costs of this Application jointly and severally.

(g) The Applicants shall not be granted further or alternative relief."

Also important to note is that as prayer (a) refers to a Civil Application 157/93 (the original application) which resulted in an Order of Court by consent. Its prayers had been framed as follows:

"1. That a RULE NISI do hereby issue calling upon the Respondents to show cause, if any, on a date to be determined by this Honourable Court why:-

(a) 4th Respondent shall not be restrained and interdicted from disposing of the property of the Applicant.

(b) 4th Respondent shall not be restrained and interdicted carrying all activities relating to the assets of the Applicant.

- (c) 3rd Respondent shall not be ordered forthwith to cause to be opened Applicant's offices and all its depots.
 - (d) 3rd Respondent shall not be ordered to call back for duty all the staff of the Applicant and its depots.
 - (e) The manadate granted by 1st and 2nd Respondents shall not be declared null and void.
 - (f) 1st, 2nd and 3rd Respondent shall not pay costs of this application.
 - (g) 4th Respondent shall not pay costs in the event of opposing the application.
2. The prayer 1 (a), (b) and (c) above should operate as an interim Court Order with immediate effect."

The Co-operatives movement in this country is controlled by the Co-operatives Proclamation No. 47 of 1948, (the proclamation) which provides for registration, constitution and regulation of Co-operative Societies. Under Section 53 of the Proclamation the Minister is empowered to make all such rules as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of the proclamation. Previously the

High Commissioner in council had powers to make such rules. The existing rules are to be found as Co-operative Societies Rules High commissioner's Notice 174 of 1948 of the 27th August 1948. I am not so sure that Co-operatives are also registrable under Friendly Societies Act 7 of 1882. Nothing really turn on this aspect. Each Co-operative Society has to register its bye laws, in terms of Rule 24 read with Rule 25. Hence the Co-op Lesotho, is a Society with which the five Applicants are registered in terms of its bye laws 3, 4 and 5. It is useful at this juncture to quote the provisions of the bye laws 3, 4 and 5 in full:

"MEMBERSHIP

3. Subject to bylaw 4, membership shall be open only to cooperative unions, to national savings societies and to the Government of Lesotho. No other society, association or organization and o individual in any capacity shall be admitted to membership.
4. Only those cooperative unions and national savings societies which are registered in Lesotho and whose residence is in Lesotho may be admitted to membership.
5. The Lesotho Cooperative Handicrafts Ltd., Leribe Cooperative District Union Ltd., Lesotho Cooperative

Union League Ltd., Lesotho Poultry Cooperative Society Ltd., Mafeteng Cooperative District Union Ltd., and the Government of Lesotho shall be foundation Members and their names shall appear on the application for registration. Thereafter applications for membership shall be open to all registered societies qualifying for membership under bye-laws 3 and 4 above." (my underlining)

It appears therefore that Fourth Applicant must have come into the membership of Co-op Lesotho Ltd later and after the foundation members. There is a further need to quote the bye laws 7 and 9 which concern the rights of members and their termination. They read as follows:-

"RIGHTS OF MEMBERSHIP

7. All members shall have the rights and obligations provided in these bylaws, but in no case shall the rights of membership be exercised until the date upon which the applicant for membership has purchased a minimum of two hundred maloti of share capital (or 'a minimum of twenty shares').

TERMINATION OF MEMBERSHIP

8. Membership shall be terminated by liquidation of the

member society, or its resignation or expulsion from Coop Lesotho Ltd. in accordance with these bylaws."

I would observe that the two sets of copies of the bye law shown to this Court are at variance with regard for Bye law 27.. One copy does not have the Managing Director as being legible to be elected to the Board. The most recent addition to the main laws is the Co-operatives (Protection) Act No. 10 of 1966.

I believe that I am on a firm basis in coming to the following conclusions with regard to the first prayer by the Applicants namely, that:-

- (a) It does not appear proved at the time of the dealing with Application 157/93 that Mr. Matla was mandated by Co-op Lesotho to claim and to file the necessary affidavits, although he claimed to be mandated. Again it does not appear that there is evidence, to gainsay, that Mr. Matla as he does say (in the instant application) that he was not mandated to so claim on behalf of Co-op Lesotho. Mr. Matla has again filed a founding Affidavit in the instant application in which he resiles from his previous statements. It appears that it is in his character to do such things.

(b) Messrs Monyako Redenlinhuys and Mohapi signed the memorandum of agreement dated the 21st April 1993 on the assumption that all was in order. By this I mean that Mr. Matla did so as he was empowered properly to launch the proceedings. Again it is interesting as to how and why Mr. Mohapi and Mr. Redelinguys sat to sign the agreement well knowing and having raised up an objection as to the powers of Mr. Matla to represent Co-op Lesotho. This I would presume, following on that reasoning, that Mr. Monyako as an Attorney was not and could not have been properly mandated. This agreement is to be found at page 142-4 of the volume 2 of the Bundle of Annexures. Almost the whole of the agreement is interesting for what it entails, namely, that it virtually jettisoned an existing arrangement whereby the Co-op Lesotho was to be disposed of through the management of the firm of Accountants of W Glutz, Marais & Crowther who were the 4th Respondent and represented by Mr. Redelinguys in the Application 157/93. That appointment has its own history.

(c) The Application 157/93 was filed without the knowledge of all the Applicants herein except probably the 1st Applicant of which Mr. Matla is a member. The whole proceedings were unknown to the others including the

agreement of the 21st April 1992.

The orders resulting from the proceedings should not in law have any effect on the other Respondents. To the extent that they had an interest as members of Co-op Lesotho it was irregular that they were not consulted nor did they authorize Mr. Matla in the application 157/93. This in itself is a mistake and an error which had the Court known about, the Court, would have been loath and would have declined to enter a judgment based thereon. I would consider that this error continued whether or not and despite the agreement of the "parties" or their alleged representatives. I do observe that none of the member cooperatives had resigned or were expelled.

I would on the strength of the above reason declare as null and void the agreement entered into between Attorneys T. Mohapi, A.T. Monyako and S.A. Redelinghys and rescind the judgment entered in consequence thereof. This I have done in the interest of justice and in terms of Rule 45 (a) and (c). I am not unmindful of the requirements of Rule 27(b) and (c) of the Court. My interpretation of the rule is that the party against whom judgment is entered must be in willful default. This was not so in Application 157/93. The Respondents did not know of the proceedings. It is interesting to note that there has not been any affidavit filed by any of the learned Attorneys touching on

the very serious aspect or query as to their mandate, and on the allegation that the other Respondents were kept in ignorance of the proceedings in the application 157/93.

I have already stated what the membership of Co-op Lesotho consists of. I would imagine that in the ordinary run of things any resolution of great importance would be made by the Committee of the said Co-op Lesotho or its General Conference as provided for in its rules. On relatively few matters would such resolution touch on the powers of the Registrar of Co-operatives. The office of the Registrar of Co-operatives is provided for in section three of the Proclamation. The powers of the Registrar are indeed vast under the Proclamation. I suppose that does not mean that they ought to be abused or that such powers shall be arbitrary. A distinction is normally drawn as between whether one has certain powers on one hand and how he uses them on the other. The Registrar's powers as are also found in section 36 of the Proclamation and are called the Powers of Enquiry and Inspection. The Registrar also has other powers under Section 37(1) which are the powers of dissolution of a registered society. I need to quote the last mentioned section:

"37(1) If the Registrar, after holding an inquiry or making an inspection under Section thirty six or on receipt of an application made by three fourths of the members of a

registered society, is of opinion that the society ought to be dissolved, he may make an Order for the cancellation of the registered Society."

There is no dispute that only after the agreement of the 21st April 1993, did the Registrar invoke the powers of and under the said section 37(1) and only did he do so following on the report of a certain MARY STEWARD of the Office of the Auditor-General whose function is the audit of Government parastatals. I underline Government Parastatals. Perhaps I should quote from the memorandum at paragraph 1.

" The Applicant has noted that in the exercise of the powers vested in the Registrar of Co-operatives, the third Respondent in these proceedings by Section 36(1) of the Co-operatives Societies Proclamation (proclamation 47 of 1948) of his motion has appointed Mrs Mary Steward, the Controller of Parastatal Audit, in the Auditor-General to hold an inquiry into the constitution, working and financial condition of the Applicant, Co-op Lesotho". (my underlining)

What is important further is that by some coincidence the instruction Mary Steward comes four days after the interim Court Order in the Application 157/93. One could not avoid a

conclusion that only after and as a result of the interim Court Order did the Registrar of Co-operative instruct Mary Steward to undertake the investigation. That there has been such investigation is contained in a letter dated the 22nd April 1993 from Mary Steward at page 145 Volume II of Bundle of Annexures and it reads in part:

"I refer to your letter dated 20th April 1993, in which I was appointed by you to inquire into the constitution, working and financial conditions of Co-op Lesotho Limited (Co-op Lesotho Ltd.,) I attach herewith my report on the financial condition." (my underlining)

I repeat there is no avoiding a conclusion that it was only after the filing of the Application 157/93.

At page six and seven of the Volume I of the bundle of Annexures the mandate granted by Order of the Honourable Minister of Agriculture, Co-operatives and Marketing document is to be found. The Government of Lesotho duly represented by ALEXANDER LESOLE JANE and REID LEPHETO NTOKOANE (as Principal Secretary of Agriculture, Co-operatives and Marketing) "on the advice of the Registrar of Co-operative Societies and as provided for in terms of Co-operatives Societies (Protection) Act No.10 of 1966, the said Minister has decided to appoint persons to manage the

affairs for Co-op Lesotho Ltd with effect from the 19th February, 1993 to 31st December 1993." I observe that section 11(1) of the said Co-operative Societies (Protection) Act provides that "if the Minister is of the opinion that a Committee of a registered Society is not performing its duties properly he may take any of the two steps, (a) take no action or (b) dissolve the Committee and appoint a suitable person to manage the affairs of a society for a period not exceeding two years." I do not even want to question (at this stage) that the Co-operatives Protection Act shall be construed as one with the Societies Proclamation. But I have two worries about the history of the matter namely:

(a) Whether it has been proved that the Minister had given the Committee of the Co-op Lesotho an opportunity to state its objection to the Registrar.

(b) That while in the said section 11, the Minister is empowered to appoint a sort of a manager in the place of the Committee this entails the further objectives:

(i) to recover the assets and discharge the liabilities of the society and take such other steps as may be in its interest (vide subsection 3(a));

- (ii) to exercise all the powers, rights, privileges of a duly constituted Committee (vide subsection 3(b);

- (iii) at a period of appointment arrange for the constitution of a new Committee in accordance with the bye laws of the society.

This did not seem to be the intention of the mandate. The firm INGLUTZ/MARAIS & GROWTHER was appointed as managers for other purposes.

The powers of this managers were not specified. But what was stated was that "the manager shall execute and perform its duties in accordance with and subject to the provision of the Co-operatives (protection) Act, 1966, the Co-operative Societies Proclamation No.67 of 1948 as amended and the Co-operative Societies Rules Promulgated thereunder." The vagueness with which the directive was drawn was deliberate and done with the knowledge that the Minister was exceeding his powers or as ultimately proved, he was giving the managers more powers than they would be entitled to, even on the strength of the said section 11 (1)

It turned out that "All terms of the specific terms of

reference and proposal by the said manager dated the 16th February 1993" meant a proposal of a Divestiture Implementation Plan. The plan concerned:

- (a) The efficient disposal of all the assets;
- (b) closing the operations of Co-op Lesotho;
- (c) terminating the employment of all staff on the 28th February 1993.

All this is consistent with the Plan. To divest is defined as "to deprive or dispossess of a title or right (eg of an estate). Divestiture In anti-trust law, the Order of Court to a defendant (e.g. Corporation) to divest itself of property, a subsidiary securities, or other assets. - See Black's Law Dictionary, 1983, ed (USA). The Concise Oxford Dictionary, defines divest as "deprive, dispossess, free, rid". The Divestiture plan made by INGLUTZ/MARAIS & CROWTHER is a comprehensive plan running from page 9 to page 75 of Volume one of the Bundle of Annexures. The point is being made that the only purpose of the appointment of the manager by the Minister was none other than to dispose of the assets of Co-op Lesotho Ltd.

This divestiture programme seems to have been (and this is common cause) to facilitate the privatization of the Co-op Lesotho. That is why the Resolution of the Board of Directors of the Co-Op Lesotho dated the 26th December 1992 states that: "at a special meeting on privatization of Co-Op Lesotho Ltd resolved in favour of privatization of Co-Op Lesotho Ltd as contained in project document signed by Lesotho Government and the Government of the USA." (see page 4 vol. Bundle of Annexures) I did not see anywhere in the Regulations of the Co-op Lesotho that a Board of Directors would be empowered to do what it purported to do. I have had a good look into the bye law 33 (Duties and powers of the Board) 59 (Disposal of net surplus) and bye law 53 (liquidation). It did not appear that the Board of Directors was empowered to do what amounts to disposal of the assets of the Co-op Lesotho or in effect its liquidation. Incidentally (in reference to Bye law 53), I did not observe that the office of the Commissioner of Co-operatives is provided for (anywhere else) in any of the laws. This appears to be an anomaly.

It is common cause that the Board of Directors of Co-op Lesotho is appointed by the Minister purportedly in terms of section 11(1) of the Co-operatives societies Act 1966, as stated in the Respondents Replying Affidavits. I have in the preceding paragraphs indicated why I found fault with the use of the

Minister's powers in appointing a manager or managers. Central to this would be that the Applicants ought to have been called and ought to have been consulted. They have not been called. It will be observed that this application is about the membership and the participation of the Applicants in the affairs of Co-op Lesotho. I do observe that nowhere in the laws of the Co-operatives movement would the Minister be entitled to do what he purported to do. It does appear therefore that the Minister's use of his powers in appointing a Board of Directions was ultra-vires. Alternatively, equally blameworthy, would be the use of the provisions of a law intended for one purpose for a different purpose. The Applicants have submitted that this practice was fraudulent and was intended to benefit certain people and interests and certainly not the owners of the Co-op Lesotho. I would agree. I do not see how the Minister would be entitled to appoint a Board of Directors and disregard the provisions which direct as to how a Committee of a Co-operative such as Co-op Lesotho ought to be elected and brought into being. It meant that the Co-op Lesotho ended up being run as a Government parastatal not a Co-operative Society. One would have thought that the appointment of Mrs Steward was merely fortuitous. But it was not.

The bye laws of Co-op Lesotho provide for the holding of Annual General Meetings (see bye-laws 15 to 26). A General

Meeting in terms of Rule 19 of the Co-operative Societies Rules 15 to 21) on each and every year, is to elect, suspend or remove members of the Board in accordance with bye law 26. The bye law 26 prescribe the number of Directors and that they shall hold office until the next general meeting. Since 1982, only a few of such general meetings have been held. This was certainly not for the purpose of electing a Committee of the Co-op Lesotho or acquainting the members of the Co-op Lesotho with the affairs of their organization. But it was a window dressing exercise intended to give the impression that the members had a say in the running of the Co-operative. This has not been successfully rebutted. When such appointments of the Board of Directors were done by the Minister, not in consultation with the members, the situation becomes even more serious in its wrongfulness. What would have been at stake would not be the assets, liabilities or such bugled interests of the Co-op Lesotho but the livelihood, the character and the spirit of the Co-operatives movement. The essential feature of this character and spirit is the volunteer participation by members. With such inroads into the movement proved, the deliberate killing of the Co-operative Society has been proved beyond a reasonable doubt.

This Co-operative Societies Protection Act of 1966 seems to have been the precursor for the Government of Lesotho to participate so extensively in the affair of the Co-op Lesotho.

This ended up in the 1982 bye laws of Co-op Lesotho. The Government of Lesotho is stated to be a foundation member together with First the Third, the Second, and the Fifth Applicant all which have been Co-operative societies except the Government of Lesotho. The preamble of the Co-operatives Societies Proclamation states that the law is to make provision for the constitution and regulation of Co-operative Societies. Members is interpreted as to include "a person or registered society". Section 21 of the proclamation shows that only persons or registered societies qualify for membership to an apex society. The Government of Lesotho (being not a natural person or a society) would obviously not qualify. Despite that clause 5 of the bye laws of Co-op Lesotho grants membership to the Government of Lesotho I would not interpret any rules or regulations or bye law as overriding the clear provisions of the Co-operatives proclamation. Neither did I see the Societies Protection Act as providing for such membership of Government of Lesotho in any co-operative society.

Counsels have not given me any authority for the proposition that no member shall hold more than one fifth of the share capital. I did not see the bye law 13(c) to be subject to such interpretation. It speaks of that: "Every member shall hold at least twenty shares." At the end this aspect of shareholding was never made clear. But all in all what seems important is that

the Applicants while being members of Co-op Lesotho, and having not been expelled and having not been suspended, they did not exercise any right of participation at general meetings, in the Committees and making of resolutions. This was wrong. To say that the Minister had hijacked the Co-op Lesotho would not be far off the mark. It is also correct that Co-op Lesotho was never the property of the Government of Lesotho. I have already made my remarks earlier in the judgment that the Minister and Mr. Ntokoane did not and would not have power to dispose of Co-op Lesotho. This is moreso when there is no evidence that they were duly authorized to act on behalf of Co-op Lesotho.

That Co-op Lesotho seems to have been mismanaged and was perhaps insolvent seems to have been a fact. I do not see that the Applicants would deny that. The report of Mary Steward seems to confirm this. But then it looks like this was brought about by the Government of Lesotho and the Board of Directors appointed by the Government. I suppose it can only be true to say that Mary Steward's report was activated by the Minister's knowledge that the Co-operative was insolvent if not on the brink. Having had problems with the Minister and Ntokoane's resolution and the Divestiture Programme the Registrar of Co-operatives then resorted to Section 36(1) of the Co-operative Proclamation. It seems that there was no doubt that the Section 36 was resorted to after the frustration of the Divestiture Programme. A

submission was made that the resort to section 36(1) was made or invoked for an improper purpose. Before we get to that let us look at the full compass of section 36(1). It requires that (a) an inquiry into the constitution, working, and financial condition of the society shall be made and (b) all officers and members of the society shall furnish such information in regard to the affairs of the society." (my underlining) I do not see how far the inquiry or the investigation concerning the above issues would be conducted without consulting or referring to the Applicants as members of Co-op Lesotho. I have spoken about the abuse by the Minister of his powers in so far as he has sought and did appoint a Board members of Co-op Lesotho against a clear provision that the Minister could only do so after failure of an elected Committee to perform its duties properly. But the Minister has appointed the Board himself from onset thus sidelining Applicants without a lawful reason.

It has been submitted that the Application seeks to interdict the Registrar of Co-operatives from exercising statutory powers and that the Court will not prevent a public servant from performing his statutory functions and duties. This attitude or finding is urged on this Court based on the following allegations:

(a) That there was no irregularity with regard to all

investigations and reports and that there is a presumption of administrative regularity.

- (b) That there were objective facts proved as established in the report by the Auditor-General that indeed the affairs of Co-op Lesotho were poorly managed and the Minister was fully entitled to form an opinion that the Committee of the Co-op Lesotho was not performing its duties properly. This submission goes further to say that the Minister was entitled to act in terms of section 11 of Co-operatives Societies Protection Act.
- (c) That the mandate to INGLUTZ/MARAIS and CROWTHER to pursue a responsible programme supported by the United States government which would hold substantial advantages and the liquidation was proper and responsible.
- (d) That the written proposals made by INGLUTZ/MARAIS & CROWTHER being a unilateral document, it could not be set aside. The document ought not to be set aside for the said reason and that the author of the report had not been joined. There is no basis upon which the relief ought to be granted, in the premises.

Having referred to the various pieces of legislation, regulations and bye laws I would say that what remains to be decided is whether or not the Registrar can be interdicted from performing his statutory duties, as it has been submitted by the Respondents. The submission by the Respondents would depend on the said presumption of administrative regularity. Has there been such regularity? Before concluding my remarks I would quote from the work ADMINISTRATION LAW 6th edition by the learned author W. M. R. WADE at page 467 (speaking of Administrative and Natural justice) where he says:

" Natural justice has become one of the most active department of administrative law.

There are both broad and narrow aspects to consider. The narrow aspect is that the rules of natural justice are merely a branch of the principle of ultra vires, and should really find their home in the preceding chapter. Violation of natural justice is then to be classified as one of the varieties of wrong procedure, or abuse of power, which Parliament is presumed to have intended. Just as a power to act 'as he thinks fit' does not allow a public authority to act unreasonably or in bad faith, so it does not allow disregard of the elementary doctrines of fair procedure. As Lord Selborne once said:

There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.

Quoting these words, the Privy Council has said that 'it has long been settled law' that a decision which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority. Likewise Lord Russell has said:

It is to be implied, unless the contrary appears, that Parliament does not authorise by the Act the exercise of powers in breach of the principles of natural justice, and that Parliament does by the Act require, in the particular procedures, compliance with those

principles.

Thus violation of natural justice makes the decision void, as in any other case of ultra vires."

The argument by Counsels in this matter took a full two days. But at the end of it all I would consider was that the crisp issues to be decided by the Court have revolved around the following (a) That certain provision of the bye laws of Co-op Lesotho are ultra vires (b) That Lesotho Government had no legal basis to have been a member of Co-op Lesotho and appointed a Board of Directors. (c) That the Applicants have been sidelined with the result that the Government of Lesotho took over the running of Co-op Lesotho. I would also find that there is a fourth aspect which addresses one of the prayers directly and is contained in paragraph 14 of the Applicant's founding Affidavit and reads as follows: "..... the 1st Respondent was acting bona fide in exercising his powers under section 36, would at least have consulted the members of Co-op Lesotho before taking this drastic step and would have consulted them after receiving the said report to look at ways of avoiding, if possible, what is, in fact its demise." I would be wrong if the inevitability of the demise of the Co-op Lesotho should be the main consideration of this judgment. I would also be wrong if I would have to worry about effect of my judgment as a main consideration. I have taken a great deal of thought in what the effect of my judgment would be on the question the management of


Co-op Lesotho. But my finding seeks to align itself with the need to do justice according to law on the facts as I find them.

I would find for the Applicants in this matter based on the conclusions of my analysis above.

I would make the following order:

- (a) The agreement entered into between Attorneys A. T. Monyako, T. Mohapi, S.A. Redelinghuys in Civil Application 157/93 is declared null and void and the judgment resolved.
- (b) A document entitled "mandate" granted by Order of the Honourable Minister of Agriculture and signed by one Lesole Jane and Reid Ntokoane is declared null and void.
- (c) The Registrar of Co-operatives, the 2nd Respondent herein is interdicted from liquidating Co-op Lesotho, except by due process of law.
- (d) The Government of Lesotho or any of its servants are interdicted from selling or otherwise disposing of the assets of Co-Op Lesotho, except by due process of law.

(e) The Respondents are ordered to pay the costs of this application.


T. NONAPATHI
JUDGE

18th May, 1994

NOTICE OF AMENDMENT OF NOTICE OF MOTION -
Being for Additional Prayers

On the following days namely, the 10th June 1994 and on the 20th June 1994 the Applicants' Attorney Mr. K. Sello and the Respondents' Counsels, Advocate Mohapi on the first occasion and Adv. Molapo on the second occasion appeared before me and brought to my attention the amended the Notice of Amended prayers dated the 15th February, 1994. The amendment was moved and accepted unopposed on the first day of hearing. The Notice contained additional prayers namely (g) (h) (i) (j). The prayer (j) is merely a request for a renumbering of the original prayer (g) of the notice of motion to read (b) I must emphasize that on the occasion that the parties' Counsels met all the orders were included by Consent. I did however concede that I had

inadvertently not considered the prayer (b) which reads "The Second Respondent shall not be interdicted from acting on the report of one Mary Steward" I did not observe that there was any opposition to this prayer being granted. On the 10th June 1994 when Mr. Sello and Mr. Mohapi appeared before me. Mr. Mohapi insisted that the prayer (h) which read: "Directing the Government of Lesotho and or the Respondents herein acting on its behalf, to hand over forthwith to Co-op Lesotho's members all the assets and other property movable and immovable, tangible and intangible, of Co-op Lesotho to the Applicants and other members of Co-op Lesotho", be amended by addition of the following: "which in the event of a dispute is proved to be the property of Co-op Lesotho". This I had been prepared to do.

On the 20th June 1994 when Mr. Sello and Mr. Molapo appeared before me, they advised me that Mr. Mohapi has now reconsidered his position and his original fear had been removed. He was now prepared to settle for the prayer (h) as it originally stood. I could not hide my surprise. Not only had I been feeling that the patience of the Court has been not only taxed but has been badly stretched. I also now suspected that there is more than meets the eye in this application. This unending vacillation by Counsels, sometimes outright insistence on minutest details such as the seemingly innocuous prayers like the Mary Steward Report make me suspect that there is now something more than the real

spirit of Co-operatives movement involved. I wish it is not something more than what Mr. Matla and his colleagues had bargained for. Much as Counsel for Applicants has rightly stated that the whole exercise may open cans and cans of worms, it is this Court's wish that the exercise shall not be intended to result in any cover up of some sort. The government and the legislature should use its best wisdom. It looks like it will be most required. The government remains responsible for co-operatives in general.

For clarity I made the following additional Orders :

- (f) The Second Responsible shall be interdicted from acting on the report of one Mary Steward.
- (g) It is declared that the Government of Lesotho is not and never has been a member of Co-op Lesotho and is not entitled to any of its assets or other benefits accruing to its members.
- (h) The government of Lesotho and/or the Respondents herein acting on its behalf, to hand over, forthwith, to Co-op Lesotho's members all assets and other property, movable and immovable tangible and intangible, of Co-op Lesotho to the Applicants and

intangible, of Co-op Lesotho to the Applicants and other members of Co-op Lesotho.

- (i) The Respondents are interdicted from interfering with the affairs of and the running of Co-op Lesotho by its members save by due process of law



T. MONAPATHI
JUDGE

20th June, 1994

For the Applicants : Mr. Sello

For the Respondents: Messrs Mohapi and Molapo