

IN THE HIGH COURT OF LESOTHO

In the matter between

STEPHEN SETENANE MAJALLE

APPLICANT

And

**AMELIA TSEKELO
MOEKETSI TSEKELO
INDEPENDENCE ELECTORAL COMMISSION
WATER AND SEWARAGE AUTHORITY
STANDARD BANK LTD (MASERU)
BOLIBA SAVINGS AND CREDIT BANK**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT**

JUDGEMENT

Delivered by the Honourable Mrs. Justice K.J. GUNI
on 27th September, 2002

The applicant in this matter is STEPHEN S MAJALLE. He describes himself as the Managing Director of M and K SECURITY GUARDS (Proprietary) Limited (hereafter referred to as M and K Security Company). It appears from the copy of the MEMORANDUM AND ARTICLES OF ASSOCIATION of the said company that it was registered on the 30th April

1999. At its formation this company had a minimum number of persons required in order to form the company. SECTION 9 COMPANIES ACT NO.25 OF 1967.

At its incorporation M and K Security Company had only two directors, namely:-

1. STEPHEN S MAJALLE and
2. GEORGE KOU

According to this applicant in 2001, GEORGE KOU left M and K SECURITY COMPANY by resigning as its member. In order to continue to function as incorporated company there was a need to recruit another member to bring the membership to the minimum required in terms of Section 9 of Companies act (Supra). Applicant as the only remaining director recruited the 1st respondent to become the member of M and K SECURITY COMPANY. At the time this 1st respondent was recruited, she apparently accepted the invitation to join as a director. The applicant avers that the circumstances did not permit them to formalise that relationship. Apparently the 1st respondent worked for this company and had access to all its property.

The 1st respondent completed and submitted form L – the register of Directors, Managers and Secretaries and of any changes therein. This was done pursuant to section one hundred and fifty – eight (158) COMPANIES ACT 25 OF 1967.

This form L is attached to the founding affidavit and marked Exhibit 2. Amongst other features that form L shows are the names of the directors of M and K SECURITY GUARDS (PROPRIETARY) LIMITED. The names are:-

1. STEPHIEN S MAJALLE
2. GEORGE KOU – indicated as having resigned
3. AMELIA TSEKELO
4. MOEKETSI TSEKELO

These last two are the 1st and 2nd respondent herein respectively. The date of the changes that were being registered are as follows:- GEORGE KOU is shown as having resigned on the 31/03/2001. The 1st respondent became a newly appointed director of M and K SECURITY Company on 02/04/01 while her husband became the member of the same company on 10/04/01. Why is 2nd respondent made the director of M & K Security Company?. This form L is signed by the 1st respondent although it is purportedly presented for filing by S.S. Majalle. The 1st respondent does not explain

why and how she managed to make her husband the director of M and K Security Company. She seems to deny that her husband is the director of M and K Security Company.

It is also not in dispute that the 1st respondent represented M and K Security Company when it entered into contracts with INDEPENDENT ELECTORAL COMMISSION (IEC) AND WATER & SEWERAGE AUTHORITY (WASA). (Refer to Annexures “B” & “C” attached to the Answering Affidavit). In terms of those contracts entered into between M and K Security Company and those two institutions (i.e. I.E.C. and WASA), the services provider who is M & K Security Company was to provide security for those clients at their areas as required by them. Both IEC and WASA agreed to pay M and K Security Company and no other person the sums of money agreed upon in the said contracts.

The cheques issued by IEC and WASA to M and K Security Company belong to no-one but to the payee named thereon. Those cheques cannot without the owner's consent lawfully be deposited in any bank account except that of M and K Security Company.

The taking of any cheques issued out to M and K SECURITY Company by anybody, without the permission of M and K SECURITY Company, is misappropriation. The taking of any cheques belonging to and issued out to M and K SECURITY Company and without its authority and depositing them in any bank account other than that of M and K SECURITY Company, is misappropriation. If as the applicant alleges, the 1st and 2nd respondents have taken into their possession cheques issued out to M and K Security GUARDS (PROPRIETARY) Limited and without its authority have deposited those cheques in their personal accounts or accounts belonging to their own company, that is fraud. It must be reported to the police. The company M & K Security Company may if it wishes sue the fraud perpetrators for the recovery of its money. It is immaterial whether or not the 1st respondent personally represented M and K SECURITY GUARDS (Proprietary) Limited when negotiating those contracts. She represented M and K Security and noone else.

M & K SECURITY GUARDS (PROPRIETARY) Limited as an incorporated company is a legal person. The company has a personality of its own – separate from that of its directors, managers, secretaries and employees. It can sue and/or be sued on its own. Anyone who claims to be

acting on behalf of the company must be properly authorised by the same company to so act on its behalf. **CENTRAL BANK OF LESOTHO V PHOOFOLO C of A (Civ) 6 of 1987, LTC V NKUEBE C of A (Civ) 12 of 1998.**

The proof of authorisation by the company for anyone to act on its behalf may be provided by means of the resolution of the company to that effect, filled of record with the papers. Sometimes the court may accept that the deponent who specifically avers in his or her affidavit said company, has infact granted him or her such authority that he or she has obtained that authority. **CENTRAL BANK OF LESOTHO V PHOOFOLO (Supra).**

The applicant herein is claiming some of the property of M and K SECURITY GUARDS (PROPRIETARY) Limited. He has no right. He must show the court that he is acting on behalf of M and K SECURITY GUARDS (PROPRIETARY) Limited and that he has been properly authorised so to act by the said company. **WING ON GARMENT (PTY) LTD Vs LESOTHO NATIONAL DEVELOPMENT CORPORATION (LNDC) C of A (Civ) N0.6/99.**

Some of the property, such as the firearms, there is sufficient proof that, that property belongs to this applicant. The firearms are clearly described in Annexure "E" attached to be Answering Affidavit as the property of this applicant. The firearms certificate – labelled EXHIBIT4, attached to the founding Affidavit has listed exactly the same firearms found in Annexure "E" as the firearms this applicant herein is permitted in terms of the law to have in his possession. In that agreement of hire of the firearms from this applicant the company M and K SECURITY GUARDS (PROPRIETARY) Limited was in fact represented by the 1st respondent and this applicant. The applicant is entitled to claim the repossession of his firearms if he does not wish to continue to hire them out to the company. The 1st respondent or anyone has no authority to possess those particular firearms. Anyone having those firearms in his or her possession without the firearm certificate in relation to them commits an offence.

As regards the uniforms in question the clearance certificate from the police shows without a doubt that the uniform so cleared by the police is that of M and K SECURITY GUARDS (PROPRIETARY) Limited. Those uniforms do not belong to any other person or company.

The applicant herein, as the member of M and K SECURITY GUARDS (PROPRIETARY) Limited, has in terms of Section 91 (1) COMPANIES ACT 25 of 1967 approached this court as an aggrieved person for the rectification of the register. According to the applicant the names of the 1st and 2nd respondents have been entered into the register as directors of M and K SECURITY GUARDS (PROPRIETARY) Limited without sufficient cause. The 1st respondent seems to deny that she is the director of M and K SECURITY GUARDS (PROPRIETARY) Limited. She claims that this applicant together with M and K SECURITY GUARDS PROPRIETARY LIMITED joined her own company which is called M and A SECURITY Company. She affords this court no proof of such membership. The 2nd respondent has filed no opposition to this application. There is no explanation whatsoever as to how this gentleman 2nd respondent happens to appear as the director in M & K SECURITY GUARDS (PROPRIETARY) Limited register. In the so called Exhibit 2-Form L shows very clearly that those directors are members of M and K Security Company. Not M and A Security as the 1st respondent seems to suggest.

The applicant has applied to this court to rectify the register of M and K SECURITY GUARDS (PROPRIETARY) Limited by removing the two

last names, AMELIA TSEKELO and MOEKETSI TSEKELO. These two directors do not resist the removal of their names. 1st respondent as I pointed out earlier on, seems to deny that she is the director of M and K Security Company. I therefore order that their names be removed from the register of M and K SECURITY GUARDS (PROPRIETARY) Limited. I also direct that the registrar of the companies be notified about this rectification of that register.

The application has partly succeeded Prayers 1(a) (b) (c) (d) (I) and L are granted with costs.

K.J. GUNI
JUDGE



For Applicant	-	Mr. Moruthoane
For Respondent	-	Mr. Matooane