IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV)NO.65/11

In the matter between:

MOLATELI MOHLOAI	**APPELLANT**
And	
ALAN RANGER	**RESPONDENT**

CORAM	:	RAMODIBEDI, P
		SCOTT JA
		HURT JA

HEARD	:	14 AUGUST, 2012
DELIVERED	:	3 SEPTEMBER, 2012

SUMMARY

Order that person arrested suspectus de fuga put up security for his release pending confirmation or discharge of rule nisi not a final order.

JUDGMENT

SCOTT A

[1] This is an appeal against the discharge of *a rule nisi* granted in pursuance of an application by the appellant for the arrest of the respondent *suspectus de fuga* in terms of High Court Rule 7.

[2] The facts relevant to the appeal are briefly as follows. On 17 August 2011 the appellant sought and obtained ex parte a *rule nisi* for the arrest of the respondent *suspectus de fuga*. In terms of the writ of arrest (which was in accordance with form "F" in the First Schedule to the Rules) the respondent was called upon to show cause on 17 August 2011 *inter alia* "why he should not be ordered to abide the judgment of the Court [in the

main action] or furnish security for his further presence within its jurisdiction." In the event, the respondent was arrested on 18 August 2011 and brought to court on the same day. He was represented by counsel who filed a notice of intention to oppose. In order to afford the respondent the opportunity of procuring his release Hlajoane J granted an order directing him to "file a Security Bond to the tune of M100.000 in exchange for his liberty". The respondent's counsel, who had only just met the respondent, undertook to file the security bond when he filed his answering papers. In accordance with the undertaking a security bond for M100 000 was filed together with the respondent's answering affidavit on 22 August 2011. The appellant's replying affidavit was filed on 25 August 2011 and the matter was argued on 1 September 2011 before the same judge who discharged the *rule nisi* with costs.

[3] The point raised on appeal shortly stated, is that the order granted on 18 August 2011 when the

respondent was brought to court was a final order and the matter was *res judicata*. Accordingly, so it was contended, Hlajoane J had no jurisdiction to set it aside. There is no merit in the point. It is clear that the respondent was opposing the granting of a final order. A notice of opposition was filed immediately and in accordance with counsel's undertaking an answering affidavit was filed within a few days to which the appellant filed a replying affidavit. Properly construed, the order granted on 18 August 2011 could pertain only to the interim period pending the confirmation or dismissal of the *rule nisi*. (As to the correct approach to be adopted when interpreting a court's judgment or order, see *Firestone SA (Pty) Ltd v Gentiruco AG 1977 (4) SA 298 (A) at 304 D-H.*) Indeed, given the circumstances in which the order was granted, to construe it as anything other than an interim order would be to render it invalid.

[4] The court a quo discharged the *rule nisi inter alia* on the ground that the appellant had failed to place

sufficient evidence before the Court to justify the inference that the respondent was about to leave Lesotho permanently. The allegation that he was about to leave was in any event denied by the respondent who presented cogent evidence to support his denial. In my view the rule was correctly discharged.

[5] The appeal is dismissed with costs.

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D.G. SCOTT

JUSTICE OF APPEAL

I agree ________________________

M.M. RAMODIBEDI

PRESIDENT OF THE COURT OF APPEAL

I agree ______________________

N.V. HURT

JUSTICE OF APPEAL

For the Appellant : Adv M. Ts'oeu

For the Respondent : Adv. S. Phafane KC