

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

**C of A (CIV)
46/2022
CIV/APN/0120/2022**

In the matter between:

**'MAMARAME
APPELLANT**

MATELA

And

**LESOTHO TELECOMMUNICATIONS
AUTHORITY**

1STRESPONDENT

**OFFICER COMMANDING MASERU POLICE
CHARGE OFFICE**

2NDRESPONDENT

COMMISSIONER OF POLICE

3RDRESPONDENT

ATTORNEY GENERAL

4THRESPONDENT

CORAM: K. E. MOSITO P
M H CHINHENGO AJA
N T MTSHIYA AJA

HEARD: 13 OCTOBER 2022
DELIVERED: 11 NOVEMBER 2022

SUMMARY

Jurisdiction - Rejection of lack of jurisdiction by the Court a quo confirmed on appeal - Jurisdiction point correctly rejected by the Court a quo - However, order of the Court a quo modified - The appeal is dismissed- The costs to be costs in the cause.

JUDGMENT

K. E. MOSITO P

Introduction

[1] This is an appeal against the judgment of the High Court (Mokoko J) dismissing the appellant's point *in limine* that the Court lacked jurisdiction to hear the application brought by the first respondent.

Factual background

[2] On 1 April 2019, the appellant was appointed the chief executive officer (CEO) of the first respondent (Lesotho Communications Authority (LCA)). By virtue of this position, she was also a member of the Board of the first respondent. Also, by virtue of this position, she possessed specific trade instruments, including a car, an LCA credit card, a laptop, an LCA uniform, Ipad Pro recording devices, office keys, an LCA Identification card and an iPhone 12. She also had access to, and possession of, board minutes and other documents of a confidential nature of the first respondent.

[3] Later on, the relationship between the appellant and first respondent broke down to the extent as detailed in another case¹ that served before this Court in the last session. Ultimately, the employment contract between the parties ended on 31 March 2022. After that, the parties became embroiled in correspondence in which the first respondent

¹ Matela v Lesotho Communication Authority C of A (CIV) 35/2021.

demanded the return of the properties mentioned in paragraph 2 above.

[4] In the correspondence, the appellant denied having all the above properties, save for the vehicle, LCA Identification card, LCA uniform and the iPhone 12. Also, in the correspondence, the appellant had agreed to return all the items in her possession, save the iPhone 12, which she had considered she was entitled to. The preceding notwithstanding, the first respondent approached the High Court *ex parte* and obtained an interim order to return all the items mentioned in paragraph 2 above.

[5] In her answering affidavit, the appellant raised the defences of lack of jurisdiction, dispute of fact, abuse of the *ex parte* procedure and lack of urgency *in limine*. At the Court, a quo hearing, only the defence of lack of jurisdiction was argued. In his order, the learned Judge dismissed the defence of lack of jurisdiction without anything more. I revert to this aspect later in this judgment.

Issue for determination

[6] The central issue in this appeal is whether the Court a quo was correct in holding that it did not lack jurisdiction to entertain the application before it. Put differently, the issue is whether the Court *a quo* was correct in dismissing the *in limine* defence to its jurisdiction.

The law

[7] Before considering the appeal before this Court, it is necessary to say something about the lack of jurisdiction as a defence. Generally, a party instituting proceeding bears the burden of proving that the Court has jurisdiction to hear their matter. In our law, an interdict founds jurisdiction, and a lack of jurisdiction cannot prevent a Court from granting an interdict in terms of which the recognised requirements for an interdict are satisfied by facts establishing the jurisdiction of the Court.² The founding affidavit attached to the notice of motion must, among other things, state facts that establish the Court's jurisdiction.³ If the Court is not satisfied with the facts stated in the application that it has jurisdiction, it will not entertain the proceedings.⁴ On this basis, the narrow legal issue raised in this appeal falls to be determined.

Consideration of the appeal

[8] There are two grounds of appeal before us in this appeal. The first ground is that the Court a quo erred in holding that the point of lack of jurisdiction was misplaced and improperly taken. I am unable to agree with this complaint. Prayer 10.1 of the notice of motion was seeking an interdict. The prayer is for the Court to direct the deputy sheriff to attach, remove and

² Mtshali v Mtambo and Another 1962 (3) SA 469 (GW); Kibe v Mphoko 1958 (1) SA 364 (O); Joubert (ed) Law of South Africa vol 11 para 419; Forsyth Private International Law 2nd ed at 200-2.

³ Kikillus v Susan 1955 2 SA 137 (W); Marais v Munro & Co Ltd 1957 4 SA 53 (EDL); Natalie Landboukoöp Bpk v Fick 1982 4 SA 287 (N).

⁴ Cilliers, Loots and Nel Herbstein and Van Winsen Cilliers AC, Loots C and Nel HC Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa 5th ed (Juta Cape Town 2009) at 438.

place certain items in the possession and custody of the first respondent. In our law, an interdict founds jurisdiction, and a lack of jurisdiction cannot prevent a court from granting an interdict in terms of which the recognised requirements for an interdict are satisfied.⁵ It is trite that jurisdiction is determined based on the pleadings and not the substantive merits of the case.

[9] If the Court's jurisdiction is challenged at the outset, the applicant's pleadings are the determining factor.⁶ The appellant's defence raising the lack of jurisdiction in the present matter was a defence that existed independently of the first respondent's case. In my opinion, the Court *a quo* correctly dismissed the defence of lack of jurisdiction. What then became of the matter after the High Court had dismissed the defence of lack of jurisdiction?

[10] Because the High Court had only adjudicated the point *in limine* and not the other aspects of the matter, it suffices to merely re-affirm the trite principle that an appropriate order to be granted after rejecting a preliminary point like jurisdiction is to direct that the matter should proceed on the other aspects of the case. This is more so because the other preliminary points, as well as the merits, would not have been entertained. Therefore, the High Court's order cannot dismiss the point of jurisdiction and leave the matter hanging. It follows, therefore, that, as presently formulated, the High Court order cannot

⁵Coin Security Group (Pty) Ltd v Smit NO and Others 1992 (3) SA 333 (A) at p 337.

⁶Tau Makhalemele v Board of Enquiry of the National Security Service C of A (CIV) 38/2022; Gcaba v Minister of Safety and Security 2010(1) SA 238 (CC) at 263.

stand. It needs to be corrected. Having disposed of the issue of lack of jurisdiction and reached the view that the order needs to be corrected, it is, in my view, unnecessary to consider the other two grounds of appeal.

Disposition

[11] As indicated above, three other preliminary points were raised in the application, and only the lack of jurisdiction was dealt with. Whether or not they were abandoned is not clear. This is an impermissible, piecemeal approach. We hold that the High Court had jurisdiction to deal with the matter before it. However, the order needs to be modified. In our view, this justifies a deviation from the general rule that costs follow the result.

Order

[12] In the result, the following order is made:

- (a) The appeal is dismissed.
- (b) The matter is remitted to the High Court to proceed with the remaining aspects of the case.
- (c) The order of the High Court is set aside, and the following order is substituted:
 - “(i) The point *in limine on the lack of jurisdiction* is dismissed with costs.
 - (ii) The matter should proceed on the remaining aspects of the case”.
- (d) The costs to be costs in the cause.



K. E. MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree:



M H CHINHENGO
ACTING JUSTICE OF APPEAL

I agree:



N T MTSHIYA
ACTING JUSTICE OF APPEAL

FOR APPELLANT:

ADV M.V. KHESUOE

FOR RESPONDENTS:

MR Q. LETSIKA