

IN THE HIGH COURT OF LESOTHO

In the matter between:

HATA BUTLE (PTY) LTD

APPLICANT

AND

'MAMPEPUOA MOHALE
(Assisted by her husband)

RESPONDENT

JUDGEMENT

Delivered by the Honourable Mrs. Justice J.K. Guni
on the 29th Day of April 1996

This is an ex-parte Application for interdict/eviction. the Respondent has rented a space at the Shopping Complex at Roma, opposite Main Entrance to National University of Lesotho, which is owned by the Applicant herein. The Respondent's sub-lease Agreement commenced on 1st October 1993. Its duration is (5) five years. In December 1993 Applicant took over the management of the property from LNDC which managed that property at the time the sub-lease Agreement between the parties was signed.

It is claimed on behalf of Applicant that relations between itself and Respondent have deteriorated beyond repair. As a result of this deterioration Applicant decided to act within his rights to terminate the sub-lease.

This sound quiet petty and frivolous. The termination clause of the lease does not specify the circumstances under which the parties may by giving notice terminate the sub-lease.

If the landlord or the tenant does not like the look on each other's face one morning, they are entitled to give to each a notice for termination of the sub-lease. May be, if they are both happy to end their affair on such petty grounds. Where the other party questions both the grounds and validity of termination, good and substantial cause must be shown. Business transactions should not be related to personal feelings.

This is a sub-lease of a General Dealer's business. The Respondent disputes that the termination can be effected whenever the party effecting it wishes as long as notice is given.

Before I could go on to the resolution of that dispute I have first of all to deal with the points in limine raised on behalf of Respondent.

1. The first point in limine raised concerned the

jurisdiction of this court. It attacks right at the roots of the matter. This court may entertain any matter once it has jurisdiction to do so. Jurisdiction gives the necessary powers and authority to do so. Section 6 of H.C. Act 5/78 deals with this aspect. The section reads:

"6. No civil case or action within the jurisdiction of a subordinate court (which expression includes a local or central court) shall be instituted in or removed into the High Court, save -

- (a) by a judge of the High Court acting of his own motion; or
- (b) with the leave of a judge upon application made to him in Chambers, and after notice to the other party."

Of these two alternative routes to the High Court which one was followed in this matter? The only way this court can determine which route was followed is by perusal of the papers filed of record. This being an application proceedings, the arguments of the counsels may give indication as to what route was followed. Mr. Mafisa pointed out that the Respondent was not served with the notice of Application for leave to bring this Application for eviction to this court.

There are no papers filed of record to indicate there was ever such a notice.

But then again there is no indication that the judge

acted mero motu. The court order itself is expressed in the following terms:

"ON THE 12TH JANUARY, 1996

HAVING READ: The papers filed of record
and

HAVING HEARD: ADVOCATE T. MAKEKA COUNSEL FOR
APPLICANT ASKING FOR LEAVE TO
BRING EJECTMENT PROCEEDINGS IN THE
HIGH COURT IN TERMS OF SECTION
6(b) INSTEAD OF BRINGING THE
MATTER UP IN THE MAGISTRATE COURT.

IT IS ORDERED THAT:

- (a) Applicant be served with this application.
- (b) Leave to bring ejectment proceedings in the High Court is granted.
- (c) Respondent is directed to file opposing papers before the High Court is granted.
- (d) Application on the merits be heard on 22nd January, 1996 at 9.30 a.m.

BY ORDER OF COURT
SGD REGISTRAR"

In those circumstances Respondent should have been given notice. The failure to do so renders the procedure adopted improper. The eviction proceedings are not properly before this court. On this point alone this application must fail.

On the question of Interdict there are certain essential factors which must be established for an application for interdict to succeed. These requirements

were first laid in the case of SETLOGELO V SETLOGELO 1914 A.D. 221. Over the years these requirements may have been refined but the form and approach has been endorsed in recent cases, such as ATTORNEY GENERAL Of LESOTHO and LESOTHO HIGHLANDS DEVELOPMENT AUTHORITY VS SWISSBOURGH DIAMONDS MINES (PTY) LTD C OF A (CIV) No 38 of 1994.

The first essential requirement is that the Applicant herein must establish a prima facie right. The Applicant is the owner of the Shopping Complex. This is not disputed. The clear right is immediately established.


The second requirement should be a well grounded apprehension of irreparable harm. What harm was the Applicant in our case going to suffer if an order of interdict was not granted?

There is no allegation that Applicant is going to suffer any harm. The deterioration of the relations between the landlord and tenant even if proved, they do not per se warrant the granting of an interdict against the Respondent's business operations. As rivals in trade the parties may not be the best of friends, if they allow envies and/or jealousies to get better of themselves. Even if the relationship has gone that bad it is very difficult to see the degree of deterioration causing or likely to cause anyone of the parties to suffer irreparable harm. There is no well grounded apprehension of irreparable harm which this

Applicant will suffer if this order of interdict is not made. Respondent, while permitted by law to remain in occupation, must be allowed to continue to conduct the business for which the premises are rented out. The balance of convenience is yet another essential that should be established. There is nothing alleged in the Founding Affidavit on behalf of the Applicant herein, which may slightly suggest that the balance of convenience favours the granting of this order sought.

Lastly, there is marked absence of any suggestion that there are no other remedies that may redress the situation. The lack of three most important elements for the successful application of an interdict, has crippled the application.

The Rule must be discharged with costs.



K. J. GUNI

JUDGE

For Applicant : Mr. Makeka

For Respondent : Mr. Mafisa