

IN THE HIGH COURT OF LESOTHO

In the matter between:

'MAMPEPUOA MOHALE
(duly assisted by her husband

APPLICANT

AND

HATA-BUTLE (PTY)
KEVIN MOSOLOLI MANYELI

1ST RESPONDENT
2ND RESPONDENT

JUDGEMENT

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

In December 1993 Applicant herein entered into a Sub-Lease Agreement in terms of which she rented a shop on the business premises owned by Respondent. This business premises are situated at what is common known as Roma Business Centre. The sub-lease Agreement commenced on 1st October 1993 (Clause 1 (a) (i) AGREEMENT OF SUB-LEASE) ANNEXURE "MM1" attached to the Founding Affidavit. The duration period of the said sub-lease agreement is 5 years.

The purpose of sub-lease Agreement was to afford

Applicant an opportunity to rent a shop which was to be used for a business of a General Dealer. (Clause 4 (a) of (THE AGREEMENT OF SUB-LEASE) Annexure MM1). It provides as follows:-

"The premises shall be used by the Sub-Lessee for the business of a general dealer other purpose in the absence of the written consent of the sub-lessor having been first obtained (which consent shall however not be unreasonable withheld)."

From the start of her business operations and for quite some time thereafter, the Applicant dealt mainly or only with fruits and vegetables. In September 1995 or thereabout the Applicant introduced groceries in her shop. It is the introduction of groceries into Applicant's business that brought to the lowest ebb the deterioration of their relations with the landlord. The management of the business premises where this Applicant has rented a shop in which she conducts her General Dealer's business, changed from LNDC to HATA-BUTLE (PTY) LTD round about the same time the Applicant entered into that sub-lease agreement. The letter from LNDC - Annexure MM2 attached to the Founding Affidavit - which is dated 30th November 1993, informed the Applicant that LNDC has sold its interest in that Shopping Centre where this Applicant has rented a shop, to HATA-BUTLE (PTY) LTD - the Respondent herein.

It appears Respondent herein also runs a supermarket business on the same business premises where the Applicant's shop is situated. It seems even though there could have

been some problems between these two parties, they were tolerable. It was only when the Applicant introduced the grocery department in her shop as she is and has been from the beginning, the holder of General Dealer's licence. The Respondent's only worry and the expressed ground for objecting to the introduction of groceries department in the Applicant's shop, is that there is going to be competition to content with. The Respondent has abundantly made it clear in his Opposing Affidavit that he fears competition.

The intended market is the residents of Roma. As has been indicated in the Founding Affidavit the Shopping Centre where these two parties have their business is situated at the entrance into the National University of Lesotho. How many people are using or likely to use that Shopping Centre? None of the parties bothered to provide this court with the relevant statistics. Why can't that market be shared? There is also no reason given. The 2nd Respondent just feels that he should be the only person who runs groceries business in the area. Why should he be allowed to deny the people of Roma their right to choose where to buy those groceries items that are sold in his supermarket? It is commonly known and accepted that competition is healthy in business. The Respondent averred that the competition he fears from this Applicant is unfair. What makes it unfair? There is no suggestion except that this Applicant initially and for a long time from December 1993 to September 1995 she traded only in fruits and vegetable. It is the Respondent's

contention that the Applicant must be restricted to those two items she traded in ever since she started her business operations.

Are there any special skills, expertise and effort that Respondent complained of being copied from him to be used in competition against him. The answer is no. Appellant and Respondent are both mere distributors. The supermarket buys and sells goods including those groceries. So does the Applicant in her shop. There is nothing wrong with that, buying and selling of goods.

At the time the Applicant introduced Groceries in her shop - September 1995, there was going to be a graduation ceremony at the university. The shopping centre where the two parties have their business, Applicant's shop and Respondent's supermarket, is situated at the main entrance into the National University of Lesotho . Huge crowds were expected to come to attend the graduation ceremony. Immediately thereafter there was going to be independence holidays. All traders in groceries and like goods expect to have a very brisk business during such holidays. As it appears for years Respondent was the only person who runs the business that dealt in groceries on those premises. (Para E Answering Affidavit).

The Respondent is the landlord. He is the person responsible for the preparation and drafting of the

Agreement of the sub-lease. The Applicant was rented the shop specifically to run the business of the "General Dealer". Respondent does not deny that the Applicant's licence authorises her to sell or deal in groceries.

From the onset the Respondent by providing in the sub-lease Agreement, that the Applicant is going to conduct the business of General Dealer, no restriction or conditions were placed upon her in the conduct of her business. "In the absence of special legal restrictions a person is without, doubt entitled to the free exercise of his trade unless she or he has bound herself or himself to the contrary. Nobody ever can claim to have an absolute right to trade without interference from others. Competition is always there, and most often brings about interference in one way or another about which rivals cannot legitimately complain. But the competition, and indeed all other activities must remain within lawful bounds. Applicant has accepted the existence of the supermarket that stocks groceries as legitimate. She must realise the stiff competition that the small shop will face from the supermarket. She cannot complain. All she asked the court was to restrain the Respondent from requiring her to stop or abandon her groceries business or interfering with Applicant in the conduct of her grocery business at Roma Business Centre except by due process of the law. All the person can claim in the circumstances of this case is the right to exercise his trade without unlawful interference from

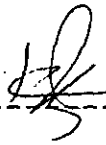
others - Should there be an unlawful interference.
MATTHEWS AND OTHERS V YOUNG 1922 AD 492 AT 507.

The invasion if I may exaggerate, of the groceries market at Roma business centre may result in the loss of customers by the supermarket to the shop. Even if such a loss is established it does not constitute an injuria. There could be difficulties encountered when attempting to draw a line of demarcation between lawful and unlawful interference. Applicant feared that her staff and or herself could be scarred away. The other physical interference was that they could be locked out by the landlord. All these, if carried out would, be an unlawful interference.

Respondent does not complain of any unlawful interference or threatened interference. Such as contravention of express statutory prohibition. Respondent admitted that Applicant has General Dealer's licence. Although Respondent as a landlord would want Applicant to seek his consent for introducing any groceries in her shop, he did not put that condition in the lease agreement. The condition is in fact inserted that if the tenant wants to use the rented space for any other purpose than the one for which she is specifically authorised, she needs the consent of the landlord (which consent shall however not be unreasonable withheld). Since Applicant was granted sub-lease specifically to carry out her General Dealer's

business the sub-lessor Respondent herein does not even attempt to rely on this clause. (Clause 4 of the sub-lease Agreement). The requirement for another consent from the landlord, for sub-lessee to put into effect the purpose for which the shop was rented is not in the sub-lease Agreement. Applicant needs and must obtain the landlord's permission if she desires to conduct any other business outside the business for which the sub-lease Agreement was concluded.

For these reasons the rule is confirmed with costs.



K. J. GUNI

JUDGE

For Applicant : Mr. Mafisa

For Respondent : Mr. Makeka