CIV/APN/407/97

IN THE HIGH COURT OF LESOTHO

In the matter between:

LESOTHO TOURST BOARD **Applicant**

v

KANANELO TLEBERE **Respondent**

JUDGMENT

Delivered by the Honourable Mr. Justice T. Monapathi on the 22nd day of December 1997

The Applicant filed an urgent application which it moved *ex parte* on thee 28th October 1997. I granted the following orders after having heard Mrs Majeng-Mpopo Counsel for the Applicant. The orders were that:

1. The normal forms and periods of service are dispensed with.

2. A rule nisi be and is being issued and returnable on the 7th day of November 1997 calling upon the Respondent to show cause (if any) why

   (a) The Deputy Sheriff shall not impound and bring in his custody the vehicle formerly registration number A 7488 (now travelling on temporary registration number to Applicant unknown) and engine number

and chassis number reflected in Annexure "H1" to the founding affidavit pending finalization of the application.

(b) The vehicle shall not be returned to Applicant together with its registration documents and all its accessories.

© Applicant shall not be granted such furtheere and/or alternative relief.

(d) Respondents shall not be ordered to pay the costs hereof.

3. Prayer 2 (a) operate with immediate effect as an interim order.

The Respondent having been served, he then filed a notice of intention to oppose and to anticipate the return date in terms of Rule 8(18) - on the 6th November 1997 at 9.30 a.m. The notice was supported by an answering affidavit. At hearing the Respondent applied for leave to file a supplementary affidavit. This was not opposed and it became pages 51-53 of the paginated record.

On the anticipated return date the parties agreed to forego and not to argue all objections and points-in-limine and were therefore left to argue over a few issues that went to merits of the case. Those could be stated briefly as being whether there was an agreement of sale for the purchase of the car as a salary package. Secondly whether the Board of Directors authorised such a sale whether specifically or by implication. This went together with whether the Managing Director or any officer or servant of the Applicant had full executive power to bring about the sale and whether the Applicant

was therefore estopped from denying the sale of the vehicle to the Respondent. Lastly whether there had been agreement as to the price of the vehicle to be sold as part of a salary package in view of the interpretation to be given to paragraph 3.00 (a) and (b) of Annexure "D" and in the light of the Respondent's time or period of retirement.

The facts in the matter were simple and better dealt with together with the comments and conclusions as they flow. The Respondent was employed by the Applicant as a Managing Director until the last day of June 1997 as the minutes of the Extraordinary Board meeting of the 4th June 1997 annexure "KTD" also show. That meeting also resolved to appoint an acting managing director so that the Managing Director (Respondent) could hand over to him before he left. Furthermore, as it was resolved arrangements were to be made to provide the Respondent with his terminal benefits. The dispute is whether the Managing Director's official car was lawfully sold to the Respondent. The Applicant in these proceedings said that the vehicle was not sold at all hence the vindicatory claim for its return.

It became common cause that in June 1997, at the time of the expiration of the Respondent's contract, a new Board of Directors had been appointed. A new chairman had been appointed in the place of Mr. Makhetha while Mr. Makhene continued to be secretary of the Board. None of the two gentlemen filed any supporting affidavit. This became important in argument before this Court for the following reasons. The Respondent contended that the appointment of a new

resolution of the Board. There was nothing to speak of a specific resolution of a sale, I accordingly would not interpret Annexure "D" (Resolutions of the Board meeting of the 7th April 1995) along the lines of the contract on agreement as we lawyers know it to be, that is a matter of offer and acceptance. It was not.

If I am wrong on the first aspect namely that the authority of the Applicant to sell can be implied in an as much as it is not specific but if it can be implied (which I did not accept), and if I am wrong on the second aspect namely that the agreement itself can be implied looking at the broad and general surrounding circumstances of the matter especially the conduct of the Finance and Administrative Manager, I have however not found that the Respondent was entitled to acquire this vehicle based on the interpretation of the paragraph 3.00(a) of the resolution, I do not find that this Respondent was entitled to acquire the vehicle based on the interpretation to be given to paragraph 3.00(a) of Annexure "D" , that is the paragraph that reads as follows:-

> "(a) should the Managing Director retain this post for a period beyond three years, he should pay the residual value of the vehicle."

The matter of fact was that the Respondent merely completed the period of three years (up to the last day of June 1997) and did not go beyond that period of three years that does not therefore deserve an interpretation favourable to paragraph 3.00(a).

I would also conclude in the same vein that I did not find that Annexure "A" is helpful to the Respondent. This Annexure "A" is the memo of the 25th June 1997 from the Respondent (when still Managing Director) to the Finance and Administration Manager, mistakingly spoke of residual value of the vehicle on the third paragraph of that memo which reads: "You will know from the attached Board of Directors Meeting decision that if I completed my contract with Lesotho Tourist Board I could buy the Managing Director's vehicle at its residual value". This clearly suggests a wrong inference that the circumstances of the termination of the respondent leads to the interpretation consistent with paragraph 3.00(a) which I have already ruled that there could not be any consistency therewith, nor could there be any alignment with the meaning of that paragraph.

I have underlined "completed my contract" in above quotation, to suggest that this Respondent only completed his contract not in terms of paragraph 3.00(a) neither in terms of paragraph 3.00(b) so that this is a typical situation where there had to be a meeting of a minds namely: That the respondent should have gone back to Board in the way suggested in the letter in Annexure "F" of proceedings, which was an invitation by the Managing Director on the 26th August, 1997, requesting that there had to be a meeting for further consultation to speak about this vehicle. Therefore this adds probability to the contention that even the previous Board did not agree on sale and price at which the vehicle would be sold. In no way therefore would the Board be held to have been estopped merely by an internal arrangement of or exchanged correspondence between

the Respondent and the Finance and Administration manager. The Board needed to have resolved specifically over the issue.

The Respondent did not agree to meet the new managing director despite the invitation letter of the 26th August 1997. This suggests or and further leads to a conclusion that there was no agreement. If there is a doubt, such a doubt that does not seem to resolve the question of the said paragraph 3.00(a) in favour of this respondent. It means therefore that I could not conclude that there has been agreement on or of the sale. I was therefore not persuaded that the statement of terminal benefits (Annexure "E") serves correctly as an indication that that there could have been agreement as to price. Why? Because the premise was wrong, it spoke about residual value, meaning that even if this Respondent had acted on the previous memorandum of the Finance and Administration Manager, both the Respondent Administration Manager were wrong in using the premise based on that the contract had been completed as envisaged by paragraph 3.00(a) I was not persuaded therefore. Nor would the conduct of the Finance and Administration Manager bind the Applicant nor be held to have estopped the Applicant from denying the existence of an agreement of sale.

As I have said I was reluctant to interpret the situation of the Respondent which neither belongs to (a) nor (b) of paragraph 3.00 of the mentioned annexure to be interpreted along (a) to suggest that the Respondent's service must have gone beyond 3 years. That was not a fact. There cannot have been a sale whether regarded as part of the "salary package"or not. There cannot not have been an

agreement of sale in the classical definition of what a sale is, that is agreement as to the object of sale and agreement as to the price. I was referred to the work of Gibson - SOUTH AFRICAN MERCANTILE AND COMPANY LAW - 6th edition - chapter 3 pp 125-131 on the nature of the contract of sale. It lead me to conclude that "even if" there could have been an agreement to sell, no "usual price" or reasonable price could have been implied in the circumstances of the present case. Much of the weakness in this regard was connected with the difficulty in intepreting the said paragraph 3.00 in favour of the Respondent. There was need to have negotiated an agreement for the sale of the vehicle.

I made a finding therefore that this application ought to succeed with costs to the Applicant.

T. MONAPATHI
JUDGE
22nd December 1997

For the Applicant : Mr. Mosito

For the Respondent : Mr. Matsau