

IN THE HIGH COURT OF LESOTHO
(Commercial Division)

CIV/APN/504/09

In the matter between:-

MAKHOABE MOHALEROE

1ST APPLICANT

PULE MOHALEROE

2ND APPLICANT

and

LESOTHO BUS AND TAXIS OWNERS ASSOCIATION

1ST RESPONDENT

LESOTHO PUBLIC MOTOR TRANSPORT

2ND RESPONDENT

THE REGISTRAR OF COMPANIES

3RD RESPONDENT

THE ATTORNEY GENERAL

4TH RESPONDENT

Date of hearing: 12th of May 2010

JUDGMENT

Delivered by the Honourable Mr Acting Justice J.D. Lyons

on the 18th day of May, 2010

This is an application for intervention by Makhoabe Mohaleroe and Pule Mohaleroe (the applicants) brought by application dated 16 December 2009.

The Lesotho Public Motor Transport Company Pty. Ltd. (the

company') had reached a position where there was some confusion over the directorship. Thus, on 27 October 2009 an extra ordinary meeting was held to resolve this issue. Some of directors were removed. New directors were appointed. The applicants (who were purportedly directors of the company prior to the meeting) were removed.

The company then proceeded to lodge for registration the required declaration of directors (form L) and a copy of the resolution of the meeting of 27 October 2009. The registrar of companies received the documents but also received correspondence from the attorneys for the applicants. That correspondence gave notice of a dispute regarding the removal of the applicants (removed directors).

The registrar quite correctly refused to register the documentation put forward by the company. The registrar took the position that as there was a dispute concerning the removal of the directors this dispute should be referred to the court for a decision. The registrar would abide the court's decision.

The company commenced proceedings by notice of motion filed on 20 November 2009. The registrar (and the Attorney General by nomination) was named as the respondent.

Not surprisingly the applicants take the view that, as directors who were removed by the company's action, they have an interest in these proceedings. They seek to intervene.

On reading the heads of argument advanced by the respondent (plaintiff in the main action) I note the allegation that the applicants engaged in 'an unlawful criminalized activity' (p.4). In the face of this serious allegation, I have no hesitation in allowing the application to intervene. The applicants obviously have an interest and the rules of natural justice require that they be given an opportunity to be heard. It is unthinkable and an obvious anathema to any civilized sense of justice to deny any person a right of hearing when such serious allegations are raised. No court could ever be expected to entertain such a submission, let alone be expected to rule on it, in the absence of hearing from those against whom the allegation is made. Any submission to the contrary is entirely misconceived.

The matter of the originating Notice of Motion is set for hearing on 28 June.

All affidavit material is to be filed by 21 June.

Heads of argument are to be filed by midday on Thursday, 24 June. I would be grateful if council would do two things when they drafting their heads of argument. Would they please set out in the opening paragraph a list of the material they are relying on. If they could also see to it that my clerk is immediately given a copy of the heads. This will give her the opportunity to check that all the material relied on is actually on file and to contact counsel if any material to be relied on is missing from my file.

Since hearing of this application I have had the opportunity to gather all of the material, including that which was not on file at hearing. I have read counsels heads of arguments for the intervention which also go into the issue to be decided in the main application.

It appears to me to be a very simple matter.

To my mind the question is whether or not in removing the directors and appointing new directors, the company followed the correct procedure. The procedure for appointing directors and removing them must be set out in the articles of association. The articles of association are the rules that the company must follow, together of course with the provisions of the Companies Act 1967.

For the sake of clarity I will expand a little on my view of the issues.

The first question to be asked is whether or not the articles set out a procedure for the removal of directors and appointment of new ones. If the answer to this is in the affirmative, then the next question to be asked and decided (as a question of fact) is whether or not that procedure was followed. It may stand for argument (as a matter of law) as to whether that procedure is to be strictly followed or otherwise. There is law on this that can be researched.

If there is a procedure set out in the articles for the removal of directors and the appointment of new ones then, in respect of the

former, does the law or the articles set down any conditions for that removal -- for example must it be for cause?. If so, then as a question of fact, has that cause been established?

These are some of the questions that occurred to me as relative to the issues at the heart of this case. Counsel are quite welcome to raise other issues or even to disagree with my view of the issues at the heart of this dispute.

The orders I make are;

1. The applicants for intervention (Makhoabe Mohaleroe and Pule Mohaleroe) are granted leave to intervene in these proceedings.
2. That the hearing of originating notice of motion filed by the company be held on 28 June at 10 AM.
3. That all affidavit material to be relied on at the hearing be filed by the close of business on 21 June.
4. That the heads of the argument (including a list of all material to be relied on) be filed by midday on 24 June.

Costs are reserved.

J.D. LYONS
ACTING JUDGE

For Applicant : Mr. Kumalo (intended intervenor)

For Respondent : Mr. Maqakachane (applicant in the main application)