IN THE HIGH COURT OF LESOTHO

CIV/APN/438/10

In the matter between:

LESOTHO BUS, TAXI AND OWNERS ASSOCIATION 1ST APPLICANT

LESOTHO PUBLIC MOTOR TRANSPORT COMPANY 2ND APPLICANT

AND

MOEKETSI TSATSANYANE RESPONDENT

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngcongo
On the 14th February 2011

This is an application in the following terms:

1. That a rule nisi be issued and made returnable on the (sic) date to be determined by this Honourable Court calling upon the respondent to show cause if any, why?

   (a) The periods and modes of service be dispensed on account of the urgency of this matter.

(b) Respondents (sic) should not forthwith be restrained and interdicted from transacting sublease agreements or investments ventures in respect of the applicants business premises situate in Plot 13283 – 011 Maseru urban pending finalization hereof. (sic)

(c) Interdicting respondent (Mr Tsatsanyane) herein from demanding or receiving rentals due from tenants.

(d) That he be not allowed to attend Board Meetings of the 2nd applicant pending finalization of this matter.

(e) Interdicting respondents (sic) from interfering with applicants (sic) business files.

2. Granting applicant further and/or alternative relief.
3. Costs in the event of opposition
4. Prayer 1 (a) operate with immediate effect pending determination of this application.

On the 12 August 2010 a *rule nisi* was ordered by my brother **Mofolo J**. in terms of this notice of motion. I should say at once that it is rather surprising that none of the prayers that form the gist of this application were sought to operate with immediate effect. It seems to me that if there is any urgency in the alleged wrongful acts of a respondent an applicant would seek an immediate halt to

them. This has not been done in this case, inevitably leaving the impression that all that was sought was to jump the queue when there really was no urgency.

The deponent to the founding affidavit of this application is a Mr. Ishmael Makalo Monare. He describes himself as an adult Mosotho male and the 1st applicant's Trustee and spokesperson for the 2nd applicant. He ends there and does not say that he is duly authorized to depose to the affidavit although the citation of the parties clearly indicates that they are artificial persons. Artificial persons act through agents such as directors, secretaries, members of executive committees etc. But such agents have to have authority from them to act on their behalf in terms of the constitutions of such entities. This is usually done by their resolutions and this requires a minimum of evidence and in motion it is usually done by alleging that he is duly authorized to act on the entity. Anything less will not suffice. **See Herbstein and Van Winsen, The Civil Practice of The Supreme Court of South Africa 4th Ed at 363 – 364** (and the authorities referred to). In the present case the deponent merely contends himself as being a trustee of 1st Applicant – whatever that may mean, and the spokesperson for the 2nd applicant. He may well be but he must bring minimum proof that he is authorized to act on

their behalf. He does nothing of the sort. In fact quite startingly counsel said as trustee he needed no resolution to bring these proceedings to court. The nearest the deponent came to having authority of the applicants appears at par. 10 of his founding affidavit I quote

> "**I maintain that the meeting of the board of directors of the 2nd applicant convened and I and Mr Nkoebe as trustees for the 1st applicant jointly adopted the resolution of the 1st applicant's Board of Directors to interdict the respondent in the manner that we do. I attach the said resolution herein and mark it Taxi 2. I am in the circumstances authorized to depose to this affidavit to forestall respondents' intrusion in the property of 1st applicant**".

First of all the deponent does not describe the nature of the entity that 1st applicant is. It would seem then that the indeterminate entity made a resolution to interdict the respondent. The 2nd applicant, a private company convened a meeting where the deponent sat. At such a meeting the deponent and Nkoebe - not the 2nd applicant adopted the resolution of the 1st applicant to interdict the respondent. This only has to be said to see how ridiculous it is. The deponent and Nkoebe are not members of the board of directors of the 2nd applicant and

they had no business sitting in its meetings much less taking any decision on its behalf.

The so-called resolution annexed and marked Taxi 2 reads:

> **A RESOLUTION OF A MEETING OF DIRECTORS**
>
> **OF LESOTHO PUBLIC MOTOR TRANSPORT CO.**
>
> **(PTY LTD)**
>
> **HELD AT MASERU BUS STOP ON THE 5TH**
> **AUGUST 2010**
> **RESOLVED.**

1. **That LESOTHO PUBLIC MOTOR TRANSPORT CO (PTY LTD)** together with its affiliate **LESOTHO BUS & TAXI OWNERS ASSOCIATION** are hereby empowered and authorized to institute interdict proceedings against Mr Tsatsanyane to bring this resolution into effect.
2. That **Ishmael Makato Monare** is further empowered to appoint competent attorneys to appoint competent attorneys to effect this resolution and sign all requisite documents.

With respect it cannot get more incomprehensible and jumbled than this- so, it is the applicants now who are being empowered and authorized to bring these

proceedings instead of them authorizing Mr Monare and just who is authorizing them. And finally on this point Mr Monare's mandate appears to end with the power to appoint competent attorneys and to sign requisite documents, certainly not to bring these proceedings.

I come to the conclusion that Mr. Monare had no authority from the applicants to bring these proceedings and that is apart from the fact that through out his affidavit he maintains that the property which is the source of his complaints against the respondents is owned by 1st applicant when the hand lease that he annexed clearly indicates belongs to 2nd applicant. In proceedings brought exparte like the present, this is fatal.

The application is dismissed. The respondents have asked for costs on the attorney and client scale, and *de bonis propries* against counsel. It did occur to me to issue such costs because of the negligent way that the matter was handled. After all it is counsel that must advise in matters of this nature. He did not properly advise his client but the client himself let counsel on a wrong course and I am not satisfied that it is counsel himself who acted in bad faith much as, as in

the case of **Nkoso v Caledonian Insurance Co, 1961 (4) SA 649 at 663 (G-H)** he was

> "*guilty of a considerable amount of muddled thinking*".

Costs therefore are awarded *de bonis propries* against Mr Monare on the client and attorney scale.

T. Nomngcongo
Judge
14 February, 2011

For Applicant – Mr Lephuthing

For Respondent – Mr Ndebele