

CCT/91/2011

IN THE HIGH COURT OF LESOTHO

(Commercial Division)

In the Matter Between:-

RETHABILE MAKAKOLE T/A PURPLE UNION

PLAINTIFF

V

LESOTHO PUBLIC SERVICE STAFF ASSOCIATION

DEFENDANT

JUDGMENT

Coram : **Hon. Molete AJ.**

Date of hearing : 28th March 2012

Date of Judgment : 15th August 2012

Summary

Contract for services rendered – Whether plaintiff obliged to know the limits of authority of defendants officials – Ostensible authority and principle of estoppel – Defendant cannot deny liability where it created impression that an official has authority to sign order – Case proved on a balance of probabilities – Judgment in favour of plaintiff.

ANNOTATIONS

CITED CASES

NBS Bank Ltd v Cape Produce Co (Pty) Ltd and Others 2002(1) SA 396 SCA

Hely-Hutchinson v Breyhead Ltd and Another 1968(1) QB 549 (CA) at 583 – (1967(3) ALL ER 98 at 102 E

STATUTES

BOOKS

Brian Bramford “the law of Partnerships and voluntary associations in South Africa” (1982) 3rd Ed at p119

- [1] The plaintiffs claim against the defendant is for M30,000-00 in respect of catering services supplied at the defendant’s special instance and request during the period 14th and 15th May 2011.
- [2] The plaintiff is involved in the business of catering, and defendant is a duly registered public service employees association. It was registered in terms of the Public Service Act NO 13 of 1995 and also in accordance with the Societies Act No 20 of 1966.
- [3] The defendant pleaded in *limine* that the person who requested the services was not authorized to bind the organization in contract. The

plea was that since the official had no legal authority to bind the defendant, that the claim be dismissed.

- [4] In his statement the defendant representative further reiterated that not only did the official lack the authority to make order, he was specifically prohibited because the executive committee did not have funds to pay for the services.
- [5] It was common cause that the Association through one Mrs Raphuthing; placed the order with plaintiff for the supply of the services on the dates referred to. The order was for the supply of meals and soft drinks for two hundred people at the Convention Centre for the AGM of the Maseru region of defendant.
- [6] The parties were in agreement that the order was supplied as requested. The plaintiff complied with his part of the contract, and issued an invoice for payment, but defendant refused to pay.
- [7] The defendant refused to pay on the grounds that;
- (a) The official who signed the order was not authorized by the organization.
 - (b) The decision of the organization in its meeting had been that Maseru region should not get funds from the mother body for its own AGMs but should source funds independently.

- (c) That the members of the Maseru region had written to the mother body asking for funding for the event and had been informed that no funds were available.
- [8] After the close of pleadings and during the pre-trial conference the parties were encouraged to settle the matter, but each party maintained their position. Plaintiff insisted that the money was due, but defendant maintained its defence particularly regarding lack of authority of the official.
- [9] The matter then had to go to trial. The parties decided that the matter could be determined on the basis of the statements and the common cause issues. It was clear to the court that this was the correct cause for the reason that what remained to be determined was liability for payment of the amount claimed under the circumstances.
- [10] The matter was heard on the 28th March 2012. The statements of the parties were accepted to be sufficient testimony. The parties made their submissions.
- [11] The following facts were not disputed;
- (a) That the defendant's letterhead was used to make the order.
- (b) That the purpose was to supply the services to the members of the defendant's Maseru branch (about 200 people).

- (c) That the service was supplied as requested.
- (d) That the defendant's Maseru branch was not registered and consequently could not sue or be sued in its own name.
- (e) That the order was not authorized as between the mother body and the branch, but that this was unknown to plaintiff.

[12] The Defendant relied on the evidence contained in the statement of one Phakiso Moleko who stated that he is the President of the organization and confirmed that the order by the Maseru branch was not authorized by the executive committee.

[13] In their argument before Court, Mr Sekonyela and Mr Tjelle who appeared for the Defendant submitted that the general rule is that a third party who deals with the organization is obliged to find out if some provisions of the organization require some internal act; authorization or ratification of a contract. The submission was that,

“he is put on his inquiry and particularly cannot rely on his ignorance that an internal act was required”¹.

[14] The thrust of their argument was that the liability of the association in contact depends on its constitutional provisions. The public registration of such voluntary organization made its constitution

¹ Brian Bramford “the law of Partnerships and voluntary associations in South Africa “(1982)” 3rd Ed at p199

accessible to the public; therefore any contractor who fails to find out what the constitution provides in this regard does so at his own peril and any claim they may have should be dismissed.

[15] The plaintiff on the other hand filed two statements. Her own, and that of Mampoi Makhetha who described herself as the chairperson of the executive committee of the Maseru region, employed by the Ministry of Finance Treasury.

[16] It is the statement of the said Mampoi Makhetha that I wish to refer to and quote at length. My view is that it is key to the resolution of the matter. She says;

“It (the Maseru region) is one of the structures of the LEPSSA. Each regional committee has a right to act on behalf of the National Executive committee in the affairs concerning only that particular region”.

She continues to say;

“An order was issued to the plaintiff in this matter annexure “A” to supply members of the Maseru region with meals. The order was signed by Mrs Mamatebele Raphuthing who is the secretary of the LEPSSA Maseru region. It is not usual that such an order has been made as such act has been authorized at an annual general meeting of the members and this has happened in a number of occasions.

At the district level Annexure “A” is a document allocated to the districts by the National Executive Committee.

Meals were served to the members of the Maseru region as per annexure “A” on the 14th and 15th May 2011 to the value of M30,000-00.”

[17] On behalf of the plaintiff, Mr Chobokoane submitted that on the part of the plaintiff it was a reasonable presumption that the signatory was acting on instructions of the defendant. He argued that the plaintiff was entitled to rely on the representation made because;

- (a) Defendant’s letterhead was used and therefore the defendant had represented or created the impression in the general public that the signatory had the authority to sign the order.
- (b) The signatory was a branch of the defendant and it was not the first time such a purchase order was issued.
- (c) The plaintiff acted reasonably in executing what seemed to be perfectly valid contract.
- (d) There is no direct suggestion that the order was fraudulent nor that the plaintiff did not comply with his part of the contract.
- (e) As a result the defendant is estopped from denying the authority of the signatory.

[18] He relied on the authority of the cases of

A. **NBS Bank Ltd v Cape Produce Co (Pty) Ltd and others**²

B. **Hely – Hutchinson v Breyhead Ltd and another**³

In the second case **Lord Denning MR** is quoted as follows;

“.....when the board appoints one of its members to be the managing director they invest in him not only implied authority, but also with ostensible authority to do all such things as fall within the scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director. But sometimes ostensible authority exceeds actual authority....”

[19] The **NBS Bank case** is more direct and to the point on the issue and submissions of defendant. It was held in that case that even where there was dishonesty involved; If the appellant had created façade of regularity and order that made it possible for an individual to pursue his dishonest scheme, and it was in the totality of appearances that the representation was to be found that the individual was authorized, then liability towards third parties even for the dishonest actions cannot be denied.

² 2002 (1) S.A 396(SCA)

³ 1968 (1) QB 549 (CA) at 583 - (1967 (3) All ER 98 at 102E)

[20] There is also an element of unjustified enrichment in so far the defendant admits that the services were provided to its members, but for purposes of this judgment I need not elaborate further.

[21] I consider that liability of the defendant has been proved on a balance of probabilities, and will grant the plaintiff relief as prayed for.

- (a) Payment of the sum of M30,000-00.
- (b) Interest thereon at 18.5% per annum,
- (c) Costs of suit.

L.A. MOLETE
ACTING JUDGE

For Plaintiff : **Mr Chobokoane**
For Defendant : **Mr Sekonyela and Mr Tjelle**