

**CIV/APN/519/12**

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:-**

**EYOB BELAY ASEMIE**

**APPLICANT**

**And**

**P.S. MINISTRY OF HOME AFFAIRS**

**1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF IMMIGRATION**

**2<sup>ND</sup> RESPONDENT**

**MINISTER OF HOME AFFAIRS**

**3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL**

**4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

Coram : Hon. Majara J

Date of hearing : 17<sup>th</sup> December 2012

Date of judgment : 13<sup>th</sup> February 2013

## Summary

*Application to interdict respondent from denying applicant use of regular passport and to review and set aside the declaration of the passport as null and void to be irregular, unconstitutional and unlawful – whether applicant was entitled to a hearing before the decision was made – whether applicant established he has a right to the passport – whether respondents were correct to deny applicant re-entry into Lesotho – issuance of passport to applicant illegal and cannot be sanctioned - applicant not entitled to the audi alteram partem before the decision was taken – respondents’ decision to deny applicant re-entry unlawful.*

## ANNOTATIONS

## BOOKS

1. Devenish S.E. Govender K Hulme D (2001) Administrative Law and Justice in South Africa (Durban: Butterworths)
2. G E Devenish, Interpretation of Statutes (Juta & Co Ltd)

## STATUTES

1. The Passports and Travel Documents Act NO. 15 of 1998
2. The Refugees Act NO. 18 of 1983

## CASES

1. Minister of Local Government and Another v ‘Mamuella Moshoeshoe C of A (CIV) NO. 15/09
2. Babeile Andrew v Attorney-General (CALB-012-09) (2009) BWCA 88

3. Administrator Transvaal & Others v Traub & Others 1989 (4) SA 731 at 748.
4. Masetlha v the President of the Republic of South Africa and Another (2008 (1) BCLR (CC) p 26
5. Suresh v Canada (2003) 4 CHRLD 138 at 140

[1] The applicant moved this Court to grant him an order on an urgent basis for restraint and interdict against the 1<sup>st</sup> to 3<sup>rd</sup> respondents as well as immigration officers at all ports of entry into Lesotho from denying him use of the regular passport NO. RA 929199 for travel into and out of Lesotho and to review and set aside as irregular, unconstitutional and unlawful, the decision that declared the said passport null and void as well as costs.

[2] Facts that are common cause are that the applicant is the bearer of a Lesotho passport NO. RA 9292199 that was issued on the 21<sup>st</sup> July 2010 and expires on the 20<sup>th</sup> June 2020. On the 19<sup>th</sup> October 2012, the 3<sup>rd</sup> respondent herein (the Minister) wrote a letter annexure **RK 5** to the applicant in terms of which she ordered him to surrender the passport, the subject matter of this application with immediate effect.

[3] it is also common cause that the said letter was written post the handing down of a Court of Appeal judgment, Annexure **RK 4** which set aside an order of the High Court that had declared the applicant a naturalized Mosotho and had directed the Minister to swear in the applicant or cause him to be sworn in as such within fourteen (14) days of that order.

[4] It is not clear from the papers when the applicant received the letter **RK 5** but it is common cause that on the 21<sup>st</sup> October 2012, he travelled to the Republic of South Africa (RSA) and was granted a visa to be thereat until the 13<sup>th</sup>

November, 2012. On the 26<sup>th</sup> October 2012, the 1<sup>st</sup> respondent issued a memo, **NV2** to all immigration officers at all Ports of entry into Lesotho in terms of which the passport in question was declared null and void.

[5] On the 2<sup>nd</sup> November, the applicant attempted to cross back into Lesotho at the Caledonspoort port of entry but his passport was rejected by the RSA immigration officers on the strength of **NV 2**. After he demanded and was shown the memo the applicant re-routed to the Maseru Port of entry where he was again denied entry.

[6] It is also an undisputed fact that the RSA Immigration Officials requested a person from the Lesotho side and one gentleman came and confirmed in the presence of the applicant that the passport in question had been nullified.

[7] Per the answering affidavit deposed to by the 1<sup>st</sup> respondent, upon his first arrival in Lesotho the applicant gave information to the authorities that he was an asylum seeker and later applied for and was granted refugee status in terms of **RK 1**, a standard application form for refugee status. The applicant then applied for naturalization and later applied for a Lesotho passport.

[8] It is the case of the respondents that the applicant acquired the passport on the basis of a misrepresentation by him to the Director of Immigration regarding his status and that when he acquired the passport he was not entitled to because he is not a Mosotho. These assertions are disputed by the applicant. The alleged misrepresentation was made in terms of the contents of **RK 3**, a letter written by him to the Director of Immigration, the 2<sup>nd</sup> respondent herein.

[9] It is also the case of the respondents and these assertions are disputed by the applicant that per the decision of the Court of Appeal the applicant is not entitled to hold on to the Lesotho passport and should not have used it to travel after the

judgment was delivered on the 19<sup>th</sup> October 2012 and the letter requesting that he surrender the passport was written to him on the same day. They add that instead, the applicant should have used the UN travel document obtainable from the Commissioner of Refugees. Further that he cannot use the Lesotho passport when he is not a citizen of Lesotho to enjoy his freedom of movement.

[10] Further that the applicant's travel to RSA without the approval of the Commissioner of Refugees and usage of the Lesotho passport was unlawful. The deponent to the answering affidavit further avers that the letter from the minister **RK 5** was delivered at the residence of the applicant at Lower Thetsane by one Teboho Malataliana who was denied entry thereat. Malataliana has deposed to a supporting affidavit in this regard and adds that he was in the company of two police officers. He states as follows in relevant parts of paragraphs 2 and 3 thereof:-

*"I wish to state that upon our arrival we demanded an entry (sic) at the gate but we were not allowed the entry by somebody who peeped through the gate who claimed to be the security guard. I told him that I came to serve the letter of Eyob Belay Asemie from the Ministry of Home Affairs.*

*Upon demand to see Eyob ... the security guard told me that the former and his wife were not available. I asked the Security guard to receive the service on behalf of Eyob... however, he refused to accept the service and told me that Eyob ...was not there and I should come when he was around.*

*I proceeded to tell him that he should inform Eyob... that I was send (sic) to collect the Lesotho passport that was in his possession and that he should report himself at the Ministry of Home affairs with immediate effect."*

[11] The respondents also aver that while the applicant considered himself to be a naturalized citizen of Lesotho, the Court of Appeal had concluded that he had not attained such status and that his application for naturalization was premature. Further that per that decision the applicant is not entitled to hold on to the Lesotho passport and that it was therefore wrongful, unlawful and improper for him to have left the country with it.

[12] The respondents further deny that the applicant is a refugee in terms of the laws of Lesotho for the reason that he entered the country by virtue of a visa which was applied for on his behalf by an entity called Solomon General Importer on account of business reasons per the contents of **RK 7**. Further that whilst in Lesotho the applicant then applied for refugee status which he was granted based on the information and untrue facts he provided which were different from the contents of **RK 7**.

[13] The respondents add that the acquisition of the passport and the refugee status are riddled with anomalies prompted by him by giving false information hence the Minister's decision. I have already shown that these assertions are disputed by the applicant.

[14] The applicant was represented by Advocates P. S. Sakoane and Z. Mda respectively whereas the respondents were represented by Advocate Sekati. In his submissions, **Adv. Sakoane** pointed out that the Minister's decision per **RK 5** rests on **section 7(1) of the Passports and Travel Documents Act<sup>1</sup>** and the judgment of the Court of Appeal.

[15] It was his submission that the two bases are fatally flawed for the reason that the only jurisdictional facts upon which a holder of a passport would be duly

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<sup>1</sup> No. 15 of 1998

bound to surrender a passport are contained in section 11 of the Act as amended<sup>2</sup> which is the provision that governs surrender and which reads as follows:-

*“A person who has been issued with a regular passport shall surrender it upon the expiration of the period of which the passport was issued or when the passport is damaged.”*

[16] Further that section 7 which provides for issuance of passports to citizens is directory and casts a duty on the Minister or the 2<sup>nd</sup> respondent, as the agent of the Minister to ensure that citizens are issued with passports and does not empower the Minister to recall an issued passport and cancel it as the power to do so lies in section 14.

[17] He added that the Minister misconstrued the sense of her powers and committed a reviewable error of law. With respect to the judgment of the Court of Appeal, **Adv. Sakoane** made the submission that reliance on it as a basis for nullifying the applicant’s passport constitutes an administrative action which cannot be justified in relation to the reasons given because the decision of the Court had nothing to do with the proprietary or otherwise of the acquisition of the passport by the applicant.

[18] He added that the respondents cannot thus rely on the judgment hence they cannot even rely on the defence of *res judicata* and its essentials. Further that the letter of the Minister must be set aside and once that is done then everything done on its strength is also null and void including the memo **NV 2** whose purpose and effect is to deny the applicant re-entry into Lesotho.

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<sup>2</sup> section 9 of the 2010 (Amendment) Act

[19] Insofar as the defence that the respondents raised in their papers that the Minister did not have to give the applicant a hearing before she made the decision, it was the submission of Counsel for the applicant that the Minister invoked the wrong section namely 7 instead of 14 of the Act and that the letter does not invoke the grounds or jurisdictional facts therein provided and does not state the names of any authorized agent of the government to whom the passport was to be surrendered to also safeguard its security.

[20] He added that the person who allegedly went to serve NV 2 and to collect the passport might have been a messenger or acting on a frolic of her own so that there was no duty on the security guard to accept the irregular and unlawful letter. Further that the said official did not bother to go back to the applicant's house as advised by the guard.

[21] On the respondents' averment that the applicant went out of the country well aware that he was a refugee **Adv. Sakoane** submitted that the reasoning is based on a legal misconception as the judgment of the Court said nothing about the issuance of a passport. That in addition, the UN travel document referred to is actually a Geneva Convention travel document which in terms of the law<sup>3</sup> is issued by the 2<sup>nd</sup> respondent and not the Commissioner of Refugees. Further that a refugee's movement in and outside Lesotho is not subject to approval by the Commissioner of Refugees as a refugee can use the Geneva Convention travel document to travel to all countries.<sup>4</sup>

[22] Counsel for the applicant added that the respondents have always been aware that the applicant used the passport to travel in and outside Lesotho as they issued it to him in June 2010. It was his further submission that if the respondents

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<sup>3</sup> Section 10 of the Refugees Act NO. 18 of 1983

<sup>4</sup> Section 8 (4) of the 1983 Act



issued the passport wrongfully as they suggest, then they have to reverse their actions lawfully and not to allege criminality which they have not proven in a court of law.

[23] **Adv. Sakoane** added that once the respondents concede that the applicant is a refugee who travelled on a passport that they issued they cannot punish him by denying him re-entry into Lesotho when he had not decided to leave permanently but to deal with the matter according to due process of law. To this end Counsel for the applicant referred the Court to sections 9, 12 and 13 of the 1983 Act which he submitted vouchsafe the applicant's right to remain in Lesotho until such time as his application for legal admission into another country is successful even if it could be assumed that their assertions are correct that he was granted the refugee status wrongfully especially in terms of section 9 of the 1983 Act.

[24] In opposition to the granting of this application, **Adv. Sekati** made the contention that in order to succeed with the review application, the applicant needs to establish the procedural irregularity and what right he has to the *audi alteram partem*. It was his submission that the applicant has no such right as it applies to persons who have a legitimate right and are likely to be affected by the decision to be taken, for the reason that his acquisition of the passport was illegal per the relevant law and the evidence in the affidavits.

[25] He added that in order for a person to enjoy the right to be heard he must have first acquired the benefits legitimately and that by seeking this Court to declare the decision of the Minister as improper, unconstitutional and unlawful the applicant is asking this Court to enforce an irregularity because section 7 of the 1998 Act provides that a regular passport may be issued to every citizen of Lesotho

for purposes of travelling in and out of Lesotho and that the evidence before the Court has established that the applicant is not a Lesotho citizen.

[26] Further that the acquisition of the passport was irregular because the applicant ought to have followed the law and submitted a naturalization certificate pursuant to section 9 (2) of the 1998 Act and that the judgment of the Court of Appeal has clearly indicated that the applicant's application for naturalization is premature which means he does not qualify to be a Mosotho.

[27] Regarding the contention that the applicant was not given any reason regarding the nullification of his passport, **Mr. Sekati** made the submission that the contention is negated by the contents of **RK 5** which the applicant and/or his security guard refused to take at the gate and by his refusal to report to the Immigration Office despite the message that was left for him to so report.

[28] He added in his supplementary heads of argument that it is common cause that the parties have been in an ongoing fight over the passport and that the applicant knew or ought to have known the reasons for its cancellation or nullification as well as the Court of Appeal judgment that he was not a Mosotho.

[29] Further that under the circumstances and on the ground that the reason for the visit at his residence were given, as a reasonable person, the applicant ought to have gone to the Ministry to find out why the passport was recalled and to demand the reasons if same were not given but elected not to do so because he already knew the reasons. He added that in the result, he called this situation upon himself.

[30] With respect to the applicant's submission that the cancellation of the passport compromised his right to movement, **Adv. Sekati** made the submission that the said right should be delinked with the Lesotho passport as he has no right

to use it. In other words, that the applicant is free to travel but not with the Lesotho passport.

[31] Lastly, **Adv. Sekati** made the submission that the applicant's contention that the revocation of the passport ought to have been done in terms of section 14 of the 1998 Act is incorrect because the section only applies where the passport has been lawfully issued to the right person. Further that the section provides the circumstances under which a passport may be revoked and does not envisage a situation where the passport has been issued to a person who does not qualify to have it and that it is within the powers of the Minister to take administrative action as she has in this case.

[32] Against this backdrop it is my view that there are three main issues for my consideration namely, whether the Minister's decision to declare the passport null and void was irregular, unconstitutional and unlawful. Secondly, whether or not the applicant ought to have been given a hearing before the decision was taken and lastly, whether the issuance of **NV 2** pursuant to **RK 5** whose effect is to refuse the applicant re-entry into Lesotho is improper and unlawful.

[33] With respect to the first question, when issuing **RK 5** the Minister cited section 7(1) of the 1998 Act which provides as follows:-

*“A Regular passport may be issued to every citizen of Lesotho for purposes of travelling in or out of Lesotho.”*

[34] In my view, the fact that as has been revealed in the papers, the applicant is not a citizen of Lesotho and is as such not covered by this section, it is indeed correct that a regular passport ought not to have been issued to him in the first place. However, the submission that was made on his behalf is that even if that

may be so, the above section does not authorize the Minister to revoke his passport and she ought to have invoked section 14 of the Act which is the section that authorizes revocation of passports.

[35] It is undisputable that the latter section is the one that provides for revocation and the circumstances under which this may be done such as where a person has ceased to be a citizen of Lesotho or where it is in the national interest or national security to so act *inter alia*. I have already stated that **Adv. Sakoane** made the submission that by invoking section 7, the Minister misconstrued her powers and committed an error.

[36] In this regard, he relied on the work of **Devenish et al**<sup>5</sup> where the learned author propounds that where a power is granted for one purpose it cannot validly be exercised for any ulterior purpose. Further that if any action is for an unauthorized purpose it will be set aside even if the public authority was well intended or the action benefitted the public in general. To this end, the author continues as follows:-

*“The Constitutional Court in the Pharmaceutical Case (2000) (2) SA 674 (CC) par 6 recently held: ‘Powers are not conferred in the abstract. They are intended to serve a particular purpose. That purpose can be discerned from the legislation that is the source of the power and this ordinarily places limits upon the manner in which, it is exercised. If those limits are transgressed a Court is entitled to intervene and set aside the decision.’”*

[37] While I accept **Adv. Sakoane**’s arguments as correct, there is however no specific provision in the Act that deals with a situation such as obtains *in casu* that is, where a regular passport has been issued to a non-citizen because the revocation

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<sup>5</sup> **Administrative Law and Justice in South Africa (Durban: Butterworth)**

and surrender sections are silent in this regard, and in my view, therein lies the problem. To this end, **Adv. Sekati**'s submission is that since the applicant is not a citizen of Lesotho then he cannot have the right to hold a Lesotho passport. This is undoubtedly a legitimate submission however it still does not address the issue of the lacuna in the relevant statute where a regular passport has been issued to a non-citizen because section 14 applies to where a person **ceases to be a citizen** which is not the case *in casu*.

[38] In my opinion, this situation requires me to apply the purposive interpretation of the applicable statute because that is how I can properly examine and infer the design and purpose behind it.<sup>6</sup> In doing so, I am led to find that in the absence of a specific section that deals with this situation, the Minister was justified in resorting to section 7 because though not directly prohibitive, it is so by implication in that it confines the issuance of regular passports to the citizens of Lesotho only and to no other person.

[39] It is also my view that this approach is compatible with the sentiments of the Constitutional Court of South Africa per the above quoted case in **Devenish et al (supra)** to the extent that it stated that powers are not conferred in the abstract but are intended to serve a particular purpose which can be discerned from the legislation that is the source of the power. Hence my finding that since the applicant should have never been issued with the passport and this having been done the Minister had the power to order its surrender as she did because the statute prohibits same albeit not directly but by implication.

[40] On the second leg of the submission, namely that the Minister did not provide the applicant with any reasons why she decided to recall his passport, as

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<sup>6</sup> **G E Devenish, Interpretation of Statutes (Juta & Co Ltd)**

indeed **RK 5** does not state same, **Adv. Sekati** made the submission that this was not necessary because the applicant does not have the right to the *audi alterum partem* because he never had the legitimate right to have a passport issued to him and in support thereof he quoted the decision of the Court of Appeal in **Minister of Local Government and Another v ‘Mamuella Moshoeshe**<sup>7</sup> where the learned Ramodibedi stated as follows at par [17]:-

*“Faced with these difficulties Adv. Shale argued that the respondent was not treated fairly in that she was not given an opportunity to be heard before her salary was terminated. The short answer to this submission is that the audi alteram partem has no application in this case. This is so because the functionary has no discretion to act contrary to the law. The appellants cannot be forced to pay out illegally. It has long been the law that, as a matter of fundamental principle, the court cannot compel a party to do that which a statute prohibits or does not permit.”*

[41] In reaction thereto, **Adv. Sakoane** made the submission that the applicant has been using the said passport since it was issued to him by the relevant authorities in 2010. To this end I find it apposite to further refer to the same judgment where the Court had this to say at par [18]:-

*“In casu, the prohibition laid down in s 13 (5) is couched in peremptory terms. It is absolute prohibition. Similarly, this consideration disposes of Adv. Shale’s further submission that the respondent had a legitimate expectation to be heard. This submission was predicated on the fact that the respondent had enjoyed payment of salary for nine (9) years previously. As was pointed out to counsel during the course of the submissions, however, this was an illegitimate expectation in the circumstances. **An illegality committed in the past cannot, in my view, be taken as a basis for continuing it***

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<sup>7</sup> C of A (CIV) NO. 15/09

*in the future.* With respect Innes CJ put the point succinctly in *Schierhout v Minister of Justice (supra)* at 109 in these terms:-

*“...what is done contrary to the prohibition of the law is not only of no effect, but must be regarded as never having been done – and that whether the law giver has expressly decreed or not; the mere prohibition operates to nullify the act.”* my emphasis

[45] On the strength of the above remarks which I am in respectful agreement with, it is my opinion that **Adv. Sekati** was correct in his submission because I am of the view that the principle stated in that case applies squarely to the facts in the present application. In addition as I have already stated, section 7 of the Act provides for issuance of regular passports to every citizen of Lesotho. This means that though it is not couched in prohibitive terms, it was clearly meant to apply only to citizens of Lesotho. In this regard the case of **Babeile Andrew v Attorney-General**<sup>8</sup> which **Adv. Sekati** also quoted puts this matter to rest where the Court in dealing with a similar issue stated thus:-

*“...when a statute empowers a public official or body to give a decision prejudicially affecting an individual in his liberty or property or existing rights, the latter has a right to be heard before the decision is taken unless the statute expressly or by implication indicates the contrary.”* Emphasis mine

[46] The same sentiments have been stated in a plethora of authorities including the judgment of Corbett CJ in the case of **Administrator Transvaal & Others v Traub & Others**.<sup>9</sup> Thus, the issuance of the passport to the applicant who at that time was not and is to date not a citizen of Lesotho was not sanctioned by the law

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<sup>8</sup> (CALB-012-09) (2009) BWCA 88

<sup>9</sup> 1989 (4) SA 731 at 748

and was as such illegal. It therefore stands to reason that even if I could accept that the Minister invoked the wrong provision as submitted, I can still not permit an illegality to continue in the light of the above authorities. It is also for these reasons that I find that the decision in **Masetlha v the President of the Republic of South Africa and Another**<sup>10</sup> is not applicable *in casu*.

[47] However, this does not put this matter to rest as I still have to determine the question whether the respondents acted lawfully by refusing the applicant re-entry into Lesotho in terms of **NV 2** considering that he was granted refugee status albeit they contend that he acquired same fraudulently by providing incorrect information to the relevant authorities. It is however noteworthy to point out that in this regard, the respondents vacillate between two (2) contentions i.e. on the one hand they deny that the applicant is a refugee for the reason that he applied for and was granted that status on the basis of a misrepresentation and incorrect information that he provided in terms of annexure **RK 7** and that no rights accrue to him as he acquired the status fraudulently. On the other hand they contend that he left the country with the Lesotho passport well aware that he is a refugee and that the only document available to him for travel out of the country is the UN travel document obtainable from the Commissioner of refugees which in my view is a concession to his alleged refugee status.

[48] In reaction thereto, **Adv. Sakoane** made the submission that once the respondents concede that the applicant is a refugee, then they cannot punish him by denying him re-entry into the country when he had not decided to leave permanently but ought to have dealt with the issue in accordance with due process of the law. To this end **section 9 of the Refugees Act** which deals with illegal entry into or presence in Lesotho reads as follows in relevant parts:-

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<sup>10</sup> 2008 (1) BCLR (CC) p 26



*“Where a person to whom this section applies,*

*(a) fails to report to the nearest authorized officer in accordance with sub-section (2); and*

*(b) is subsequently recognized as a refugee,*

*his presence in Lesotho shall be lawful, unless there are grounds to warrant his expulsion pursuant to Section 12.”*

[49] Section 12 which deals with the expulsion of a refugee, reads as follows in relevant parts:-

*“(1) The Minister may, in the interest of national security or public order, issue an order for the expulsion of a refugee.*

*A refugee affected by an order issued under subsection (1) may make an application to the Minister in writing against the expulsion order.*

*(6) Where the application against an expulsion order is rejected the refugee shall, unless national security or public order otherwise require and having due regard to all the circumstances of the case, **be permitted to remain in Lesotho until such time as his application for legal admission into a country other than Lesotho is successful.**”*

(my emphasis)

[50] When regard is had to the above provisions, it stands to reason for me to find that the submission that they vouchsafe the applicant’s right to remain in Lesotho and not be expelled until such time as his application for legal admission into another country is successful is correct. Further, per these provisions, such right is not determinant on the legality or otherwise of his presence in Lesotho. Therefore the respondents’ submission that the applicant obtained the refugee status fraudulently and/or illegally does not take the matter anywhere because the law

provides that even if he is in the country illegally, until such time that he can be admitted into another country, he cannot be expelled which is the effect of NV 2.

[51] Thus, the sentiments that were expressed by the Court in the case of **Suresh v Canada**<sup>11</sup> apply in equal force to the case of the present applicant as follows:-

*“The principles of fundamental justice require, at the minimum, compliance with the common law requirements of procedural fairness. These principles do not require full oral hearing or judicial process when deporting a refugee. However, the refugee has to be informed of the case against him; further the material on which the decision to deport is based has also to be provided to the refugee. The refugee has also to be able to respond in writing to the case for his or her deportation and to challenge any of the information on which the deportation decision was taken. Written reasons for the decision to deport have to be provided.”*

[52] Consequently, while I have found that I cannot grant the order in terms of prayer 1 (a) and (b) in the notice of motion for the reasons I have stated above, I find that the applicant has successfully made out a case for an order in terms of parts of his prayer (a) insofar as his re-entry into Lesotho is concerned because he has not been deported in terms of the law. For all the foregoing reasons I accordingly order as follows:-

- (a) Prayer 1 (b) is hereby dismissed;
- (b) Prayer 1(a) is successful in parts to the extent that the respondents are restrained and interdicted forthwith from denying the applicant re-entry into Lesotho as a refugee and to deal with the issue of his expulsion in accordance with the law;
- (c) Each party i.e. the applicant and 1<sup>st</sup> to 3<sup>rd</sup> respondents must bear its own costs.

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<sup>11</sup> (2003) 4 CHRLD 138 at 140

**N. MAJARA**  
**JUDGE**

For the applicant : Advocates P.S. Sakoane & Z. Mda

For respondent : Advocate Sekati