

**IN THE HIGH COURT OF LESOTHO  
(Commercial Division)**

**CCA/63/2013**

In the matter between:

**MCT HOLDINGS (PTY) LTD  
AND 16 OTHERS**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> TO 17<sup>TH</sup> APPLICANTS**

And

**ANJU CIVILS (PTY) LTD  
AND 18 OTHERS**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> TO 19<sup>TH</sup> RESPONDENTS**

In re

**Anju Civils (Pty) Limited**

**PETITIONER**

And

**Trencon Building World Belela Joint Venture**

**1<sup>st</sup> Respondent**

**Trencon Construction (Pty) Limited**

**2<sup>nd</sup> Respondent**

**Building World (Pty) Limited**

**3<sup>rd</sup> Respondent**

**Belela Constructon (Pty) Limited**

**4<sup>th</sup> Respondent**

## **REASONS FOR RECUSAL**

**19<sup>TH</sup> March, 2014**

- [1] Sometime in December, 2013, soon after the last hearing of this matter on the 18<sup>th</sup> December, 2013, I received a telephone call from someone who said her name was Amina Moosa. The last time I had heard of any one named Amina Moosa was in my high school days, some thirty seven (37) years ago. It turned out that it was the same person.
  
- [2] Having exchanged pleasantries and reminiscing about our high school days, she went on to tell me that she recognised me when she saw me in court on the 18<sup>th</sup> December, 2013. She informed me that I was presiding over the matter that involved her family businesses and these I presume are the Selkol Trading (Pty) Limited and Moosa Holdings (Pty) Limited.
  
- [3] This took me completely off guard. I received several calls from this Ms Moosa after that, with invitations to lunch or for a visit to Ladybrand where said she resides. Just after Christmas I left for a holiday. On my return, I had missed about five (5) calls from Ms Moosa and when she finally found me, she offered me a trip to a wedding in Durban. I politely declined the offer. I must mention at the outset that I was worried from the initial contact how Ms Moosa had gotten my mobile number.

- [4] I am certain that she was aware that if I was presiding over matters that involved her family businesses, then, even if I was her former high school friend, it was totally inappropriate for her to be calling me or even to offer me a trip to Durban.
- [5] I came to the conclusion and in good conscience that, following the unbecoming behaviour on the part on Ms Moosa, it would be prudent for me to inform all the parties that are likely to be affected by these events. I had occasion to speak to **Mr Mpaka** and **Mr Ndebele** in another matter involving Selkol Trading, where I have already recused myself.
- [6] In the case of the **Law Society of Lesotho v Ramodibeli and Others**<sup>1</sup>, Peete J in his majority judgment quoting Gubbay CJ with approval in **S v Modus Publications (Private) Ltd and Another**<sup>2</sup> had the following to say:

*“The office of a judge of the High Court is one demanding the highest degree of honesty, integrity, impartiality complete independence... and strict adherence to the laws of the land. The public are entitled to, and do expect no less.”*

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<sup>1</sup> Constitutional case 1 of 2003

<sup>2</sup> 1998 (2) SACR 151 at 156

[7] Guni J in the **Law Society** case<sup>3</sup> in her dissenting judgment, quoted Schutz AJA in the case of **LEC v Forrester**<sup>4</sup>, where he cautioned against a judge taking advantage of:

*“ a possibly convenient course of retiring from difficult litigation merely because one of the litigants asked him or her to do so.”*

[8] I firmly believe that the proper thing to do is to recuse myself from this matter, as I hereby do, seeing that the Moosa family businesses are a party in this matter, in the form of Selkol Trading (Pty) Ltd and Moosa Holdings (Pty) Ltd. Since I have already recused myself from other matters involving Selkol Trading, I have no reason not to do the same in this matter before me.

[9] In doing so, I am not conveniently trying to retire from this case, but I am avoiding even a semblance of suspicion that to a reasonable person, there might be a reasonable apprehension that I might not be impartial or that there might be bias on my part. I say this alive to the fact that notwithstanding the strong presumption of impartiality that applies to judges, we are nevertheless held to certain stringent standards regarding bias.

[10] My being approached by a member of the family of one of the litigants, who is a role player in this case, was not only offensive

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<sup>3</sup> Supra

<sup>4</sup> 1979 LLR 440 at 454 -455

to me as a presiding judge, it also put me in an awkward position. In the light of the reasons set out above I recuse myself from this matter (and other matters related thereto).

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**L. CHAKA-MAKHOOANE**  
**JUDGE**

For Applicants : **Mr Ndebele assisted by  
Ms Lesupi**

For 1<sup>st</sup> Respondent : **Mr Redelinghuys**

For 2<sup>nd</sup> to 6<sup>th</sup> Respondents : **Mr Mpaka**

For 7<sup>th</sup> Respondent : ....

For 8<sup>th</sup> Respondent : **Mr Selzer**

For 9<sup>th</sup> Respondent : **Mr. Edeling assisted by  
Mr Mathe**

For 14<sup>th</sup> and 15<sup>th</sup> Respondents : **Mr Loubser**