

**IN THE HIGH COURT OF LESOTHO**

HELD AT MASERU

CIV/APN/206/2020

**In the matter between:**

**MAKANANELO RAMMOLLA  
SEBATSO CHEPESA  
MAMPE KHANYE  
AMELIA SELLO**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT  
4<sup>TH</sup> APPLICANT**

**AND**

**BIG DREAMERS SAVING AND CREDIT  
COOPERATIVE LESOTHO  
HIS WORSHIP KOLISANG  
COMMISSIONER OF COOPERATIVES  
THE ATTORNEY GENERAL**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT**

Neutral Citation: Makananelo Rammolla & 3 Ors v Big Dreamers Saving & Credit coop Lesotho and 3 others CIV/APN/206/2020 [2021] LSHC 27

**JUDGMENT**

Coram : Hon. Mr. Justice E.F.M.Makara  
Dates of Hearing : 29<sup>th</sup> April 2021  
Date of Judgment : 29<sup>th</sup> April 2021

**SUMMARY**

Review proceedings – Applicant challenging review powers of Chief Magistrate, over small claims Court proceedings – Chief Magistrate not

having reviewed or done anything in the original proceedings – The Court having found the proceedings to have been prematurely instituted.

Held: The rule nisi granted is discharged and the application dismissed with costs.

## **MAKARA J.**

### **Introduction**

[1] The Applicant lodged an urgent application before the Court seeking for its intervention by ordering in these terms:

- (a) Rules pertaining to notices and service be dispensed with on account of urgency of this matter.
- (b) The 1<sup>st</sup> Respondent shall not be interdicted and prohibited from proceeding with the execution of the order granted by the 2<sup>nd</sup> Respondent.
- (c) The 1<sup>st</sup> Respondent proprietor, Managers, Directors be directed to serve Applicant and dispatch to the Registrar of this Honourable Court their forensic report, the financial report as well as other documentation relating to the financials of the 1<sup>st</sup> Respondent for a period that implicates the transactions of Applicants within seven days of receipt of this matter.
- (d) An order granting leave to Applicants, upon good cause being shown, to approach this Honourable Court upon the same papers duly supplemented, for additional and/or alternative relief relating to the matters raised in the application or in this order.
- (e) An order directing the 2<sup>nd</sup> Respondent or the senior clerk of Maseru Magistrate Court to dispatch the record of proceedings in SC NO.1588/19.

[2] The Respondents contested the application and duly filed the counter papers.

[3] It should be projected that this being, review proceedings the Court found it imperative to order the Court *aquo* to dispatch the

record of proceedings to this Court. This was intended to serve as a primary point of reference in the determination of the procedural irregularities upon which the complaint is premised. This notwithstanding, it subsequently transpired to the Court and to the Counsel involved that the key and determinative controversy is exclusively founded upon a question of law. This, in precise terms, centers around the jurisdiction of a Senior Magistrate to review the decision of another magistrate who presided over the matter between the parties in the original proceedings.

**[4]** It is significance to be realized that these review proceedings were initiated on urgent basis before any Senior Magistrate could exercise the review powers contemplated under Rule 34 (1) and (2) of Subordinate Courts (Small Claims Procedure) implementing procedure Rules, 2011 which provides:

- (1) A judgment debtor against whom judgment has been entered may, within 30 days appeal against the judgment by;
  - (a) filing the appeal together with the supporting grounds thereof before the clerk of the court; and
  - (b) paying the appeal fee and, nominal security determined by the clerk of court and the messenger's fees.
- (2) The judgment debtor may appeal to the presiding officer for the reduction of the amount of the security for the appeal.

**[5]** The Court assigns a remedial interpretation to the rule. It firstly recognizes that the Clerk of Court referred to therein is the Clerk of the Magistrate Court and that the presiding officer denotes the Magistrate officers in their hierarchical structures. The impression hereof is that any Magistrate is competent to review the small claims-based proceedings. In this regard, it is worthwhile to be realized that within the applicable rules, appeal interpretationally includes a review.

[6] It is worthwhile to project the fact that the small claim procedure is presided over and administered by an umpire who is not necessarily a judicial officer inclusive of a magistrate. Thus, the appeal or review proceedings contemplated in the rules, should be comprehended in that context. This elucidates the picture why a Magistrate is assigned jurisdictional competency of understandably a senior standing to review the small claims proceedings.

[7] Furthermore, it has to be highlighted that Parliament has not created a Court called a Small Claims Court. Instead, the Chief Justice has created a Small Claims procedure for the parties who contest a claim over money of Ten Thousand Maloti (M10,000.00) and below. The avenue is optional for the qualifying litigants. The philosophy behind the procedure is to provide for an expedient methodology for the resolution of the issue involved.

[8] Intriguingly, it is common cause in these proceedings that no Magistrate has ever entertained any appeal against the decision of the umpire in the original proceedings. This is clearly indicative that as yet, there are no jurisdictional development which justify the intervention sought for. In other words, the move has been prematurely initiated.

[9] In the premises, it is found that given the issue in *casu*, the *rule nisi* granted is discharged and the application is dismissed with costs.

**EFM MAKARA  
JUDGE**

**For Applicant : Adv. Matheka inst. Inc. T. Maieane & Co.**  
**For Defendant : Messrs Poopa Consulting Attorneys**