IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)

HELD AT MASERU **CCA/0025/2020**

In the matter between:

NTŠELISENG MOTLOLI T/A MOTLOLI CATERING **APPLICANT**

AND

LSP/WBHO JOINT VENTURE	**1ST RESPONDENT**
NIGEL JOHNSTONE	**2ND RESPONDENT**
PONTŠO NTSEUOA	**3RD RESPONDENT**
NTŠEUOA ENTERPRICE SUPPORT SERVICES (PTY) LTD (NESS) SOUTH AFRICA	**4TH RESPONDENT**
BONANG NTSEUOA	**5TH RESPONDENT**
GREATER DESTINY INVESTMENTS	**6TH RESPONDENT**
SELOTHO MOTHOKOA	**7TH RESPONDENT**
POLIHALI TLOKOENG TRUST	**8TH RESPONDENT**
POLIHALI DEVELOPMENT TLOKENG TRUST (PDTC)	**9TH RESPONDENT**
STANDARD LESOTHO BANK	**10TH RESPONDENT**
DEPUTY SHERIFF	**11TH RESPONDENT**

Neutral Citation: Nšeliseng Motloli v LSP/WBHO Joint venture and 10 Others (CCA/0025/2020) [2022] LSHC COM. 2 (17 MARCH 2022)

JUDGMENT

CORAM: **MOKHESI J**

DATE OF HEARING: **24 NOVEMBER 2021**

DATE OF JUDGMENT: **17 MARCH 2022**

SUMMARY

CIVIL PRACTICE: *Applicant lodging an application in circumstances where material dispute of facts reasonably foreseeable- Application dismissed on this basis alone, with costs.*

ANNOTATIONS:

Cases:

Bid Industrial Holdings (Pty) Ltd v Strang (Minister of Justice and Constitutional Development, third Party) 2008 (3) SA 355 (SCA)

Dean v Kaffrarian Steam Mill Co. Ltd (1907) NLR 418

Dlamini v Jooste 1925 – 1926 OPA – OPD 223

Ex Parte Ivan Pedersen Ltd 1929 WLD 109

Firestone SA (Pty) Ltd v Gentiruco A.G 1977 (4) SA 298 (A)

Lombaard v Droprop CC and others 2010 (5) SA 1 (SCA)

National Director of Public Prosecutions v Zuma (573/08) [2009] ZASCA 1 (23 January 2009)

Thompson, Watson & Co. v Poverty Bay Farmers Meat Supply Co. 1924 CPD 93

Plascon – Evans Paints) Ltd 1984 v Van Riebeck Paints (Pty) Ltd 1984 (3) SA 623 (A)

Room Hire Co. (Pty) Ltd v Jeppe Mansions Ltd 1949 (3) SA 1155 (T)

Saker & Co. Ltd v Grainger 1937 AD 223

Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd 1969 (2) SA 295 (A)

Wallace v Rooibos Tea Control Board 1989 (1) SA 137 (C)

[1] **Introduction**

This matter is starting *de novo* before this court because My Sister Chaka-Makhooane J. passed on while in the process of writing judgment, and so this judgment will be interspersed with reference to what transpired before her. As will be seen in due course, what started as a simple application proliferated uncontrollably to such an extent that seven more urgent applications were birthed. What is on show in this matter is "urgent application" galore of some serious note. In order to appreciate fully what brought about this application, suffice for this introductory remarks to say that it was brought about by the business relationship which had badly soured between partners, and so, one of the partners aggrieved by what she saw as unbecoming conduct of others, lodged this application seeking interdict, claiming certain monies and attachment of vehicles of the 3rd respondent to found and confirm jurisdiction of the court.

[2] In the Notice of Motion, the applicant sought the following reliefs:

> *"1. That the rule nisi do hereby issue calling upon the Respondent's herein to show cause if any on a date to be determined by this Honourable Court why:*
>
> *a) The ordinary periods and modes of service shall not be dispensed with due to the urgency of this matter.*
>
> *b) The 1st and 2nd respondents shall not be interdicted forthwith from cancelling and or terminating the contract for provision of catering services entered into between the applicant and the 1st respondent on or*

about July 2019, except by due process of law pending finalization of this application.

c) *This honourable court shall not declare the said indefinite catering contract between the applicant and the 1st respondent on or about 5th July, 2019 as aforesaid to be valid and in force.*

d) *That 3rd, 4th, 5th, 6th, 7th and 8th respondents shall not be restrained and interdicted from harassing, insulting, representing, purporting to terminate the said catering agreement between the applicant and the 1st respondent and/or interfering in any manner whatsoever with running the administration or execution of the said contract except by due process of law, pending finalization of this application.*

e) *That 3rd and 4th respondents shall not be interdicted from communicating or representing the 1st and 2nd respondents in any manner whatsoever, as agents of the applicant pending finalization of this application.*

f) *That the 3rd and 4th respondents shall not be interdicted and or restrained from signing, withdrawing, transferring and dealing with moneys and/or interfering in any manner whatsoever with the moneys and the accounts of the applicant under account number 9080004673200 held with the 10th respondent bank pending finalization of this application.*

g) *The 9th respondent (sic) respondent shall not be interdicted from allowing the 3rd and 4th respondents from transferring, withdrawing or dealing in any manner whatsoever with accounts of the applicant under account number 9080004673200 held with the 10th respondent bank pending finalization of this application.*

h) *The 9th respondent shall not be ordered to deactivate and or block all passwords used by the 3rd and 4th respondents in operating the said account pending finalization of this application.*

i) *The Applicant shall not be declared to be the sole authority and entity responsible for the execution and administration of all the conditions of the said catering contract entered between the Applicant and the 1st respondent.*

j) *That the contract entered into between the Applicant and 3rd and 4th respondents on or about July 2019, to be declared as voidable contract based on undue influence and coercion.*

k) *That the 3rd and 4th respondents be ordered to pay applicant the sum of about one hundred and forty thousand and one hundred and twenty and three Lisente Maloti (140,120.03) being an estimated total of all the monies that the 3rd respondent unlawfully paid herself from applicant's account number 9080004673200 held with the 10th respondent bank.*

l) *This honourable court shall not attach the property in a form of cars to wit Black ML Mercedez Benz and Toyota Hilux Legend 4 x 4 registration numbers DVI6XR GP of the 3rd and 4th respondents being perigrini in order to found and/or confirm the jurisdiction of this honourable court pending the finalization of this application.*

m) *The 1st and 2nd respondents shall not be interdicted from engaging the 3rd, 4th, 5th, 6th, 7th, 8th and 9th respondents as caterers in the stead of the applicant pending the finalization of this application.*

n) *The contract signed between the applicant and the 3rd and 4th respondent dated 5th July 2019 shall not be declared as voidable as having been made under duress and/or undue influence.*

o) That the letter dated 11th February 2020 from the 3rd and 4th respondents shall not be declared as a repudiation of the said contract resulting in the termination of the contract as aforesaid.

2. That the Applicant be given any further and/or alternative relief.

3. That the 3rd, 4th, 5th, 6th, 7th, 8th and 9th respondents be ordered to pay costs of suit on attorney and client scale."

[3] At the hearing of this matter, Adv. B. Sekonyela for the applicant, informed the court that prayers 1(a), (b) (c) have fallen been overtaken by events while prayers 1(j) and (n) were abandoned. This matter was lodged *ex parte* and on an urgent basis, and it is opposed by 3rd, 4th and 9th respondents.

[4] **Factual Background**

On the 05th July 2019, the applicant, 3rd and 4th respondents entered into a joint venture/teaming agreement for provision of catering services to 1st respondent. On the 11th February 2020 the 3rd and 4th respondents terminated the said Teaming agreement with effect from 19th February 2020. In terms of the said agreement, the applicant was tasked with daily catering services, operations and delivery to the 1st respondent as she was in possession of the Lesotho catering licence. The 4th respondent, on the other hand provided bridging finance and managed relationship with the partners' client (1st respondent) and provided support to staff, among others. Relevant for the present application, the agreement provides:

Profit share

- *Profit share will be paid to the parties every month with Motloli receiving 40% and NESS 60% based on cash flow availability.*

- *Bank Account*

- *Motloli and NESS will jointly access and manage the existing Motloli's Catering Standard Lesotho Bank, which client will make monthly payments into.*

- *Motloli will be the custodian of the ATM card for day to day expenses or as and when required.*

- *NESS will be responsible for the management of the account's internet banking function in order to administer any relevant monthly payments for the project, or any other relevant payments as per the submitted bank resolution.*

[5] On the 11th February 2020, the 3rd respondent together with her partners, 5th and 9th respondents, terminated the joint venture agreement between the 3rd respondent and the applicant. Among the reasons cited were that the applicant misrepresented her capabilities and experience in her business profile to the parties' client (1st respondent). The other accusation was that the applicant was the Head of Operations on site but did not possess catering qualifications or food related qualifications as required by the paties' client. The applicant was further accused of not devoting her attention to the project due to her other business engagements. It was following this termination that this application was launched. The orders sought in the interim were granted by My Sister Chaka-Makhooane J on the 24 February 2020, with the issuing of Rule Nisi which was made returnable on the 09th March 2020. On the 27th February 2020, the 3rd, 4th

and 9th respondents filed a Notice of Anticipation of the return day of the Rule Nisi. In the application the 3rd, 4th, 9th respondents averred that the matter was not urgent; that the order of the 24th February 2020 was unjustifiably sought and granted *ex parte;* that the matter contained serious dispute of facts and material non-disclosures; that the applicant failed to disclose the cause of action, and accordingly prayed for discharge of the *rule nisi*. After hearing arguments, the learned Judge discharged the rule nisi, with the result that a 4 x 4 Hilux vehicle which had been attached to found jurisdiction was ordered to be released to the 3rd and 4th respondents. The vehicle was not released as security for its release was later ordered by the court. Sadly, however, despite tender of security, the vehicle was not released for reasons which are unfathomable. The 3rd respondent continued to have access to the joint venture account as per the parties' agreement.

[6] **Respective Parties' Case.**

Ms Ntšeliseng Motloli, who is a sole Proprietor of Motloli Catering (applicant) deposed to the founding affidavit wherein she averred that she "*entered into a Sub-contract Agreement styled 'Teaming Agreement' with the 3rd and 4th respondents, South African Company whereby the 3rd and 4th respondents gave us a loan in a form of moneys as a working capital for the operations of the project. The said moneys used as a working (sic) for us was accordingly repaid by us with interest."* (*Ad para.15*)

[7] At paras: 22 to 23 she avers further that:

> *"22 As if that is not enough, the 3rd respondent has been unlawfully paying herself and transferring her 60% of the share from my business account and*

paying even other moneys which were not agreed with her as appears more on NM2 attached hereto.

23 To wit, the 3rd respondent has paid herself the total of about one hundred and forty thousand and one hundred and twenty and three Lisente Maloti (140m120.03) being unlawful moneys, including the 13th cheque, which she has refused to pay on demand and are now due to me as shown on NM4 attached hereto."

[8] She averred that the basis of her lodging an urgent and *ex parte* application was because of the status of the 3rd and 4th respondents seeking attachment of their vehicles was necessary to found and/or to confirm jurisdiction, as they are peregrine. She averred that unless the application was granted *ex parte* and on an urgent basis, she was apprehensible that the 3rd respondent would withdraw all the money in her bank account "and skip the country."

[9] **3rd, 4th and 9th Respondents' Case.**

On the one hand, Ms Pontšo Ntšeuoa deposed to answering affidavit on behalf of the 3rd 4th and 9th respondents, and in it she denies that she was co-opted into joint venture arrangement by the applicant. She instead avers she is the one who was earmarked for the catering contract but due to the fact that she did not have a catering licence, she had to enter into the agreement in question as the applicant had such a licence. She says she provided a working capital to the joint venture and even made accessible to the applicant, her banking facilities such as ATM card. She attached a print-out of her Nedbank account showing that indeed certain payments were made to the applicant from the same account. She says she terminated the agreement following several complaints from client and because of the applicant's

misrepresentation of her abilities in her company profile. She maintains that the termination was lawful. She denies that she unlawfully paid herself, as those payments represented "my advances and 4th Respondent's 60% share all of which was agreed."

AD Para. 14.2 she says:

> *"14.2 The 13th cheque referred to was payment to herself as well. I therefore do not understand how it becomes unlawful when it is paid to me and not unlawful when paid to her."*

The above sketch of factual skirmishes between the parties suffices for purposes of this judgment.

[10] **Issues for determination:**

(i) Whether the application should succeed in view of the dispute of facts.

(ii) Counter application

[11] **Whether the application should succeed on account of dispute of facts.**

As already seen, the applicant maintains that she is the one who introduced the 3rd respondent to 1st respondent. On the other hand the 3rd respondent disputes this version positing that she is the one who co-opted the applicant because the former did not have the catering licence, hence the need to enter into the so-called Teaming Agreement between the applicant, 3rd and 4th respondents. The applicant further avers that the 3rd respondent unlawfully

paid herself the sums of money she is claiming now, including the 13th cheque. The 3rd respondent disputes this as well by putting forth a version that the applicant was paid the same 13th cheque as well, and the monies which the applicant claims were unlawful payments were pro *rata* payments in terms of the Teaming Agreement. The applicant disputes this assertion. The 3rd respondent even annexed evidence of Nedbank statement showing payments made to the applicant. The 3rd respondent further averred that she made available her banking facilities for use by the applicant, an averment which the latter disputes. These disputes of facts are material to the determination of this matter.

[12] **Discussion and the Law.**

In civil proceedings, when a party is desirous of launching a claim, a choice of procedure for doing so is very important as it may be pivotal to the fate of such a claim. The choice of procedure is important because the fact-finding process involved in each procedure is materially different. In actions proceedings, fact-finding is made on the balance of probabilities, while in motion proceedings on the other hand, the court is concerned *only* with the resolution of legal issues based on common cause facts (**National Director of Public Prosecutions v Zuma (573/08) [2009] ZASCA 1 (23 January 2009)** at para.26**).**

[13] For the reason that in motion proceedings what stands for resolution are legal issues based on common cause fact, when a dispute of facts arise in motion proceedings, fact-finding follows the following principles: a final order can only be granted if the facts averred by the applicant, which have been admitted by the respondent together with the facts alleged by the latter

justify the order. However, there are exceptions to this rule such as where the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on papers (**Plascon – Evans Paints) Ltd 1984 v Van Riebeck Paints (Pty) Ltd 1984 (3) SA 623 (A) 634 – 5).** In **Room Hire Co. (Pty) Ltd v Jeppe Mansions Ltd 1949 (3) SA 1155 (T)** it was stated that (at 1162);

> *"…[A]pplication may be dismissed with costs, particularly when the applicant should have realised when launching his application that a serious dispute of fact was bound to develop. It is certainly not proper that an applicant should commence proceedings by motion with knowledge of the probability of a protracted enquiry into the disputed facts not capable of easy ascertainment … what is essentially the subject of an ordinary trial action."*

[14] In **Lombaard v Droprop CC and others 2010 (5) SA 1 (SCA)** at p. 11, the Court said:

> *"….Therefore, if a party has knowledge of a material and bona fide dispute, or should reasonably foresee its occurrence and nevertheless proceeds on motion, that party will usually find the application dismissed."*

This formulation is in line with Rule 8(14) of the High Court Rules 1980 which gives this court a discretion to dismiss the application where in its opinion, the material disputes of fact which arise in affidavits are incapable of resolution without resort to *viva voce* evidence.

[15] Reverting to the facts of the case, it is clear to me that this case is based on disputed facts, the truth of which can only be determined on the basis of

probabilities, an approach which is not permissible in motion proceedings. Whether the 3rd respondent paid herself the amounts claimed, unlawfully, cannot be resolved in motion proceedings. The applicant did not make even the slightest attempt to apply for referral of the disputed facts for oral evidence in terms of Rule 8(14) of the rules of this court. In the same vein in terms of the same rule given that this application cannot be decided without aid of *viva voca* evidence, and, in terms of the authorities cited above, this application should be dismissed. The applicant should have foreseen these material and *bona fide* dispute of facts on which its case is based, arising. It was reasonably foreseeable that the factual basis upon the applicant's case is founded would be disputed but she proceeded nonetheless by way of motion proceedings.

[16] Ordinarily, this conclusion should have meant the end of this judgment, however, as stated in the introductory remarks, there were about seven, offshoot applications in this matter, however, two of those applications; *viz* "Application for Supplementary Affidavit to Amend Prayer 1 (K) to increase claim" filed on 02 March 2020 and a similar application filed on the 28 May 2020, should suffer the same fate as the main application as they are inextricably linked to it. I now turn to consider the remaining applications even though they can justifiably be said to be of no consequence in the light of the dismissal of the main case. I incline towards determining the other applications despite of their lack of consequence in the light of the dismissal of the main application, due to misconception of certain principles which are apparent therein.

[17] **Application in terms of Rule 45 of the High Court Rules.**

It will be recalled that the main application was lodged *ex parte*, and that, when the respondents anticipated its return day, they also prayed for the discharge of the *rule nisi* with costs on attorney and client scale. What transpired is that, the learned Judge, in her minute in the court file wrote that the application was dismissed but made no express pronouncement on costs. But, when the typed order was issued, it said that the rule nisi was discharged with costs. It is this order for costs which prompted the applicant to launch an application in terms of Rule 45 of the High Court Rules seeking the variation of the said order, for the following reasons: (i) The cost order was not pronounced in court (ii) It was not recorded in the Judge's file; (iii) The cost order should not have been granted as the applicant was substantially successful in bringing the application for attachment of the property to found or confirm jurisdiction.

[18] In terms of Rule 45 (1) (a) of the High Court Rules, the court may on application of any party affected, rescind or vary "(a) an order or judgment erroneously sought or erroneously granted in the absence of the party affected thereby". It should be recalled that when the respondents anticipated the return day of the rule *nisi*, they also sought the discharge of that rule with costs on attorney and client scale. It is also without doubt that the arguments were advanced in court pertaining to this issue, only that the court was silent when discharging the rule. The costs order only appeared in the signed order. The question to be answered is whether this costs order was erroneously granted in the absence of the applicant to justify her invocation of Rule 45(1)(a). In my considered view, the answer should be in the negative. It is not the applicant's argument that the issue of costs was not argued before the learned Judge, the only complaint she has with the

order discharging the rule is that the court simply discharged the rule without pronouncing on the issue of costs, only to include it in the signed order. If it is accepted that this was the state of affairs, the costs order was not issued erroneously in the absence of the applicant, within the meaning of Rule 45(1)(a).

[19] The fact that the court was silent on costs when discharging the *rule nisi* in court, only to include it in the signed order, does not help the applicant's cause. It is trite that where costs are argued in court but when the court pronounces itself in the order, does not say anything about costs, even though the question of costs was argued, the costs order is regarded as costs in the action (**Dlamini v Jooste 1925 – 1926 OPA – OPD 223** at 230). Put differently, the respondents would still be entitled to their costs of successfully discharging the rule, when the successful party is ultimately awarded costs in the main, because they had sought the discharge of the rule with costs. It would be different if arguments were not made in court regarding the issue of costs. Then in that case, the aggrieved party would be entitled to approach the court for correction, alteration or supplementation of the cost order under the exceptions to *functus officio rule* as stated in **Firestone SA (Pty) Ltd v Gentiruco A.G 1977 (4) SA 298 (A) (** See: p.p 306 306H – 308A and the accurate summary of the principles in the headnote of the judgment).

[20] **Counter application**

On the 30 March 2020, the 3rd and 4th respondents counter-applied to force the applicant to account for use of funds in the joint business account, which were received and disbursed from 10 March 2020 – 27 March 2020. To this

application the applicant in her answering affidavit raised points in *limine* of *locus standi* and no cause of action. The argument which is made in this regard is that the respondents have no right to the applicant's bank account number as the agreement between them was terminated by the former on 19 February 2020. The respondents' argument in this regard is that, consequent to the rule *nisi* being discharged:

> *"4.2…. Respondent continued to operate the account unilaterally and until the 25th March 20202 when I managed to have access into the account."*

[21] There is paucity of evidence in this regard as can be seen. If the business relationship between the parties ended on the 19 February 2020, in terms of the termination letter issued by the 3rd respondent, then the question may be asked, what business does she have in how the said account number is operated by the applicant. She has no *locus standi* to know how the applicant's business account is operated. The applicant's point in *limine* should therefore succeed with costs.

[22] **Founding or Confirming jurisdiction where the respondent is *perigrinus*.**

In terms of Rule 6 of the of the High Court Rules 1980:

> *"6(1) The Court may on application grant leave for property of a perigrinus which is in Lesotho to be attached in order to give the court jurisdiction in an action which the applicant intends to bring against such perigrinus.*
>
> *(2) The applicant must satisfy the court*

(a) that he has a prima facie cause of action against the perigrinus and

(b) that the property sought to be attached is the property of the perigrinus or that the perigrinus has some right in the property, and

(c) that applicant himself is an incola of Lesotho and that the respondent is a perigrinus

(d) the applicant may in the same application apply for leave to serve defendant by Edictal citation.

(3) Such application shall be an ex parte one but if the courts grants the order such shall be served on the perigrinus within such time as the court deems fit.

…..”

[23] I decidedly quoted the above rule because the applicant's counsel, Adv. Sekonyela, in his written and oral submissions seemed to vacillate between, and conflated, the principles applicable to founding or confirming jurisdiction of the court and principles applicable to payment of security for costs by a *perigrinus*. The two issue are governed by different procedures and serve different purposes. Security for costs is governed by Rule 48 of the Rules. In the instant matter, the applicant sought a writ of attachment of the 3rd and 4th respondents' motor vehicles in order to confirm or found jurisdiction of the court in view of the latter's status as *peregrine*. Attachment of property at the instance of an incola to found or confirm jurisdiction in respect of a *perigrine* respondent serves the purposes of making the judgment which may be made against the latter effective **(Bid Industrial Holdings (Pty) Ltd v Strang (Minister of Justice and**

Constitutional Development, third Party) 2008 (3) SA 355 (SCA) at paras. 47 – 48**)**. In the present matter, I will approach the matter from the premise that the court was justified is attaching the vehicle in question to confirm or found jurisdiction. All the procedural requirements of Rule 6 were met. I turn to consider whether it was proper for the applicant's counsel to incessantly bombard this court with the so-called applications to increase security.

[24] **Application to Increase Security**

On 26 March 2020 the applicant lodged an urgent application to an increase security of M80,000.00 which was fixed by the Registrar to M300,000.00. The interdictory reliefs which formed part of the reliefs sought in that application are academic due to the passage of time. An application of the same nature was lodged on the 08 December 2020. The first one was unopposed while the 2nd one was opposed by Thabo Ntlatsang who intervened as the respondent. The two applications pertain to the same issue of increase or variation of an amount fixed for confirming or founding jurisdiction of this court. It is important to recall that the applicant sought and was granted attachment of the vehicle in question to found or confirm jurisdiction of this court as the 3rd respondent is a perigrunus. Consequent to the order of attachment being made, it transpired that that the vehicle did not belong to the 3rd respondent but to Mr Thabo Ntlatsang, and therefore in exchange for its release to the latter, the Registrar fixed the amount of M80,000.00 as security. This amount was fixed approximating the value of the applicant's claim (**Dean v Kaffrarian Steam Mill Co. Ltd (1907) NLR 418; Ex Parte Ivan Pedersen Ltd 1929 WLD 109).** The said Mr Ntlatsang is a South African citizen who intervened to apply for the release of the

Toyota Hilux which had been attached in terms of Rule 6 (6) of the High Court Rules. In the second application the Mr Ntlatsang raised a number of points in *limine* in opposing the application, and germane for present purposes; that the court does not have jurisdiction to review the order of security as it is final in nature.

[25] In argument, Adv. B. Sekonyela for the applicant, relied on the case of **Saker & Co. Ltd v Grainger 1937 AD 223** at p. 227 where the court said "The principle underlying this practice is that in proceedings initiated by a peregrinus the court is entitled to protect an incola to the fullest extend…" (emphasis added). This statement was used to justify the variation of the security ordered to confirm or found jurisdiction. The applicant's reliance on this case is misguided as the said case was not dealing with security ordered against perigrinus to found jurisdiction. Different principles govern the procedure for payment of security for costs by peregrinus and payment of security by peregrinus to found jurisdiction of the court. It is trite that once the Registrar has satisfied herself of the security payable to found jurisdiction, once that security has been fixed, the peregrinus cannot be forced to give further security (**Thompson, Watson & Co. v Poverty Bay Farmers Meat Supply Co. 1924 CPD 93 at 96).** The reason for this is that jurisdiction which has been validly established by attachment will continue notwithstanding that the value of the property attached has become low (**Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd 1969 (2) SA 295 (A)** at 301 E – F).

[26] Different considerations, however, apply to security for costs which is sought under Rule 48 of the High Court Rules. Where the incola can

establish that security costs which was fixed against a perigrinus will exceed the original estimation, she or he is free to apply to the court that additional security be paid by the peregrinus (**Wallace v Rooibos Tea Control Board 1989 (1) SA 137 (C) at 139D – E).** Perhaps at the risk of being repetitious, in the main application, the application sought an attachment of the 3rd respondent's property to found jurisdiction. The amount of M80,000.00 fixed in *lieu* of release of the vehicle attached was for that purpose only not as security for costs, what therefore is meant by this is that there is no room for requesting an additional security, as jurisdiction validly established will continue. It follows therefore that the two applications were ill-conceived.

[27] In the result the following order is made:

(i) The main application is dismissed with costs;

(ii) Counter applications is dismissed with costs;

(iii) Mr Thabo Ntlatsang's Toyota Hilux vehicle with the following particulars: registration numbers DV 16X GP; VIN number AHTEZ39G307038538 and Engine number 1KDA796553, should be released forthwith.

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MOKHESI J

For Applicant: **Adv. B. Sekonyela instructed by K. D. Mabulu Attorneys**

For the 1st and 2nd Respondents: **No appearance**

For 3rd, 4th and 9th Respondents: **Adv. T. Mpaka instructed by DU Preez Liebetrau & Co. Attorneys**

For 5th, 7th and 10th and 11th Respondents: No appearance