

**IN THE HIGH COURT OF LESOTHO**  
**(COMMERCIAL DIVISION)**

**HELD AT MASERU**

**CCA/0117/2022**

In the matter between

**MOLEMO KHASOANE t/a**

**MOLEMO BRICKS**

**APPLICANT**

**And**

**LETS'ENG DIAMONDS**

**RESPONDENT**

Neutral Citation: Molemo Khasoane t/a Molemo Bricks v Lets`eng Diamonds  
[2022] LSHC ..... Comm. (23<sup>rd</sup> November 2022)

**CORAM: M. S. KOPO, J**

**HEARD: 21<sup>ST</sup> NOVEMBER 2022**

**DELIVERED: 23<sup>RD</sup> NOVEMBER 2022**

## **SUMMARY**

*Civil Procedure – Authorisation to institute proceeding for a juristic person – Requirements therein - Urgent application- urgency has to be shown and is not there for the taking -*

## **ANNOTATION**

### **Cases**

#### **Lesotho**

Platinum Credit Limited v First National Bank of Lesotho and Others [2022]  
LSHC 71 (05 August 2022)

#### **South Africa**

Mogalakwena Local Municipality v Provincial Executive Council, Limpopo  
and Others [2014] 4 All SA 67 (GP)

### **Statutes**

High Court Rules No. 9 of 1980

## **RULING**

### **[A] INTRODUCTION**

[1] On the 21<sup>st</sup> November 2022, this matter was argued on the preliminary issue of urgency. On the 23<sup>rd</sup> November 2022, I dismissed the urgency and

struck the matter off the urgent roll. In the process I promised to give reasons later. This is the reasoned ruling.

[2] In this matter, the Applicant moved urgently for an order that;

1. *Rules of court on modes and period of service be dispensed with on account of urgency of this matter;*

2. *A Rule nisi be issued returnable on the date to be determined by this Honourable (sic) court, calling upon Respondent to show cause why:*

a) *This Honourable Court shall not interdict the Respondent from engaging a new contractor providing services that were provided to them by Applicant pending finalization of this matter;*

b) *This Honourable Court shall not order suspension of any engagement of a new contractor if any pending finalization of this matter;*

c) *This Honourable Court shall not interdict the Respondent from unilaterally terminating the contract between Respondent and Applicant, and from enforcing the purported termination pending the finalization of this matter;*

- d) *This Honourable Court shall not order that the contract between Applicant and Respondent should continue;*
  - e) *This Honourable Court shall not interdict Respondent from removing all Applicant's employees from Respondent's premises with inclusion of those who were not found guilty of any misconduct;*
  - f) *Alternatively, this Honourable Court shall not interdict Respondent from removing property of Applicant from the former's premises without immediately paying all monies due to Applicant;*
  - g) *This Honourable Court shall not interdict Respondent from terminating services rendered at the former's premises by Applicant under contracts which Respondent is not party;*
  - h) *Applicant shall not be granted further and/or alternative relief;*
  - i) *Applicant be granted Costs of suit;*
3. *That prayers 1, 2 (a), (b), (c) are granted as Interim Order with immediate effect.*

**[3]** The Respondent first raised points *in limine* challenging the urgency of the matter. This is in fact what this court is seized with now. First of all, the Respondent challenged the urgency on the ground that the Applicant abused the court process by moving so hastily and not providing the

Respondent enough time to defend the matter. It was argued that the matter was filed on the 16<sup>th</sup> day of November, 2022 and served two (2) days later at around 1300hrs on a Friday.

[4] The second leg of the above argument is that the rules of court were not complied with in the sense that the Notice of Motion did not comply with Form J as is the law. This is because the said Notice of Motion did not prescribe when the Respondent will be expected to have entered opposing papers if it intends to.

[5] The second ground that the urgency or the interim order sought urgently is challenged on is that it is a “stratagem to prolong the existence of a mouth-to-mouth agreement” when it is not legally acceptable. This, it is argued for the Respondent, is prejudicial.

## **[B] ANALYSIS OF THE MATTER**

[6] It is common cause that the Applicant and the Respondent entered into a contract in the year 2019. One of the terms of the contract was that the Applicant would render equipment with its operators to the Respondent to work at the Respondent’s mine.

[7] It is also common cause that some of the Applicant’s employees were implicated in a misconduct. Moreover, as a result of the said implication in the misconduct, the Respondent wrote to the Applicant on the 14<sup>th</sup> day of November, 2022 terminating the contract. It is this termination that caused the Applicant to rush to court and seek the order on the terms mentioned above.

[8] Rule 8 (22) directs the procedure of urgent applications. It is through this Rule that modes of service and time can be dispensed with due to the urgency of the matter. The Rules anticipate situations in which there cannot be time to follow the prescribed timelines in the Rules of Court and in the process allow for haste. In as far as justice and fairness are concerned, it is obvious that this is an extraordinary procedure that may affect the fairness related with preparations of the matter on the opposing side. For this reason, therefore, it must only be allowed where it is absolutely necessary. In all other situations, the Applicant as the *dominus litis*, has to be careful not to deny the opposing side a fair time to answer the matter in the guise of urgency by moving too hastily.

[9] In **Platinum Credit Limited v First National Bank of Lesotho and Others**<sup>1</sup>, I had occasion to deal with the approach in urgent applications. I quoted with approval the following words of Tuchten J, in the South African case of **Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others**<sup>2</sup>

*“It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): whether the respondents can adequately present their cases in the*

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<sup>1</sup> [2022]LSHC 71 (05 August 2022)

<sup>2</sup> [2014] 4 All SA 67 (GP)

*time available between notice of the application to them and the actual hearing, other prejudice to the respondents and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency”<sup>3</sup>*

**[10]** In *casu*, indeed the first question is whether the Applicant cannot get relief in due course. What is clear and is common cause is that the contract in question was renewable each month. Will the order of court not prolong the contract beyond the time that the parties had agreed upon? Secondly, can applicant not get damages in due course?

**[11]** On the first question, whether it is by design, as Advocate Roux argues or an untended result, the contract will be perpetuated beyond the time that the parties have agreed on if this court were to allow this application to stand. On a balance of convenience therefore, it will prejudice the Respondent if the Application would be granted. This therefore brings us to the second question. Applicant can still get the relief in the form of damages even if the matter is heard in due cause. What makes this application seem as if the Applicant cannot get substantial relief in due course is the fact that the current contract is about to run out. This should however not detract us from looking at the matter in as far as the present contract is concerned. The Applicant still can get relief in due course.

**[12]** This finding is dispositive of the matter. However, even if the Applicant could surmount this hurdle, he would still be faced with the question of

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<sup>3</sup>Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others supra at para 64

whether he did not move with too much haste. There is nothing on the facts that warranted the Applicant to move so hastily and risk not affording the other party an opportunity to adequately prepare its defence. There is no denying that there are some situations that can warrant moving in very limited times. However, in this case there is nothing that warrants this haste. The contract in question is coming to an end at the end of December and the Application was filed on the 18<sup>th</sup> day of November which was on a Friday. He then directs the Respondent to argue the matter on Monday. Such haste should only be warranted in situations that are aimed to prevent eminent harm not one in which the perceived harm is almost two months away.

## **[C] CONCLUSION AND ORDER**

**[13]** Having concluded that the Applicant can still get relief in due course with a claim for damages and that there is an abuse of court process, the following order is made:

- (a)** The Application is struck off the urgent roll.
- (b)** Cost shall be costs in the course.



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**Kopo J.  
Judge of the High Court**

**For Applicant:**

**Adv. POLANE**

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

**Adv. ROUX**