

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

**HELD AT MASERU**

**CCA/0040/2022**

In the matter between:

**MOJELA MICHAEL MONAHENG**

**APPLICANT**

And

**THABANG MOKHELE**

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

**AYANDA NDLOVU**

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

**FIRST NATIONAL BANK**

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

**OFFICER COMMANDING PITSO GROUND**

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

**ATTORNEY GENERAL**

**5<sup>TH</sup> RESPONDENT**

**Neutral citation:** Mojela Michael Monaheng v Thabang Mokhele and 4 others  
(No.1) [2022] LSHC 76 COM (23 April 2022)

## RULING

CORAM: MATHABA J

HEARD ON: 23<sup>rd</sup> April 2022

DELIVERED ON: 23<sup>rd</sup> April 2022

[1] On the 22<sup>nd</sup> April 2022 the applicant approached this Court *ex parte* and on urgent basis for an order in following terms: -

- “(1) Dispensing with the normal periods and modes of service of an application due to the urgency of this application;
- (2) Rule Nisi be issued and returnable on the date to be determined and fixed by this Honourable Court to call upon Respondent to show cause, if any, why:
  - (a) the attachment of 1<sup>st</sup> and 2<sup>nd</sup> Respondents vehicle as security to find jurisdiction cannot be granted pending finalization of this application.
- (3) Ordering 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay the sum of M170,000-00 which was paid into the account of the 2<sup>nd</sup> Respondent for buying Applicant a tractor together with inherent costs thereof.
- (4) Interest at the rate of 15% starting from the 9<sup>th</sup> September, 2022.

- (5) Ordering 3<sup>rd</sup> Respondent to avail record of the deposits made into account number **62912605253**.
- (6) Ordering 4<sup>th</sup> Respondent to assist in the implementation of this application.
- (7) Ordering costs on attorney and client.
- (8) Granting such further and/or alternative relief.
- (9) Prayers **1, 2, and 2(a)** to operate with immediate effect as an interim order.”

[2] Mr. *Mabulu* appeared before me virtually on Saturday the 23<sup>rd</sup> April 2022 to move the application. He indicated that he was appearing at the instance of the applicant ‘s counsel, Mr. *Sekatle*, who was not available. Mr. *Mabulu* stated that the first respondent acquired M170,000.00 from the applicant through fraudulent misrepresentation that he was going to buy him a tractor, which he never did. He contended that the first respondent was a *peregrinus* hence the application to attach his motor vehicle to give this Court jurisdiction in a claim for M170,000.00 against the first and the second respondent.

[3] I observed at the outset that while the application was brought on an urgent basis, nowhere in the founding affidavit in support thereof did the applicant set forth in detail the circumstances which he avers render the application urgent. This was contrary to peremptory requirements of rule 8(22) (b) of the High Court Rules of 1980.

[4] One other glaring and fatal omission from the founding affidavit was the allegation that the motor vehicle which the applicant wanted to attach was within jurisdiction of this Court. I brought to Mr. *Mabulu* 's attention rule 6(1) of the High Court Rules in this regard. He indicated that he just browsed through the rule and did not read it carefully. I indicated to him that an order attaching the motor vehicle to confirm jurisdiction in the absence of evidence that the motor vehicle was within jurisdiction of this Court would be a nullity.

[5] Mr. *Mabulu* acknowledged the deficiencies in the founding affidavit and disclosed that he even discussed them with the applicant and counsel before he appeared before me. He asked that the applicant be allowed to supplement his papers to address the deficiencies which the Court had identified. I pointed out to Mr. *Mabulu* that the best approach would have been to withdraw the application, especially when he was already aware of the deficiencies instead of persisting with it hoping that the Court will not see the deficiencies.

[6] I also stated in passing and without necessarily determining the point as yet, that even jurisdiction of this Court was not properly pleaded. All that the applicant said was that "This Honourable Court has jurisdiction to entertain this application". It is not clear if the applicant and the 1<sup>st</sup> respondent 's relationship was of a commercial or business nature in order to bring the application within rule 10 the High Court (Commercial) Court Rules 2011.

[7] In the result and based on the material deficiencies detailed in paragraphs 3 and 4 above, I make the following order:

- 7.1 Dispensation with the normal periods and mode of service as prayed for in this application is refused.
- 7.2 The application for attachment of the first respondent's motor vehicle is dismissed.
- 7.2 The matter is removed from the roll of urgent matters.

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**A.R. MATHABA J**  
Judge of the High Court

For the Applicant: Mr. K.D. Mabulu.  
No appearance for respondents