

IN THE HIGH COURT OF LESOTHO
(Commercial Court Division)

HELD AT MASERU

CCA/0074/2021

In the matter between:

LELOLI TRADING (PTY) LTD

APPLICANT

And

MAFETENG DISTRICT COUNCIL

1ST RESPONDENT

LIKEPOLANA (PTY) LTD

2ND RESPONDENT

MP MOTORS (PTY) LTD

3RD RESPONDENT

**PUBLIC POLICY AND ADVISE
DIVISION**

4RD RESPONDENT

MINISTRY OF FINANCE

5TH RESPONDENT

ATTORNEY GENERAL

6TH RESPONDENT

Neutral Citation: Leloli Trading (Pty) Ltd v Mafeteng District Council and 5 others CCA/0074/2021 [2022] LSHC 11 COM (9th February, 2022)

JUDGMENT

CORAM: MATHABA J

HEARD ON: 14th December 2021

DELIVERED ON: 9th February 2022

SUMMARY:

Interim Interdict: requirements discussed – applicant failing to demonstrate absence of any other satisfactory remedy – application dismissed.

ANNOTATIONS:

CITED CASES

Lesotho

Attorney General & Another v Swissbourngh Diamond Mines (Pty) Ltd & Others LLR & LB 1995- 1996 173

Attorney General v Dlamini’s Holdings (Pty) Ltd and Another CIV/APN/7/97 CC 1002/96) (CIV/APN/7/97) [1997] LSHC 19 (13 February 1997)

Mabatsoeng Grace Hlaele N.O v ‘Maisaiah Thabane (CIV/APN/195/20) [2020] LSHC 17 (13 July 2020)

Maphepha v Tsietsi and Others (CIV/APN/442/00) [2001] LSHC 10 (11 February 2001

Moabi v Moabi & Others (CIV/APN/24/80) [1980] LSHC 107 (28 October 1980)

Smally Trading Company v Lekhotla Mats’aba& 10 Others (C of A (CIV) 17 of 2016 [2016] LSCA 22 (25 May 2016)

South Africa

Bloch v Secretary For Inland Revenue 1989 (2) SA 401

Eriksens Motors (Welkom) Pty Ltd v Protea Motors (Warrenton) 1973 (3) SA 685 (A)

Gool v Minister of Justice and Another 1955 (2) SA 682 (C)

National Treasury v Opposition to Urban Tolling Alliance 2012 (6) SA 223 (CC)

Setlogelo v Setlogelo 1914 AD 221

Simon No v Air Operations of Europe AB and Others 1999 (1) SA 217 (SCA)

South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others 2014 (4) SA 371 (CC)

Tshwane City v Afriforum 2016 (6) SA 279 (CC)

United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others (1032/2019) [2021] ZASCA (13 January 2021)

INTRODUCTION:

[1] The applicant approached the Court on an urgent basis on the 1st October 2021. The applicant seeks to interdict the 1st and 3rd respondents from proceeding with the implementation of the contract relating to tender No. ITT 2020/2021/DCE/OE pending finalisation of review application in CCA 0074/2021.

[2] The application was moved on the 6th October 2021 before Makara J who granted the Interim Court Order in the following terms having heard Mr. *Metlae* for applicant and Mr. *Tsenoli* for the 2nd respondent:

“1 That rule nisi is hereby issued, returnable on the **20th day of October 2021.**

2(a) The rules pertaining to mode of service and time of this Honourable Court are herein dispensed with on account of urgency.

(b) The 1st and 3rd Respondents are herein interdicted from proceeding with the implementation of the contract ITT 202/2021/DCE/OE pending finalisation of this application.”

[3] There is an order for consolidation that appears in the Interim Court Order filed of record. The Order reads as follows:

“1. The Application in CCA/0074/2021 instituted on the 10th September 2021 be consolidated with the Urgent Application in CCA/0074/2021 instituted on the 1st October 2021.”

Though the Interim Court Order has been signed, Makara J did not make such an Order when the parties appeared before him on the 6th October 2020. I will revert to this aspect later in the judgment.

[4] The Court Order granted on the 6th October 2021 was seemingly ‘interim – Interim Court Order’ hence return date is to decide whether to confirm the Interim Court Order or not. The parties appeared before me for argument on the 14th December 2021 with applicant represented by Mr. *Metlae*

and the 1st, 4th, 5th and 6th respondents represented by Mr. *Thakalekoala* while the 2nd respondent was represented by Mr. *Rapitse*.

[5] When the parties first appeared before me on the 20th October 2021, Mr. *Metlae* objected to Mr. *Thakalekoala* representing the 1st respondent on the ground that the 6th respondent's office represents the national government and that the 1st respondent was autonomous. Though Mr. *Metlae*'s heads of argument did not address this aspect, Mr. *Thakalekoala* comprehensively addressed it in his heads of argument. The nub of Mr. *Thakalekoala*'s response was that in terms of both the Constitution and the Attorney General's Act 1994 as amended, the 6th respondent is a legal representative of the government. He argued that it is not defined whether when the 6th respondents acts for government, he or she should act for government at the national or local level.

[6] The intention to oppose in respect of the parties that Mr. *Thakalekoala* was representing was not filed of record. Having established from both Counsel that it existed and that it also included the 1st respondent as well, I declined the objection. It is not for the Court to dictate as to who should represent local governments, especially in circumstances where the 6th respondent decides to extent legal representation to them and they too accept such representation.

[7] I now proceed to other aspects of the application. It is not obvious to me how the application was moved on the 6th October 2021. In terms of the

notice of motion and the notice of set down filed of record, the application was intended to be moved on the 5th October 2021. Again, as per the return of service filed of record, some of the parties were only served with the application on the 5th October 2021. There is nothing in the Court file to indicate that the application was set down to be moved on the 6th October 2021. This may explain why other respondents were not in attendance when the application was moved, particularly the 3rd respondent.

[8] Something further needs to be said about the Interim Court Order, specifically the Order for consolidation of the application for interdict and the application for review. Counsel for 3rd respondent expressed dissatisfaction with an Order for consolidation in his first set of heads of argument. It bears repeating that only the 2nd respondent and the applicant were in Court when the Interim Court Order was granted. Following an Order for consolidation, the applications were supposed to be heard simultaneously as one application.

[9] I am not sure if all the parties appreciated the significance of this Order. When the parties appeared before me on the 20th October 2021, Mr. *Tsenoli* for the 2nd Respondent indicated that his client did not have interest in the application for interdict as a result of which it will not be filing any papers. Indeed Mr. *Tsenoli* did not make any further appearances except at my instance on the date of hearing for reasons which will become apparent in due course.

[10] The other respondents were then ordered to file their answering affidavits, if any, on or before the 29th October 2021 while the applicant was ordered to file its replying affidavit, if any, on or before the 12th November 2021. The matter was postponed to the 16th November 2021. Only the 3rd respondent filed its answering affidavit to which the applicant reacted with a replying affidavit. The answering affidavit was only restricted to application for interdict. The 3rd respondent was not a party to the review application and may have been hamstrung to react thereto. Mr. *Rapitse* indicated that the 3rd respondent was put in an awkward position by an Order of consolidation. It is not clear to me why the 3rd respondent was not joined in the main proceedings when they were initially instituted. It had participated in the tender, the subject matter thereof and had lodged its own query regarding the award of the tender to the applicant.

[11] Moreover, the heads of argument filed by Mr. *Metlae* were restricted to interim interdict only. Mr. *Rapitse*'s initial heads of argument addressed both the application for interdict as well as the review. However, his second set of heads of argument was restricted to application for interdict. Mr. *Thakalekoala*'s heads of argument were directed at the application for review. Only the papers relevant to the application for interdict were paginated and indexed.

[12] The above facts highlight confusion which necessitates clarity in the conduct of this matter going forward to avoid miscarriage of justice. The parties do not appear to have heeded Makara J's call at the time he granted the interim interdict on the 6th October 2021 to the effect that they should "*identify the lawyer representing the 3rd respondent and then work on a way forward*". They seem to have just exchanged the papers.

[13] I only realised on the 13th December 2021 as I was preparing for hearing that, according to the Interim Court Order filed of record, the applications were consolidated. I had no reason to doubt the accuracy of the Interim Court Order then. As a result, when the matter was called at or about 07h30 on the 14th December 2021, I made Counsel for the parties aware of my discovery and expressed my reluctance to proceed with the application for interdict separately unless all the parties were to agree to abandon the Order of consolidation.

[14] Mr. *Tsenoli* was not in attendance but quickly availed himself when he was called. All Counsel agreed that the application for interdict should be heard separately. They indicated that none of the parties will suffer prejudice. Both Mr. *Metlae* and Mr. *Tsenoli* were unsure how the Order for consolidation came about as they indicated that they never asked for it when they appeared in Court on the 6th October 2021.

[15] I have since discovered from the minute of Makara J on the Court file that he never issued such an Order. He only opined that “*perhaps, the best and wise approach would be to consolidate the matters, identify the lawyers for the 3rd Respondent and then work on a way forward. In the meantime, the application is granted in terms of prayers 1,2 which should operate with immediate effect*”. Prayer 1 was about dispensation while prayer 2 was about interdict.

[16] In the result, I assume that the Interim Court Order which includes an Order for consolidation was inadvertently signed. Court Orders are normally drafted by parties in whose favour they have been granted. I am therefore inclined to think that this error has its origin from the chambers of the applicant’s attorneys. However, with the luxury of hindsight, I think the Order for consolidation would have still been in order. These applications could have still been instituted as one application from the word go as it is normally done with prayers relevant to interim relief/interdict and review appearing under part A and B of the notice of motion respectively.

[17] Despite the confusion alluded to above, proceeding with application for interdict pending the review application was not going to be problematic. The file was Court ready and the parties had been afforded an opportunity to file their papers as well as the heads of argument.

BACKGROUND:

[18] The applicant, 2nd and 3rd respondents submitted bids in tender no. ITT/2020/2021/DCE/02 that was issued by the 1st respondent. The applicant was initially the preferred bidder and entered into contract with the 1st respondent on the 29th March 2021. However, the 4th respondent directed that procurement under the tender be suspended. As deciphered from the founding affidavit, which I must say, suffers from lack of particularity, the suspension followed the institution of a query by the 2nd respondent. The 3rd respondent asserts, and it is not denied, that it had also lodged a query regarding the way the tender was awarded to the applicant. It alleges that it escalated the query to the 4th respondent on the advice of the 1st respondent's secretary and was eventually awarded the tender.

[19] In response to the decision to re-evaluate the tender, the applicant instituted a review application under CCA/0074/2021 primarily challenging the decision to re-evaluate on the ground that the 4th respondent offended the *audi alteram partem* rule by entertaining the 2nd respondent's query without notifying the applicant as an interested party. It is not in dispute that at the time the application for review under CCA/0074/21 was instituted, the 1st respondent had not commenced with re-evaluation of the tender. The decision to re-evaluate was also favourable to the 3rd respondent which had lodged its own parallel query.

[20] Notwithstanding pending application for review, the 1st respondent proceeded with re-evaluation of the tender and awarded it to the 3rd respondent. The contract between the 1st and the 3rd respondent was concluded on the 30th September 2021. In reaction to re-evaluation and awarding of the tender to the 3rd respondent, the applicant instituted the instant application seeking an order interdicting the 1st and the 3rd respondent to sign or implement the contract pending finalisation of the review application and an order to set aside the award of the contract to the 3rd respondent on grounds of irregularity and unlawfulness.

[21] The issue for determination is whether the applicant has made a case for Interim Interdict pending finalisation of the review application.

INTERIM INTERDICT:

[22] The well know test for temporary interdict requires that the applicant establishes the following:

- (a) a *prima facie* right, though open to some doubt;
- (b) a well-grounded apprehension of irreparable harm if interim interdict is not granted and ultimate relief is eventually granted;

- (c) the balance of convenience favours the granting of the interim interdict; and
- (d) the absence of any other satisfactory remedy.

See: **Setlogelo v Setlogelo** 1914 AD 221; **Attorney General & Another v Swissbrough Diamonds Mines (Pty) Ltd & Others** LLR & LB 1995 – 1996 173 at 182

[23] These requirements must not be assessed separately or in isolation, but in conjunction with one another. In **Eriksens Motors (Welkom) Pty Ltd v Protea Motors (Warrenton)** 1973 (3) SA 685 (A) at 691 (F) the Court said the following with reference to these requirements:

“The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant’s prospects of success the less his need to rely on prejudice to himself. Conversely, the more the element of ‘some doubt’, the greater the need for the other factors to favour him. The Court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities; see *Olympic Passenger Service (Pty.) Ltd. V Ramlagan*, 1957 (2) SA 382 (D) at p. 383D – G. Viewed in that light, the reference to a right which, ‘though *prima facie* established, is open to some doubt’ is apt, flexible and practical, and needs no further elaboration.”

[24] I have observed that the founding affidavit does not address these requirements in a structured manner. The results of failure to deal with these requirements *seriatim* will be evident in this judgment.

PRIMA FACIE RIGHT:

[25] The correct test in adjudicating *prima facie* right in the context of an Interim Interdict is to take the facts averred to by the applicant, together with those facts put up by the respondent that are not or cannot be disputed and consider whether, having regard to inherent probabilities, the applicant should obtain a final relief on those facts at the trial. The facts set up in contradiction by the respondent should be considered and if serious doubt is thrown upon the case of the applicant, he cannot succeed. *See: Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 688B-F; *Simon No v Air Operations of Europe AB and Others* 1999 (1) SA 217 (SCA) at 228 G.

[26] In *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) 237 at 238 para [50], the Constitutional Court of South Africa observed that-

“Under the *Setlogelo* test the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decision already made. Quite apart from the right to review and to set aside impugned decisions,

the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite.”

[27] Though the applicant does not explicitly allege in its founding affidavit that it has *prima facie* right, I am satisfied that the facts alleged by the applicant sufficiently establish not just a *prima facie* right, but a clear right. The applicant has already signed a contract in relation to the tender in issue and I cannot think of any reason why it may be said that the applicant does not have a clear right under the circumstances of this case.

[28] It is not disputed that the decision to re- evaluate the tender was taken in violation of the principles of *audi alterem partem*. Consequently, the applicant has prospects of success in the review. *Prima facie* right may also be established by demonstrating prospects of success in the review. *See: South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* 2014 (4) SA 371 (CC) at paragraph 25.

[29] Mr. *Rapitse* made a vain attempt to convince me that the applicant has not demonstrated that it *bona fide* retains the right and has a better claim than anyone else thereto. In support of this proposition Counsel cited **Maphepha v Tsietsi and Others** (CIV/APN/442/00) [2001] LSHC 10 (11 February 2001;

and **Moabi v Moabi and Others**, 1980 (2) S.A 407 as quoted in **Maphepha**, *supra*.

[30] I have perused **Maphepha**, *supra*. Nowhere in the judgment does Hlajoane J, as she then was, make any pronouncement in support of Counsel submission. While in her judgment Hlajoane J, as she then was, cited **Moabi supra**, I have not been able to find the latter judgment in the law report she referred to despite diligent search. Rather, I have found the case of **Bloch v Secretary For Inland Revenue** 1989 (2) SA which runs from page 401 to 411 in the law report. The case does not deal with interdicts, neither does it support the proposition which Counsel was advancing.

[31] I have nonetheless found **Moabi v Moabi & Others** (CIV/APN/24/80) [1980] LSHC 107 (28 October 1980). Though interdict was an issue in this case, it equally makes no reference to the proposition which Counsel advanced. It is apposite to indicate that regard being had to the facts and the ultimate decision in **Setlogelo**, *supra*, it is clear that the source of the right which one seeks to protect is not material to the enquiry.

APPREHENSION OF IRREPARABLE HARM

[32] In **Setlogelo**, *supra*, at page 227, the Court indicated that –

“The argument as to irreparable injury being a condition precedent to the grant of an interdict is derived probably from a loose reading in the

well – known passage in Van der Linden’s *Institutes* where he enumerates the essentials for such an application. The first, he says, is a clear right; the second is injury. But he does not say that where the right is clear the injury feared must be irreparable. That element is only introduced by him in cases where the right asserted by the applicant, though prima facie established, is open to some doubt.”

[33] I respectfully agree with the above observation. It would defy common sense and justice if the applicant for interim interdict were still to be required to establish irreparable injury or harm even in circumstances where he has established a clear right.

[34] The applicant in *casu* asserts, and it is not denied, that it will suffer irreparable harm if the respondents continue with the implementation of the tender as it will lose the revenue it anticipated to get following the award of the tender to it. The 1st respondent continued with re-evaluation and awarded the tender to the 3rd respondent even after it was served with application for review of the decision to re-evaluate the tender. Without a temporary interdict, there is nothing that will stop the respondents from continuing with implementation and execution of the contract. The applicant will then be left with a hollow judgment in the event of its application for review succeeding. The applicant therefore has a well-grounded apprehension of irreparable harm.

BALANCE OF CONVENIENCE

[35] There are two competing interests with regard to this requirement. The interests are inextricably linked to the harm a respondent is likely to suffer in the event that an interdict is granted and the harm likely to be suffered by the applicant if the interdict is not granted. See: **Tshwane City v Afriforum** 2016 (6) SA 279 (CC) at 302 B -C)

[36] As it was held in **National Treasury**, *supra*, paragraph 55:

“A court must be satisfied that the balance of convenience favours the granting of a temporary interdict. It must first weigh the harm to be endured by an applicant, if interim relief is not granted, as against the harm respondent will bear, if the interdict is granted. Thus a court must assess all relevant factors carefully in order to decide where the balance of convenience rests.”

[37] The applicant deals with the balance of convenience in paragraph 6.4 of its founding affidavit. It is evident in this paragraph that the applicant seems to have missed the elementary principle that the affidavit in motion proceedings constitutes both pleadings and evidence. The applicant simply says that the balance of convenience favours it because *‘the delays and the cause for approaching the court in this manner has been a result of the 1st Respondent’s high handedness in the handling of the procurement process and never care attitude towards the Applicant’s legal process’*. Clearly this is inadequate as no factual allegations or factors that tilt the balance in applicant’s favour are presented in this paragraph. The 3rd respondent is equally silent on this aspect.

[38] However, regard being had to the entire affidavit and considering that ours are courts of substantive justice, I am of the view that the balance of convenience favours the applicant. The applicant has indicated at paragraph 5.2 of the founding affidavit that it stands to suffer irreparable harm if the respondents continue with implementation of the contract in that it will lose the revenue that it had anticipated after it signed the contract with the 1st respondent. The 2nd respondent left these allegations unanswered in its answering affidavit while the other respondents have not filed answering affidavits as I have already indicated.

[39] Mr. *Rapitse* argued that the balance of convenience favours the 3rd respondent because in his words, it has ousted the applicant with its better title to the contract in question. This argument is untenable for two reasons. Firstly, it overlooks the fact that the applicant 's contract has not been cancelled. The 1st respondent has not instituted application for self -review with regard to the award of the tender to the applicant, nor instituted any proceedings to set aside the award and the contract. Secondly, inasmuch as it is undisputable that the 3rd respondent has been issued the same contract as the applicant and for the same tender, no facts have been canvased in the answering affidavit in support of the 3rd respondent that it will suffer greater prejudice than the applicant if interdict is granted.

ABSENCE OF ANY OTHER SATISFACTORY REMEDY

[40] A remedy of interdict is discretionary in the sense that a Court may not grant it in circumstances where a suitable alternative remedy is available to the applicant. The founding affidavit is conspicuously silent on this requirement. It means that the applicant has not been able to show that it has no other alternative satisfactory remedy. Messrs. *Rapitse* and *Thakalekoala* strenuously argued that the applicant has alternative remedy in damages.

[41] Mr. *Thakalekoala* relied on **Smally Trading Company v Lekhotla Mats'aba & 10 Others** (C of A (CIV) 17 of 2016 [2016] LSCA 22 (25 May 2016)) to support his argument. In that case the Court of Appeal had the occasion to deal with an application where the appellant wanted the respondents to be restrained from performing certain actions in pursuance of a tender awarded to some of the respondents pending the finalisation of appeal instituted by the appellant against the dismissal by High Court, of an application relating to the tender. The Court said the following:

“[7] In this case I was not satisfied that the applicant had satisfied the court that it did not have another satisfactory remedy. In para 6.4 of the founding affidavit it was merely stated that the applicant ‘would suffer irreparable harm because damages will not adequately compensate the loss [it] would suffer if the tender is not properly processed.

[8] I do not agree with this statement. If the applicant is ultimately successful in its attack on the withdrawal of the initial tender process and the award of the tender under the ‘selective’ process (which

excluded the applicant from tendering) and it proves that it would have won the initial tender then it will have no difficulty in quantifying its damages, which prima facie would be the profits it would have made on the contract, something which it should easily be able to prove and recover. It followed that the application had to fail.”

[42] Mr. *Metlae* submitted forcefully that it would be repugnant to justice and contempt of law for the respondents to violate *audi alteram partem* rule and to purport to rescind the contract given to the applicant otherwise than in terms of the provisions of section 56(1) and (2) of the procurement regulations and even ignore an application for review on the basis that the applicant can otherwise obtain recourse through damages.

[43] Therefore, it is apposite at this stage to refer to Greenberg J,‘s dictum in **Heilbron v Blignaut** 1931 WLD 167 at 169 quoted with approval in **United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others** (1032/2019) [2021] ZASCA (13 January 2021) where he said the following:

“If an injury which would give rise to a claim in law is apprehended, then I think it is clear that the person against whom the injury is about to be committed is not compelled to wait for the damage and sue afterwards for compensation, but can move the Court to prevent any damage being done to him. As he approaches the Court on motion, his facts must be clear and if there is a dispute as to whether what is about to be done is actionable, it cannot be decided on motion. The result

is that if the injury which is sought to be restrained is said to be a defamation, then he is not entitled to the intervention of the Court by way of interdict, unless it is clear that the defendant has no defence. Thus if the defendant sets up that he can prove truth and public benefit, the Court is not entitled to disregard his statement on oath to that effect, because, if his statement were true, it would be a defence, and the basis of the claim for an interdict is that an actionable wrong, i.e. conduct for which there is no defence in law, is about to be committed”.
(Emphasis added.)

[44] It would indeed be repugnant to justice to expect the applicant to wait for the injury to materialise and sue for damages thereafter. This is closely related to the principle that no one should ever have to abandon his rights and accept damages instead. *See: Mabatsoeng Grace Hlaele N.O v ‘Maisaiah Thabane* (CIV/APN/195/20) [2020] LSHC 17 (13 July 2020) page 13.

[45] In my view, the question is not whether the applicant will have alternative satisfactory remedy when harm *has* occurred. It is sufficient that the applicant demonstrates absence of satisfactory remedy as at the time he approaches the Court for interdict in order to satisfy this requirement. If the applicant does not have alternative remedy as at that time and meets other three requirements, then he qualifies for an interim interdict. This will often happen in situations where a mischief has not yet been done but is being threatened. I cannot readily imagine a situation where an applicant will have alternative remedy in the form of damages where harm has not yet occurred.

[46] It is due to the extra ordinary nature of the interdict *pendente lite* that the applicant is required to allege and prove that there is no other alternative satisfactory remedy to interdict. In *casu*, there is simply no foundation or factual basis in the founding affidavit to arrive at a finding that the applicant does not have alternative remedies.

[47] Mr. *Metlae* attempted to distinguish the instant case from that of **Smally Trading Company**, *supra*, in that according to him, the respondents had already supplied the goods in that case. It may be so, but there is nothing in the judgment to suggest that the respondents had already supplied the goods. The decisive consideration in that case was that if the applicant was to prove that it would have won the tender, then it will have no difficulty in quantifying its damages in the form of profits.

[48] The most distinguishing feature in *casu* is that the applicant has demonstrated a clear right worthy of protection pending the review application. The applicant in *casu* is even better positioned to claim damages in the event of it suffering harm. However, I have already opined that a party cannot be expected to wait for the harm to be occasioned and resort to damages thereafter when it is appropriate to apply for an interdict. The only insurmountable hurdle for the applicant in this case is that it has not stated that it does not have other alternative satisfactory remedy. The applicant has not explained why an order for damages will not be appropriate or adequate in this case or why it has not

moved the Court for an order of specific performance as it has a signed contract with the 1st respondent. It could be these remedies will not provide satisfactory relief compared to interdict, but without any factual basis in that regard, I am unable to arrive at the conclusion that interdict is appropriate remedy in this case.

[49] Interim interdict can only be granted when all the requirements are met. *See: Kaputuaza and Another v Executive Committee of the Administration for the Hereros and Others* 1984 (4) SA 295 (SWA) 295 at 317; *Lipschitz v Watrus* NO1980 (1) SA 662 (T) at 673; *United Democratic Movement and Another, supra*, paragraph 33. The first two cases were quoted with approval in *Attorney General v Dlamini's Holdings (Pty) Ltd and Another* CIV/APN/7/97 CC 1002/96) (CIV/APN/7/97) [1997] LSHC 19 (13 February 1997).

[50] In the result, I am not able to find for the applicant where he has not met one of the requirements for interim interdict.

ORDER

[51] The following order is therefore made –

31.1 the rule nisi granted on the 6th October 2021 is discharged.

31.2 the application for interim interdict is dismissed.

31.3 costs of this application be costs in the cause.

31.4 the parties representatives are directed to appear in Court on the 10th February at 14h30 for purposes of agreeing on the further conduct of the main matter.

A.R. MATHABA J
Judge of the High Court

For the Applicant: Mr. Metlae

For the 1st Respondent, 4th, 5th and 6th Respondents: Mr: Thakalekoala

For the 2nd Respondent: Mr. Rapitse