

IN THE HIGH COURT OF LESOTHO
(Commercial Court Division)

HELD AT MASERU

CCA/0016/2022

In the matter between:

LEMPHANE DIAMOND MINE (PTY) LTD APPLICANT

And

MINISTER OF MINING

1ST RESPONDENT

LAND ADMINISTRATION AUTHORITY 2ND RESPONDENT

LAND REGISTER

3RD RESPONDENT

COMMISIONER OF MINES

4RD RESPONDENT

ATTORNEY GENERAL

5TH RESPONDENT

THE MINING BOARD

6TH RESPONDENT

Neutral Citation: Lemphane Diamond Mine (Pty) Ltd v Minister of Mining and 5 others CCA/0016/2022 [2022] LSHC 36 COM (25th February, 2022)

JUDGMENT

CORAM: MATHABA J

HEARD ON: 18th & 21st February 2022

DELIVERED ON: 25th February 2022

SUMMARY:

Application – Application to suspend execution of Minister’s decision to terminate mining lease – whether it’s a prayer for specific performance or temporary interdict – Prayer for specific performance has its foundation from breach of contract which must be pleaded – A prayer mischaracterised and refused absent some of the requirements of temporary interdict.

ANNOTATIONS:

CITED CASES

Lesotho

Attorney General & Another v Swissbrough Diamonds Mines (Pty) Ltd and Others LLR & LB 1995 – 1996 173

Lehohla and Others v The Government of the Kingdom of Lesotho and Others
CIV/APN/125/2019 (unreported)

Letsatsi Ntsibolane v Teaching Service Commission and Others
CIV/APN/45/2019 (unreported)

Mahlakeng and Others v Southern Sky (Pty) Ltd and Others LAC (2000-2004)
742

Smally Trading Company t/a Smally Uniform & Protective Clothing v Lekhotla
Matsaba and Ten Others C of A (CIV) 17/2016 [2016] LSCA 40 (28 October
2016)

The President of the Court of Appeal v The Prime Minister and Others
(Constitutional case no 11 of 2013) [2013] LSHC 120 (22 November 2013)

South Africa

Admark (Recruitment) (Pty) Ltd v Botes 1981 (1) SA 860

Caledon Street Restaurants CC v Monica D' Aviera ECD Case No. 2656/97;
[1998] JOL 1832 (SE)

East Rock Trading 7 (Pty) Ltd and One v Eagle Valley Granite (Pty) Ltd and
Others (11/33769) [2011] ZAGPJH 196 (23 September 2011)

Luna Meubel Vervaardigers (Edms) V Makin and Another (t/a) Makin's
Furniture Manufacturers) 1977 (4) SA 135 (W)

Nelson Mandela Metropolitan Municipality v Greyvenouw CC and Others 2004
(2) SA 81 (SE)

Scriven Bros v Rhodesian Hides & Produce Co. Ltd and Others 1993 (1) SA
393

Stern and Ruskin, NO v Appleson 1951 (3) SA 800

Webster v Mitchell 1948 (1) SA 1186 (W)

Statutes

High Court Rules, 1980

INTRODUCTION:

[1] The applicant brought an urgent application against the respondents in the following terms:

- “1. That the Rules relating to forms and periods of service of the above Honourable Court be dispensed with on account of the urgency of this matter.
2. A *rule nisi* be issued and made returnable on the time and date to be determined by this Honourable Court calling upon the Respondents to show cause (if any) why the orders sought herein shall not be granted.
3. The execution of the letter of Termination of Mining Lease of **APPLICANT** dated **3rd JANUARY 2022** and penned by the 1st Respondent is suspended pending the resolution of this matter.
4. The **1st** and or **4th RESPONDENT** must furnish and or dispatch the record of proceedings, correspondences and or any minutes that

informed the issuance of the Letter of Termination of Mining Lease of **APPLICANT** dated 3rd **JANUARY 2022**.

5. That it be declared that the Termination of Mining Lease of **APPLICANT** pursuant to a letter dated 3rd **JANUARY 2022** and authored by the 1st **RESPONDENT** is irrational and hence unlawful,
6. The issuance of a Letter of Termination of Mining Lease of **APPLICANT** dated 3rd **JANUARY 2022** and authored by the 1st **RESPONDENT** is reviewed, corrected and or set aside on grounds of being illegal and or unlawful.
7. **PURSUANT TO THE GRANT of PRAYER 5 and or 6 above:** That a writ of mandamus is issued against 1st and or 4th **RESPONDENTS** to cause for the registration of the Mining Lease dated and signed on the 24th **MAY 2017** with the 2nd and or 3rd **RESPONDENT** pursuant to the provisions of **SECTION 42 (4) OF DEEDS REGISTRY ACT NO. 12 OF 1967 (As amended)**. Within 21 (twenty-one) days upon the grant of this order.
8. **ALTERNATIVELY, TO PRAYER 5 and or 6 ABOVE:** That **APPLICANT** and 1ST **RESPONDENT** refer the present matter for arbitration as envisaged under **ARTICLE 37** of the agreement of Mining Lease.

9. **PRAYERS 1, 2, 3 and 4** must operate with immediate effect as an interim relief and shall remain in force until it may be discharged or set aside by this Court on the return date or thereafter.

10. Further and or alternative relief.

11. Costs of suit in the event of the opposition hereof.”

[2] The application was lodged on the 16th February 2022 and the applicant ‘s attorneys chose to move it on the 18th February at 09h30. Though the respondents were served the same day the application was lodged, I have no doubt that some of them, if not all, had less than 48 hours to consider the application and act. For instance, the 5th respondent ‘s chambers only received the application at 03h15. The Court of Appeal has repeatedly deprecated the practise of failure to give appropriate and timeous notice to affected parties. Again, I observe with great regret that legal practitioners continue to use Form I instead of Form J of the High Court Rules 1980 in moving urgent applications. This is contrary to rule 8 (7). I will return to this subject later in this judgment.

[3] The application is opposed though the respondents are yet to file their answering affidavits. The intention to oppose has been filed and the interim relief sought by the applicant is opposed. On the dates of argument, the 18th and the 21st February 2022, Mr. *M. Teele* appeared for the applicant while

Mr. *M. Moshoeshoe* appeared for the respondents. I am indebted to Counsel for stimulating and helpful oral arguments which they presented.

BACKGROUND:

[4] The applicant and the Government of Lesotho entered into a mining lease agreement on the 24th May 2017. The parties have their respective rights and obligations under the agreement. For instance, the applicant was required to submit a mining plan, which would amongst others, show when the applicant was going to commence mining operations. Again, the applicant was supposed to pay ground rent in respect of the mining area. On the other hand, the Government had responsibilities which included facilitating registration of the mining lease in terms of Deeds Registry Act No. 12 of 1967 by, amongst others, providing the coordinates for the mining area, approval of the mining plan and acquisition of shares in the applicant, all of which according to the applicant, never happened.

[5] It is the applicant's case that as a result of Government not discharging its obligations and not being responsive to the applicant's requests, coupled with Covid-19 pandemic which nearly brought the world on its knees,

the applicant could not commence with the mining operations on the 15th April 2020 as it had planned.

[6] On the 28th June 2021 the 1st respondent invited the applicant to show cause why the mining lease could not be revoked for failure to comply with the terms of the lease agreement and mining programme. The 1st respondent complained that since the issuance of the mining lease in 2017, the applicant had not commenced with production and was non-compliant with the terms of the mining lease.

[7] In response, the applicant provided a comprehensive explanation for the delays through its letter dated the 12th July 2021 addressed to the 1st respondent. Amongst the obstacle mentioned in the letter is the delay arising from breakdown of treatment plant, long lead times in manufacturing specialised processing equipment, worldwide COVID -19 pandemic which affected mining industry due to imposed movement restrictions, Government's failure to approve the revised mining plan as well as to facilitate registration of the mining lease and failure to acquire shares in the applicant. The applicant indicated in the letter that it was ready to commence the operations on the 1st September 2021. There was no response from the 1st respondent. Tellingly, some of the challenges which the applicant alluded to, if not all, had already

been communicated by the applicant to the 4th respondent through a letter dated the 17th February 2020.

[8] Notwithstanding the explanation provided by the applicant to the 1st respondent for the delay and previous communication on the same, the 1st respondent issued yet another letter on the 29th November 2021. In the letter, the 1st respondent complained about the applicant 's delay to commence operations and to develop the mine to reach commercial production since 2017 when the mining lease was issued. The 1st respondent further complained about the applicant's failure to adhere to the work programme and to pay rent due contrary to the Act and the terms of the applicant's mineral concession. The letter was issued in terms of section 68 (2) of the Mines and Minerals Act 2005. The applicant was requested to remedy the alleged contraventions within 30 days from receipt of the letter, failing which the applicant's mineral concession was going to be cancelled.

[9] Though it is not palpably clear if the applicant responded to the letter, it seems a fair inference that the letter was respondent to. Averments relevant to this letter appear in paragraph 3.24 of the founding affidavit. The last sentence of the paragraph states that "*In the same manner, there has been no response to date*". While this could as well mean that the applicant itself did not respond to the 1st respondent's letter, the appropriate meaning of the

sentence in the context of the affidavit is that the applicant provided a response, but it never got feedback from the 1st respondent as it previously happened. In the preceding paragraph of the affidavit which deals with invitation to show cause, the applicant said it never got a response to its representations, hence the words “*in the same manner, there has been no response*” could only mean that as it previously happened, the applicant’s letter did not draw any response from the 1st respondent.

[10] In early January 2022 the applicant received a letter terminating the lease agreement from the 1st respondent for failure to commence with the operations to reach the commercial production as well as for failure to meet reporting obligations and to remedy the breach following the letter of the 29th November 2021. The applicant was given 30 days within which to discharge its liabilities and obligations that arose prior to termination. In response, the applicant through its attorneys of record directed a letter dated the 2nd February 2022 to the 1st respondent the nub of which was to declare dispute in terms of article 37 of the mining lease between the parties. It indicated that the 1st respondent should have referred the dispute relevant to the delays to commence mining operations to arbitration as agreed method of dispute resolution instead of terminating the lease. The 1st respondent reacted with a letter dated the 14th February 2022 addressed to the attorneys arguing that since the mining lease

had already been terminated, referral of the dispute to arbitration had been overtaken by the events.

[11] The applicant is attacking the decision to terminate the mining lease on the ground of it being illegal, unlawful and irrational. Inasmuch as I am not called upon to determine the validity of the applicant 's complaint at this stage, it suffices to highlight the following as the grounds upon which applicant is basing its case: (a) the applicant is not in breach of the mining lease as a result of which the grounds for termination are a red herring; (b) that the delay to commence mining operations, if any, was a result of COVID – 19 pandemic accompanied by the Government 's indifference to meet its material obligations under the agreement; (c) that the 1st respondent is in breach of several material terms of the agreement, (d) that the 1st respondent cannot exercise the power to terminate the agreement without adhering to dispute resolution mechanism provided for by article 37 of the agreement, etc.

URGENCY

[12] I Invited Mr. *Teele* to address me on urgency. The preliminary view I held was that the notice of motion was not as far as possible in compliance with Form J as per the peremptorily requirements of rule 8(7). It

deviates completely from Form J and rule 8(8) inasmuch as it does not stipulate time periods for the filing of notices suitably abridged in accordance with the urgency of the matter. Rather, the applicant opted to use Form I. Again, on the face of the certificate of urgency, it was not clear why this Court should immediately put aside everything it was doing and prioritise this case.

[13] The deficiency in the certificate of urgency exacerbated my concern that the respondents were given less than 48 hours to react to the application contrary to rule 8 (23) which requires that a Minister or other officer or servant of the Crown when sued in his capacity as such, shall not be given less than 14 days from the date the application is served to file intention to oppose unless the Court shall have authorised a shorter period. The rule applies in every application against Government functionaries in their capacity as such. While the scheme of the rules is such that it is permissible to shorten the periods, there must be a good explanation for reducing the period from 14 days to less than 48 hours.

[14] Mr. *Teele*, advisedly so in my view, conceded that the certificate of urgency was not elegantly drafted for the Court to immediately appreciate why this case should jump the queue. He proceeded to submit that the aim was to give the respondents 48 hours' notice, which he argued, was almost met. He strenuously asserted that in determining whether the applicant was dilatory in

bringing this application, the material date was the 14th February 2022, being the date on which the 1st respondent declined arbitration, and not the 3rd January 2022 being the date on which the mining lease was terminated. He submitted that the applicant could not have come to Court immediately after it received the letter of termination as it had to first explore the available remedy of arbitration. On the strength of the decision in **Scriven Bros v Rhodesian Hides & Produce Co. Ltd and Others** 1993 (1) SA 393, Mr. Teele argued that arbitration provisions in the agreement survive termination, as a result of which the 1st respondent was ill-advised in declining arbitration. I must say, within the limited time that I had, I read the judgment and I am in respectful agreement with the decision reached therein.

[15] Regarding prayer 3 in the notice of motion, the one relevant to suspension of execution of the letter of termination dated the 3rd January 2022, Mr. Teele argued that though inelegantly drafted, viewed in the context of prayer 8 in the notice of motion, the prayer was that of specific performance. As consequent, so he argued, the applicant was not required to establish four requirements of interdicts *pendente lite*. I agree with Mr. Teele that in an application for specific performance, the applicant is not required to prove normal requirements of interdict *pendente lite* though there are a few cases of specific performance where these were required. See for instance: **Admark (Recruitment) (Pty) Ltd v Botes** 1981 (1) SA 860 (W) 861 C. Again, in a

claim for vindicatory or quasi – vindicatory the applicant is not required to prove for instance actual or a well-grounded apprehension of irreparable loss.

See: **Stern and Ruskin, NO v Appleson** 1951 (3) SA 800 at 813.

[16] On being asked to address the Court on the four requirements of temporary interdict in the event of the Court finding that prayer 3 was in effect a prayer for temporary interdict, Mr. *Teele* asserted that all the requirements for temporary interdict were demonstrated in the founding affidavit. When the Court invited him to direct its attention to specific paragraphs in the founding affidavit where these requirements were canvassed, Mr. *Teele* somewhat acknowledged that the requirements regarding the balance of convenience and absence of any other satisfactory remedy were not intelligibly canvassed. He sought to argue that considering the nature of applicant's business, it will not be possible to quantify damages as the value, quality and quantity of diamonds to be mined is not predictable.

[17] For his part, Mr. *Moshoeshoe* argued that the applicant was dilatory in instituting the instant case inasmuch as it knew from 28th June 2021 when it was served with a show cause letter that the 1st respondent wanted to terminate its mining lease. He indicated that even after the mining lease was terminated on the 3rd January 2022, the applicant waited until the 16th February 2022 to come to Court on an urgent basis. He argued that on the strength of the

decisions is **Lehohla and Others v The Government of the Kingdom of Lesotho and Others** CIV/APN/125/2019; and **The President of the Court of Appeal v The Prime Minister and Others Constitutional Case** No:11/2013, I should dismiss the application as urgency was self – created. I have read both judgments and indeed the delay and availability of substantial remedy in a hearing in due course were the considerations in dismissing the applications.

[18] Mr. *Moshoeshoe* further argued that prayer 3 was untenable as the decision to terminate the mining lease had already been taken. He relied in the decision of **Letsatsi Ntsibolane v Teaching Service Commission and Others** CIV/APN/45/2019 to drive his point home. Likewise, I have had an occasion to read the judgment. The decision was mostly underpinned by the fact that it was untenable to order reinstatement as an interim relief as well as the fact that other requirements of temporary interdict had not been satisfied. I do not understand the applicant in *casu*, at least at this stage, to be saying that this Court should undo the decision of the 1st respondent in the meantime.

[19] Moreover, Mr. *Moshoeshoe* argued that prayer 3 was not a prayer for specific performance but rather a prayer for interdict in terms of which the applicant wanted the Court to maintain *status quo*. Placing reliance on **Smally Trading Company t/a Smally Uniform & Protective Clothing v Lekhotla Matsaba and Ten Others** C of A (CIV) 17/2016, Mr. *Moshoeshoe* argued that

prayer 3 should be refused on the ground that the applicant failed to demonstrate well-grounded apprehension of irreparable harm and the absence of any other satisfactory remedy.

ANALYSIS

[20] I have already dealt with the certificate of urgency that was awfully inadequate in terms of explaining why the matter deserved urgent attention. I turn now to the attenuated notice of hearing, less than 48 hours' notice. It is trite that applicants in an urgent application must give proper consideration to the degree of urgency and then tailor the notice of motion accordingly. The applicants are allowed to truncate time period for filing a notice of intention to oppose and answering affidavits and may only deviate from the form of service provided for in the rules to the extent necessary. In **Luna Meubel Vervaardigers (Edms) V Makin and Another (t/a) Makin's Furniture Manufacturers** 1977 (4) SA 135 (W) at page 137 E- G the Court said that:

“Practitioners should carefully analyse the facts of each case to determine, for the purpose of setting the case down for hearing, whether a greater or lesser degree of relaxation of the rules and the ordinary practice of the court is

required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. ... [A]n applicant must make out a case in the founding affidavits to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.”

[21] In **Caledon Street Restaurants CC v Monica D’ Aviera** ECD Case No. 2656/97; [1998] JOL 1832 (SE), with which I respectfully agree, it was emphasised that the mere existence of some urgency will not justify the wholesale disregard of the time limits contained in the rules. It was further observed, correctly so in my view, that the temptation was to brush the wrong handling of the matter and the applicant’s presentation thereof as urgent beyond what was justified, under the mat. Kroon J emphasised in **Caledon Street Restaurants**, *supra*, that the fact that a postponement was granted and the other party able to file its papers in time for argument, must not be allowed to cloud the issue whether the Applicant’s modification of the rules on the grounds of urgency was unacceptable.

[22] I accordingly find that less than 48 hours’ notice given to the respondents was extremely inadequate. There is no justification on papers why the relevant Form was not used and no sufficient explanation why the respondents were given less than 48 hours to consider this case. Inasmuch as when considering the affidavit as a whole, I am convinced that the matter is of

sufficient urgency, it was not necessary for the applicant to pressurise the respondents and the Court in the manner it did in the circumstances of this case. I say this considering the circumstances of this case and my view in this regard is not based on a degree of inflexible formalism. It is rather actuated by the desire to ensure that urgent applications are properly managed in the interest of litigants and proper functioning of our courts as well as general administration of justice. Courts are always pressed for time and invitation to them to consider a matter as urgent must be both genuine and well-motivated. I reiterate that the matter was not of extreme urgency warranting less than 48 hours' notice.

[23] In **Mahlakeng and Others v Southern Sky (Pty) Ltd and Others** LAC (2000-2004) 742 at page 751, the Court of Appeal referred to the case of **Highlands Water Venture v D.N.C Construction (Pty) Ltd** CIV No.123 and 124 of 1994, unreported Lesotho High Court judgment, where *Monaphathi J* said the following:

“The party bringing an application *ex parte* must set out the circumstances justifying dispensing with all prior notice to the respondent and why he cannot obtain substantial relief in a hearing in due course. This also means that a proper form of notice shall be used. Any deviation therefrom shall be fully explained and justified. A most comprehensive treatment on the circumstances and the need for use of proper notice of motion is to be found in the judgment of *Flemming DFP in Gallagher v Norman's Transport* 1992 (3) SA 502-504.”

[25] What *Monaphathi J* said in **Highlands Water Venture**, *supra*, applies with equal force in urgent applications that are brought on notice to interested parties. In fact, the matter of **Mahlakeng and Others**, *supra*, did not deal with an *ex parte* application as such, but dealt with a situation where the respondents were served with application in the afternoon of the 4th June and invited to appear in court the next day, on the 5th June 2003 at 9.30 a.m. *Steyn P*, as he was, aptly put it at page 744 of the judgment where he said, “*No provision was made for them to give notice of their intention to oppose as is required by form “J” which is applicable in all applications other than those brought ex parte.*” Giving an interested party inadequate notice undermines the principle of *audi alteram partem* as the other party is denied a sufficient time to prepare itself for a hearing.

[26] I now turn to another requirement for urgency to be invoked. That is, besides explicitly setting forth the circumstances which it avers renders the matter urgent, the applicant is also required to provide reasons why it claims it could not be afforded a substantial relief at a hearing in due course if the periods presented by the rules were followed. See: **Rule 8(22)(b) of High Court Rules, 1980**. While the applicant does not in explicit terms say that it will not be afforded a substantial redress in an hearing in due course, I have looked at the entire case and taken into account the applicant’s case that the nature of the

harm it “*shall bear given the alleged transgressions of the 1ST RESPONDENT and or his authorised agents is immeasurable*”. Looking at the merits of this case and the fact that the 1st respondent declined arbitration as a result of which the applicant was left with no option, but to approach this Court, it is my considered view that the matter has to be treated on an urgent basis. It is important to note that absence of substantial redress is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. See: **East Rock Trading 7 (Pty) Ltd and One v Eagle Valley Granite (Pty) Ltd and Others** (11/33769) [2011] ZAGPJH 196 (23 September 2011) at para 7.

[27] When considering whether the applicant was dilatory in instituting its application, a Court must also take into account efforts taken by a litigant to resolve the matter before coming to Court. See: **Nelson Mandela Metropolitan Municipality v Greyvenouw CC and Others** 2004 (2) SA 81 (SE) at 94 C – D; **East Rock Trading 7 (Pty) Ltd and One, supra.** While there is a period of about a month that remains unaccounted for from the 3rd January 2022 when the termination letter was issued to the 2nd February 2022 when the applicant responded to the termination letter, I have taken into account the steps the applicant took as well as the merits of this case in arriving at the conclusion that the matter deserves to be treated on an urgent basis. But even were I wrong in that conclusion; I am confident the matter would be on a semi urgent roll if we

had such in our jurisdiction. It is opportunistic for the respondents to contend that the determination of this matter is not urgent when it took the 1st respondent almost two weeks to consider and decline the applicant 's referral of the matter for arbitration.

[28] To struck the case from the roll of urgent matters on the basis of the deficiencies and non – compliance I identified above, would in my view, make the Court the captive of the rules even in circumstances where it is clear that the case warrant to be handled with urgency. This decision is obviously not to be interpreted as holding that non-compliance identified above will always be excused. Each case will always be decided on its own unique merits.

PRAYER 3

[29] I am not convinced that prayer 3 is a prayer for specific performance. It is a prayer for the Court to maintain the *status quo*. The net effect of the prayer is to prohibit the respondents from taking any action pursuant to the termination letter issued by the 1st respondent on the 3rd January 2022. A prayer for specific performance has its foundation from breach of contract and the relevant breach must be pleaded like it has been done with prayer 8 on the notice of motion that I am not called upon to determine now. As a result, the applicant is required to meet the requirement of interim interdict.

[30] It is trite that the requirements for an interim interdict are the following:

- i. a prima facie right, although open to some doubt;
- ii. a well -grounded apprehension of irreparable harm if interim relief is not granted and ultimate relief is eventually granted;
- iii. the balance of convenience favours the granting of the interim interdict; and
- v. the applicant has no other satisfactory remedy.

See: **Webster v Mitchell 1948** (1) SA 1186 (W)

Smally Trading Company t/a Smally Uniform & Protective Clothing v Lekhotla Matsaba and Ten Others

C of A (CIV) 17/2016

Attorney General & Another v Swissbourgh Diamonds

Mines (Pty) Ltd and Others LLR & LB 1995 – 1996 173 at 183

[31] These requirements must not be assessed separately or in isolation, but in conjunction with one another. See: **Eriksens Motors (Welkom) Pty Ltd v Protea Motors (Warrenton)** 1973 (3) SA 685 (A) at 691 (F). Given the outcome I reach in this matter, I need not discuss the requirements in detail.

Though there is no express mention of *prima facie* right in the affidavit, looking at the affidavit as a whole, there is demonstration of a *prima facie* right based on the facts. Again, though the applicant is silent about the likely prejudice to the respondents in the event that the interdict is granted *vis a vis* the prejudice that the applicant will suffer if interdict is not granted, the applicant has somewhat shown that the balance of convenience favours the granting of the interim relief. However, the applicant 's case is wanting when it comes to irreparable harm and absence of alternative remedies. All that the applicant says is that the nature of harm it shall suffer given the alleged transgressions is immeasurable.

[32] The applicant does not take the Court into his confidence and explain why the harm will be immeasurable and does not go further to demonstrate how the harm it will suffer will be irreversible. Again, when it comes to adequacy of alternative remedy, all that the applicant says is that damages cannot be adequate to avert the potential prejudice it stands to suffer. It was only during argument that Mr. Teele sought to explain in detail why it will not be possible to quantify the damages that the applicant was likely to suffer. Unfortunately, these being motion proceedings, the applicant was required to plead its case in the founding papers and not through Counsel from the bar.

[33] In the light of the conclusions reached above on urgency and prayer 3 in the notice of motion, I make the following order:

ORDER

- [34] 34.1 that prayers 1,2 and 4 in the notice of motion are granted;
- 34.2 that prayer 3 is refused; and
- 34.3 that the costs of the application for interim relief to be costs
 in the cause.

A.R. MATHABA J
Judge of the High Court

For the Applicant: Mr. M. Teele KC
For the Respondents: Mr. M. Moshoeshoe