

IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)

HELD AT MASERU

CCA/0092/2022

In the matter between:

MOKOBANE MALIEHE

APPLICANT

AND

EUROTYRES (PTY) LTD

1ST RESPONDENT

NAKO MATSOSO

2ND RESPONDENT

TEBOHO MOSHOESHOE

3RD RESPONDENT

KHOTSO NKALA

4TH RESPONDENT

STANDARD LESOTHO BANK

5TH RESPONDENT

MASTER OF THE HIGH COURT

6TH RESPONDENT

ATTORNEY GENERAL

7TH RESPONDENT

Neutral Citation: Mokobane Maliehe v Eurotyres (Pty) Ltd & 6 Others [2023]
LSHC 133 Comm. (03RD AUGUST 2023)

CORAM: MOKHESI J
HEARD: 21ST MARCH 2023
DELIVERED: 03RD AUGUST 2023

SUMMARY

COMPANY LAW: *The applicant who is the shareholder of a company suing the company and its shareholders for the value of his shares while the company remains undissolved- Held, while the company remains undissolved the shareholder cannot be paid a value of his shares outside the buying-out of his shares by the company in terms of section 41 of the Companies Act 2011- The application accordingly dismissed with costs.*

ANNOTATIONS

Legislation:

Companies Act, 2011

Cases:

Lesotho Olympic Committee LAC (2000 – 2004) 449

JUDGMENT

[1] Introduction

This is an application by a shareholder of a company in terms of which he is seeking to be paid the amount of M339,462.88 as the value of shares he alleges belong to him following what he considered to be a buy-out of his shares by the company, within seven (7) days of the issuance of the order, failing which the 1st Respondent company be liquidated. The application is opposed by the company and its other shareholders.

[2] Background Facts

As already stated, the applicant, 2nd to 4th respondents are shareholders in the 1st respondent, each holding 40%, 30%, 20% and 10% shares respectively. These individuals are the only shareholders of the company. In April 2022, the applicant returned from work abroad to attend a family ceremony. He found out that there had been violence which had been perpetrated by one of the company's employees on another, and in order to prevent further escalation, pending resolution of the matter, he decided to close the business premises. Following this closure, he was served with the spoliation application in terms of which he was ordered to surrender the keys to the business premises. The order further froze the company's business account.

[3] In the same month the rule nisi on the return day of the rule nisi, the court advised (Magistrate Court) both parties to resolve the matter amicably. Consequent to this advice by the court, a meeting was convened between the parties' legal representatives with a view of reaching settlement to the dispute. The main purpose of the meeting was to value the company and

to determine the value of each shareholder's holding. At the meeting which was held on the 24 June 2022 the 1st respondent's financial report was tabled.

- [4] The 1st respondent's bank account was unfrozen on 14 July 2022 by the learned magistrate. On seeing the financial report, the applicant wrote a letter in terms of which he proposed that he be paid 40% of the money in the company's business account and 40% of the value of tyres the company sells. The tyres are the 1st respondent's main stock item. There was much correspondence between the parties' counsel on this issue. What was supposedly a headway in the *impasse* was achieved on 23 August 2022 when the respondents agreed that the applicant will be paid the value of his shares in the 1st respondent. The applicant was advised by the 1st respondent to make an unconditional resignation letter as a precondition for payment. The applicant resigned, instead, conditionally, as a director of the 1st respondent in which he stated that his resignation would be conditional on the amount of M339,462.88 being transferred into his account. In response, the respondents' counsel wrote a letter to the applicant's counsel conveying the respondents' acceptance of the applicant's resignation, and their willingness to part with 40% of the value of tyre stock. They however, critically, indicated that because the money which the company had according to the financial statement alluded to above, had diminished, and that he would only get the amount he claims once the tyre stock on hand was sold. What in essence this meant was that no agreement was reached as the respondents were counteroffering. In a nutshell, the applicant is still a shareholder and a director of the 1st respondent as the matters stand.

[5] In its opposition, the respondents do not deny the allegations which the applicant is putting forth. They, however, propose that the court (at para. 14 of their answering affidavit) "...it would be in the best interest of both parties if this Honourable Court can put the time frames for the parties herein to commence voluntary liquidation proceedings as soon as possible as it is clear that the parties herein can no longer work together."

[6] **Discussion and the Law**

I turn to consider whether the reliefs sought can be granted by this court. It will be observed that the main relief which the applicant is seeking presupposes that he is owed money but as we have seen from the narration of background facts in the preceding paragraphs the proposal to have him bought out of the company fell through, resulting in the *status quo* remaining as it was, with him being a director and a shareholder of the 1st respondent. The question which then comes to mind is whether it is tenable for a shareholder of a company to seek to be paid the value of his shares while the company remains undissolved. As I understand the legal position, the shareholder can only be paid a value for the shares he/she holds in the company if shares are purchased by the company in terms of the provisions of Section 41(2) of the Companies Act, 2011.

[7] In the present matter, the applicant is seeking an untenable relief. On reading all the papers filed of record it is clear that the parties would like to have the company dissolved as they are constantly involved in acrimonious fights over its control, to its detriment. But that relief was not sought by the applicant and therefore cannot be granted. It is trite that a court cannot grant a relief which was not sought by the applicant (**Lesotho Olympic**

Committee LAC (2000 – 2004) 449 at p. 456 F – G). If the parties want to dissolve the company, as they seemingly do, it is entirely up to them to invoke the provisions of Section 163 of the Companies Act, 2011 in order to achieve that end. The court can not grant dissolution in the absence of jurisdictional facts justifying such order. The present application was about the recovery of what was supposedly a debt owed by the 1st respondent to the applicant, but as it turned out there was no such debt as the agreement for buying out the applicant fell through.

[8] In the result, it follows therefore, that:

(i) The application is dismissed with costs.

MOKHESI J

**For the Applicant: Adv. B. Mokoatle instructed by K. J Nthontho & Co.
Attorneys**

**For the 1st to 4th Respondents: Mrs Manyokole from Da Silva
Manyokole Attorneys**