

IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)

HELD AT MASERU

CCA/0115/2022

In the matter between

MOIPONE FLEET LEASING SERVICES (PTY) LTD APPLICANT

AND

PULANE KOLISANG 1ST RESPONDENT

OFFICER COMMANDING MASERU CENTRAL 2ND RESPONDENT

COMMISSIONER OF POLICE 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

Neutral Citation: Moipone Fleet Leasing Services (Pty) Ltd v Pulane Kolisang &
3 others [2023] LSHC 53 Comm. (27TH APRIL 2023)

CORAM: MOKHESI J

HEARD: 23RD FEBRUARY 2023

DELIVERED: 04TH MAY 2023

SUMMARY

CIVIL PRACTICE: *The point of lack of jurisdiction of the court being raised for the first time in the heads of argument- propriety thereof- Held, lack of jurisdiction goes to the core of the court's competency to hear the matter, and therefore it can be raised at any point, even for the first time on appeal.*

ANNOTATIONS

Cases:

Attorney General v Kao LAC (2000 – 2004) 656

Director of Public Prosecutions and Others v Pitso Ramoepane and Others C of A (CIV) 49/2020 (14 May 2021) (unreported)

Phomolong Investment (Pty) Ltd v KEL Property Company (Pty) Ltd C of A (CIV) 28/2022 (11 November 2022) (unreported)

JUDGMENT

[1] The applicant had approached this court on *ex parte* basis seeking attachment of vehicle in the interim and cancellation of the lease agreement between the parties in the main. The interim relief was granted as prayed on the 29 November 2022. The pleadings were closed, and the matter was finally heard on the 23 February 2023. The 1st respondent's counsel, Adv. Lesholu raised the issue of this court's lack of jurisdiction to hear the matter for the first time in his heads of argument. The applicant objected to this point being raised outside of the pleadings, however, despite the applicant's vehement objection, this court acceded to the 1st respondent argument that it lacks jurisdiction to entertain the matter on account of the existence of arbitration clause in the agreement between the parties. I gave an *ex tempore* judgment promising to deliver full written reasons in due course. The present are the reasons for upholding the jurisdictional point raised.

[2] **Factual Background**

The applicant and the 1st respondent on 25 June 2019 entered into a vehicle leasing agreement in terms of which the applicant leased motor vehicles to the 1st respondent at a rental fee of M15380.28 per month. The lease was for the period of forty-eight (48) months. The effect of the lease is that during its currency the applicant retains ownership. In terms of the agreement the 1st respondent was authorized to use the vehicle by hiring it out to the third party being the Government of Lesotho.

[3] Aggrieved by what it considered to be breach of the agreement by the 1st respondent in not paying monthly instalments in terms of the vehicle leasing

agreement, the applicant instituted the current application *ex parte*. It should be stated that the agreement between the parties contains an arbitration clause in terms of which all disputes arising out of the agreement should be referred to arbitration.

[4] When the 1st respondent was served with the *ex parte* order and the applicant's founding papers it immediately opposed it and raised a number of the so-called points in *limine*, namely, material non-disclosure, abuse of *ex parte* and urgency procedure, non-compliance with financial regulations. However, a point in *limine* regarding this court's lack of jurisdiction in view of the existence of arbitration clause, engendered vigorous debates because it was raised by the 1st respondent from the bar. I turn to deal with these points.

[5] **Lack of Jurisdiction**

As already stated, the leasing agreement which is the subject of these proceedings contains an arbitration clause in terms of which all disputes arising out it are to be referred to arbitration. The applicant contends that the 1st respondent should have raised the point of lack of jurisdiction only in its answering affidavit. I find this contention to be without substance. Jurisdiction is a threshold issue because it speaks to the court's competency to hear and determine the matter. Jurisdiction is so critical that it can be raised at any stage of the proceedings because where the court lacks jurisdiction it cannot be conferred on it my parties or the court's inadvertence to raise it. The defence of jurisdiction can even be raised on appeal (**Attorney General v Kao LAC (2000 – 2004) 656 at paras. 13 –**

18; Director of Public Prosecutions and Others v Pitso Ramoepane and Others C of A (CIV) 49/2020 (14 May 2021) (unreported).

[6] On the strength of the case of **Phomolong Investment (Pty) Ltd v KEL Property Company (Pty) Ltd C of A (CIV) 28/2022 (11 November 2022) (unreported)** and the authorities cited therein, the existence of an arbitration clause in the agreement between the parties disqualifies the court of law from hearing and determining the parties' dispute. This conclusion renders it unnecessary to deal with other points in *limine* raised.

[7] The application is dismissed with costs.

MOKHESI J

For the Applicant: Adv. T. Fiee instructed by Mei & Mei Attorneys

For the 1st Respondent: Adv. R. Lesholu instructed by K. D Mabulu & Co. Attorneys

For the 2nd to 4th Respondents: No Appearance