

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CIV/T/634/2018**

In the matter between

**NKOPANE MOHLOMI**

**PLAINTIFF**

AND

**LESOTHO NATIONAL INSURANCE COMPANY**

**1<sup>ST</sup> DEFENDANT**

**‘MAMOE A HLATHE**

**2<sup>ND</sup> DEFENDANT**

**MPAKA MAFAESA**

**3<sup>RD</sup> DEFENDANT**

**Neutral Citation:** Nkopane Mohlomi v Lesotho National Insurance Company & 2 Others LSHC Civ 67 (21<sup>st</sup>

February 2025)

**CORAM** : **BANYANE J**  
**HEARD** : **06/12/2024**  
**JUDGMENT** : **21/02/2025**

### **Summary**

Claim for damages by a passenger injured from a motor vehicle accident- vehicle insured by the defendant- special plea challenging jurisdiction of the High Court on grounds that the plaintiff's claim is limited to M 12 000 .00-sections 6,8, 9 and 14 of the Motor Vehicle Insurance Order of 1989 discussed- The right to claim under section 6 limited to the class of passengers enumerated in section 8 Passenger's claim limited to M 12 000.00. Special plea validly raised-Court declines jurisdiction.

### **ANNOTATIONS**

#### **Legislation**

1. High Court Act No.5 of 1978
2. Subordinate Court (Amendment) Act No.6 of 1998
3. Motor Vehicle Insurance Order 26 of 1989

#### **Cited Cases**

#### **Lesotho**

1. Jaase v Jaase C of A (CIV) 67 of 2017

2. Nqojane v National University of Lesotho 91985-89) LAC 383
3. Jobo v Lenono C of A (Civ) 28/10
4. Makoala v Makoala C of A (CIV) 04/ 2009
5. Mapiloko v Fragmar (Pty) Ltd C of A (CIV) 42 of 2017
6. Masetsa Ramarumo and another v Khotso Selomi C of A (CIV)44 of 2019
7. Pule v Letlala CIV/T/149/2019[2021] LSHC 36
8. Mtambo v. Lesotho National General Insurance Company Ltd, CIV/T/259/18

### **South Africa**

1. Makhanya v University of Zululand (218/2008) [2009] ZASCA 69
2. Pillai v Auto Protection Insurance Co. Ltd 1964 (1) SA 113
3. Van Blerk v African Guarantee and Indemnity Company 1963 (3) SA 814 (W)
4. Aetna Insurance Company v Minister of Justice 1960 (3) SA 273 (AD)
5. Estate Agents Board v Lek 1979 (3) SA 1048(A)
6. Gcaba v Minister of Safety and Security 2010 (1) SA 238 (CC)
7. Galo Africa Ltd and others v Sting Music (Pty) Ltd and others 2010 (6) SA 239 (SCA)

## **JUDGMENT**

### **BANYANE J**

### **Introduction**

[1] The plaintiff instituted a claim against the defendant for payment of the sum of M 155 540.50 as compensation for bodily injuries arising out of or caused by the alleged negligent driving of a motor vehicle registered CM 105. The vehicle overturned on 28 August 2016 at Ha Lejone. In his declaration, the plaintiff asserts that he was a passenger in this vehicle. He claims the damages under the following heads:

1. M 540.00 for medical and hospital expenses.
2. M 15 000.00 Estimated future medical and hospital expenses.
3. M 60 000.00 General damages for pain and suffering.
4. M80 000.00 Loss of amenities of life.

[2] After filing its notice of intention to defend, the defendant requested further particulars, including details as to the purpose for which the plaintiff was conveyed in CM 105. The plaintiff declined to furnish the particulars, stating they were not necessary for pleading. The defendant subsequently filed its plea.

## **The special plea**

[3] The defendant raised a defence of lack of jurisdiction by way of a special based on the following grounds:

- (i) In terms of the provisions of section 8 (1) of the Motor Vehicle Insurance Order, 1989, (as amended) the defendant's liability towards the plaintiff (if established) is limited to M 12 000.00.
- (ii) In terms of the Subordinate Court (Amendment) Act No.6 of 1998, the monetary jurisdiction of the Magistrate Court is M 25 000.00.
- (iii) Consequently, the matter falls within the jurisdiction of the Magistrate Court and could only be filed in the High Court pursuant to section 6 of the **High Court Act No.5 of 1978**, i.e, with leave of the Judge or by the Judge acting on his own motion.

[4] The plaintiff thereafter applied for joinder of the driver of CM 105 and the vehicle owner. However, on the date appointed for the hearing of the matter, I directed parties to argue the special plea only and that the joinder application would be entertained if the Court dismissed the special plea.

## Submissions

[5] Advocate Putsoane, on behalf of the defendant, cited several authorities explaining the spirit and purport of the provisions of sections 6 of the **High Court Act 1978**.<sup>1</sup> These authorities show that the general unlimited jurisdiction of the High Court conferred by section 2 of the High Court Act, 1978 is qualified by section 6 with the result that a civil case within the jurisdiction of a subordinate Court may be instituted in or removed into the High Court by a Judge acting on his motion, or with his leave upon application to him by a party on notice to the other party.<sup>2</sup>

[6] Put differently, where the High Court and a subordinate Court have concurrent jurisdiction to hear and determine a matter, the subordinate Courts have precedence unless the judge acting on his own motion or upon

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<sup>1</sup> Masetso Ramarumo and another v Khotso Selomi C of A(CIV) 44 of 2019, Setofolo Lintsa v Mahloko C of A 20 of 2002 and other cases

<sup>2</sup> Jaase v Jaase C of A C(CIV) 67/2017

application for leave, permits the institution or removal of the proceedings from the subordinate Court to the High Court under **section 6** of the **High Court Act of 1978**.<sup>3</sup>

[7] Advocate Makae conversely argued that the plaintiff's claim as pleaded exceeds the Subordinate Court's monetary jurisdiction and is therefore properly instituted before this Court. Relying on **Makoala v Makoala**<sup>4</sup> She argued that it is impermissible for the defendant to convert its defense on the merits into a preliminary issue.

### **Issue for determination**

[8] The sole issue for determination is whether the plaintiff's claim falls within or beyond the jurisdiction of the Magistrates' Court.

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<sup>3</sup> Nqojane v National University of Lesotho (1985-89) LAC 383, Mapiloko v Fragmar (Pty) Ltd C of A (CIV) 42 of 2017.

<sup>4</sup> C of A (Civ) 04/2009

## **The law on jurisdiction**

[9] The term jurisdiction has many meanings. Jurisdiction is defined as the power vested in a court by law to adjudicate upon, determine, and dispose of a matter.<sup>5</sup>

[10] The jurisdiction of a court depends on either the nature of the proceedings or the nature of the relief claimed or, in some cases, on both, but it does not depend on the substantive merits of the case or the defence relied upon by the defendant.<sup>6</sup>

[11] For purposes of deciding the validity of the preliminary point, the applicant's pleadings alone should be considered.<sup>7</sup> This means the disposal of a jurisdictional challenge entails no more than a factual inquiry, with reference to only the particulars of the claim to establish the nature of the right that is being asserted in support of

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<sup>5</sup> Ewing v McDonald & Co Ltd v M & M Products Co 1991(1) SA 252(A) at 256G, see also Veneta Minerarai Spa v Carolina Collieries (Pty) Ltd 1987(4) SA 883(A) at 886 D, Graff Reinet Municipality v Van Ryneveld's Pass Irrigation Board 1950(2) SA 420(A) at 424.

<sup>6</sup> Estate agents Board v Lek 1979 (3) SA 1048(A), Gcaba v Minister of Safety and security 2010 (1) SA 238 (CC). Galo Africa Ltd and others v sting Music (Pty) Ltd and others 2010 (6) SA 239 (SCA) para 6

<sup>7</sup> Makoala v Makoala C of A (Civ) 04/2009



the claim.<sup>8</sup> Sometimes, the right that is being asserted might be identified expressly. At other times, it might be discoverable by inference from the facts that are alleged and the relief that is being claimed.<sup>9</sup>

## **Discussion**

[12] I turn to examine the facts of this matter to establish the nature of the right asserted in support of the plaintiff's claim. The brief facts in the plaintiff's declaration are that he was a passenger in vehicle CM 104 when it overturned. He sustained injuries that gave rise to the claim of compensation in the amount of M155 540.50 against the insurer of CM 105. The right to claim damages against the insurer is cognizable under the Motor Vehicle Insurance Order, 1989.

[13] The basis for the jurisdictional challenge is that a passenger's right to claim damages against the insurer is subject to section 8(1) of the Motor Vehicle Insurance Order, 1989, which limits a claimant's entitlement to an amount

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<sup>8</sup> Makhanya v University of Zululand (218/2008) [2009] ZASCA 69, (para 31)

<sup>9</sup> Makhanya v University of Zululand (218/2008) [2009] ZASCA 69, (para 31)

of M 12 000.00. This being the case, the plaintiff's claim ought to have been filed in the Subordinate Court or instituted in this Court by leave because the unlimited jurisdiction of the High Court conferred by section 2 of the **High Court Act, 1978** is curtailed by the provisions of section 6 of the Act.

[14] I now proceed to consider the provisions of the Motor Vehicle Insurance Order, 1989, referred to by Mr. Putsoane, to determine whether the plaintiff's claim is within the Subordinate Court's jurisdiction.

[15] The convenient starting point is Section 6. It provides that the insurer shall be obliged to compensate any person for any loss or damage which the third party has suffered as a result of;

- a) Any bodily injury to himself.
- b) The death or any bodily injury to any other person; in either case caused by or arising out of the driving of a registered motor vehicle by any person, in Lesotho, if the injury or death is due to the negligence or other unlawful act of the person who drove the registered motor vehicle or of the owner or his servant in the execution of his duty.

[16] Section 8 provides that:

8 (1) The liability of an insurer in connection with any one occurrence to compensate a third party for any loss or damage contemplated in section 6 which is the result of any bodily injury to or the death of any person who, at the time of the occurrence which caused the injuries or death, was being conveyed in or on the registered motor vehicle concerned, shall be limited in total-

- a) to the sum of M 12 000.00 in respect of any bodily injury to or death of any one such person who at the time of the occurrence which caused that injury or death was being conveyed in the registered motor vehicle in question,
  - i) for reward
  - ii) in the course of the business of the owner of that registered motor vehicle; or
  - iii) in the case of an employee of the driver or owner of that registered motor vehicle, in the course of such employment.

[17] Section 9 reads as follows.

“9 (1) The Insurer shall not be obliged to compensate any person in terms of this Order for any loss or damage-

- a) for which neither the driver nor the owner of the motor vehicle concerned would have been liable if section 6, had not been included in this Order, or
- b) suffered as a result of bodily injury or death of any person, who, at the time of the occurrence which caused that injury or death was being conveyed in circumstances other than those set out in section 8 of the order.”
- c...
- d...

[18] I searched in vain for local authorities wherein section 8(1)(a) of the Order was interpreted. In **Mtambo v. Lesotho National General Insurance Company Ltd**<sup>10</sup> a jurisdictional challenge based on grounds similar to the present matter was raised but not decided.

[19] Section 11 (1) of the South African **Motor Vehicle Insurance Act 29 of 1942** is substantially similar to our sections 8 and 9. The former had been interpreted in numerous decisions, which I find persuasive in the inquiry

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<sup>10</sup> CIV/T/259/18

before me. Section 11 is divided into two parts. The first part is a general provision similar to section 6 of our MVIO 1989. This general provision is followed by a proviso that contains four paragraphs. The first, third, and fourth paragraphs are substantially similar to our sections 8 (1) and 9 (1)(a) and (b) read together.

**[19.1]** Section 11 imposes liability on the registered company (in our case, the insurer) to compensate a person for any loss or damage which that person has suffered as a result of bodily injury to himself through the negligent driving of a vehicle, and the liability is subject to the proviso highlighted above.<sup>11</sup>

**[19.2]** In **Aetna Insurance Company v Minister of Justice**,<sup>12</sup> The Court said:

“ The liability of the registered company is reduced by the proviso to section 11(1). Para (i) of the proviso relieves the company from liability if neither the driver nor the owner would be liable.<sup>13</sup> Para (ii) deals with cases where an employee of the driver or owner has been injured or killed, and workmen compensation has been paid to such employee or

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<sup>11</sup> 1964 (1) SA 113 at 115 – 116

<sup>12</sup> 1960 (3) SA 273 (AD) at 287.

<sup>13</sup> the equivalent of our section 9(1)(a)

dependents. Then follows para (iii) and (iv). Para (iii) relieves the registered company from liability where the person injured or killed was, at the time of the occurrence which caused his injury or death, 'being conveyed' in or upon the vehicle a)otherwise than for reward, and b)otherwise than in the course of business of the driver or owner of the motor vehicle in question, and c)otherwise than in the course of his employment as servant of the driver or owner.<sup>14</sup>

The Court further said:

“ ... As opposed to this kind of passenger, there is another large class, namely, those who are carried “otherwise than for reward, “and not in the course of the business or as the servant of the owner or the driver. In this class of passengers, the legislature clearly intended to include the family of the driver or owner, his friends, and any other person to whom he gives a gratuitous lift. In respect of persons of this class, the registered company is relieved of liability.”<sup>15</sup>

**[19.3] In Van Blerk v African Guarantee and Indemnity Company,<sup>16</sup> The Court said:**

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<sup>14</sup> P285G-H(para (iii) is similarly worded to our section 8(1)(i)-(iii)

<sup>15</sup> P287 B-D (our section 9(1)(b)

<sup>16</sup> 1963 (3) SA 814 (W) at 816 F

“It is clear from this proviso (iii) that the policy of the legislature was to debar from the benefits bestowed by the statute all those who were merely passengers in the insured vehicle in the sense laid down in **Aetna Insurance Company v Minister of Justice** 1960 (3) SA 273 (AD) at p 288; save as regards three categories namely,

- (i) Those conveyed for reward.
- (ii) Those conveyed in the cause of the business of the driver or owner.
- (iii) Those conveyed in the cause of employment as servants of the owner or driver.”

**[20]** Reverting the position of the law in our jurisdiction, section 6 of the MVIO imposes liability on the insurer to compensate a person for any loss or damage that a person has suffered as a result of bodily injury to himself through the negligent driving of a motor vehicle. Concerning passengers injured while conveyed in the insured vehicles, the liability of the insurer is subject to the provisions of section 8 read with 9. Read together, the legislature intended to limit the liability of the insurer in respect of injuries or persons who are carried for reward, those who are being carried in the course of the business of the driver or the owner of the vehicle or the servants of the driver or the owner.

[21] Although the insurer is not relieved of liability in the event of an injury or death of a passenger falling in the classes of passengers listed in section 8(1), its liability is limited to 12.000. 00. Section 9 makes it clear that any passengers falling outside the section 8 bracket are excluded from benefitting under the Act. Section 9 relieves the insurer from liability where the passenger injured or killed was, at the time of the accident, being conveyed in the motor vehicle otherwise than the circumstances shown in section 8. The test for receiving a benefit by passengers is the purpose of conveyance.

[22] In the instant matter, the plaintiff's declaration shows that the plaintiff was a passenger in CM 105, although the purpose for which he was conveyed is not stated, neither was the information supplied when sought by the defendant. Considering that the insurer's liability provided in section 6 is subject to sections 8 and 9, I accept the defendant's contention that the defendant's liability towards the plaintiff (if established by proving at trial that he falls within the classes of passengers enumerated in section 8 ) is limited to M 12 000.00. in terms of the provisions of section 8 (1) of the Motor Vehicle Insurance Order, 1989, (as amended).



[23] In terms of section 17(1) of the **Subordinate Courts Act 1988** (as amended), the Magistrates' Court has jurisdiction to adjudicate claims up to M 25 000.00. It follows that the plaintiff's legally permissible claim falls within the jurisdiction of the Magistrates' Court.

[24] The next question is whether the joinder of the vehicle owner or the driver (if granted) would justify the institution of this claim before this Court. I do not think so. The reason for this is that in terms of section 14 of the MVIO, a person entitled to a claim under the Act shall not be entitled to claim compensation in respect of that loss or damage from the owner or the driver who drove the vehicle. This section reads as follows;

14. When a person is entitled under this order to claim from the insurer any compensation in respect of any loss or damage resulting from any bodily injury to or the death of any person caused by or arising out of the driving of a registered motor vehicle under this order by the owner thereof or by any other person with the consent of the owner, the first mentioned person shall not be entitled to claim compensation in respect of that loss or damage from the owner or from the driver who drove the vehicle as aforesaid or if that person drove the vehicle as a servant in the execution of his duty from his employer, unless the insurer is unable to pay the compensation or its liability has been terminated under section 7."

[25] In **Pule v Letlala**<sup>17</sup> my brother Mokhesi J explained the rationale for this provision and concluded that;

“10. based on this rationale, if by pouring fuel into the tank of the motor vehicle, the driver or the owner is deemed by law to have taken out an insurance protect himself or herself against claims of compensation for bodily injuries to third parties, a claimant is obliged to claim against the insurer not the owner of the vehicle. The reengineering of the aw of delict brought about by the Act in terms of section 14 was to abolish the common law right of the injured party to claim against the owner, and in the owner’s stead the Act places the insurance company...”

[26] For these reasons, I conclude that the plaintiff’s claim is justiciable in the subordinate Court because the right he is seeking to assert in terms of section 6 of the **Motor Vehicle Insurance Order** is subject to other provisions of the Act discussed above. The jurisdictional challenge is, therefore, validly raised. The fact that the plaintiff framed his claim in the manner he did does not detract from the clear provisions of this Order.

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<sup>17</sup> CIV/T/149/2019[2021] LSHC 36(25 March 2021) at para

[27] Based on this conclusion, the last question to consider is whether this Court should hear and determine this claim. As stated earlier, where the High Court and a Subordinate Court have jurisdiction to hear and determine a given matter, the lower Court has precedence unless the Judge is acting on his own motion or upon application for leave, permits institution of the matter in the High Court pursuant to **section 6** of the **High Court Act of 1978**.<sup>18</sup>

[28] In **Jobo v Lenono and others**<sup>19</sup> the Court of Appeal said:

[6] The proper administration of justice requires that the High Court exercises its powers in a manner which will resolve disputes between the parties as expeditiously as circumstances permit. Where it is legitimately within its power to do so, a trial Judge should act in a way which will prevent unnecessary delay in the resolution of such disputes.

[9] ...Where a Judge may legitimately assume jurisdiction, and can do so without prejudice to the parties, he or she should not hesitate to do so in the interests of the administration of justice.”

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<sup>18</sup> Nqojane v National University of Lesotho. see also Mapiloko v Fragmar (Pty) Ltd C of A (CIV) 42 of 2017 above

<sup>19</sup> C of A (Civ) 28 of 10) [2011] LSCA 2 (20 April 2011

[29] Bearing in mind the decision of the court of appeal in **Masetsa Ramarumo and another v Khotso Selomi**(supra) to the effect that section 6 was enacted in order to prevent the High Court from being swamped with litigation not meriting its attention, I do not think that this is a matter appropriate for assumption of jurisdiction.

### **Order**

[30] For the reasons set out in this judgment, the special plea is upheld with costs.

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**P. BANYANE**  
**JUDGE**

For the plaintiff : Advocate Makae

For defendant : Advocate Putsoane