

IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU

LAC/REV/03/2021

In the matter between:

MAMARAME MATELA

1ST APPLICANT

MOTANYANE MAKARA

2ND APPLICANT

AND

LESOTHO COMMUNICATIONS AUTHORITY

1ST RESPONDENT

**LESOTHO COMMUNICATIONS AUTHORITY-
BOARD OF DIRECTORS**

2ND RESPONDENT

UNIVERSAL SERVICE FUND - LCA

3RD RESPONDENT

KENEUOE MOHALE

4TH RESPONDENT

NIZAM GOOLAM

5TH RESPONDENT

**MINISTER OF COMMUNICATIONS
SCIENCE & TECHNOLOGY**

6TH RESPONDENT

**PRINCIPAL SECRETARY – MINISTRY OF
COMMUNICATIONS SCIENCE & TECHNOLOGY**

7TH RESPONDENT

**DIRECTORATE ON CORRUPTION &
ECONOMIC OFFENCES**

8TH RESPONDENT

GLOBAL VOICE GROUP SA

9TH RESPONDENT

COMMISSIONER OF POLICE

10TH RESPONDENT

VODACOM LESOTHO (PTY) LTD

11TH RESPONDENT

SEKHAMETSI INVESMENT CONSORTIUM

12TH RESPONDENT

THE PRIME MINISTER

13TH RESPONDENT

ATTORNEY GENERAL

14TH RESPONDENT

Neutral Citation: Mamarama Matela & 1 v Lesotho Communications
Authority & 13 Others LAC/REV/03/2021 [2021] LSHC 87

RULING

CORAM: BANYANE J

ASSESSORS: MRS M. THAKALEKOALA
MR. K. MOHALE

HEARD: 28/06/2021

DELIVERED: 07/07/2021

Summary

Suspension of a chief executive officer and removal of the chairperson of the LCA board of directors by the Minister of Communications – characterization of the decision - whether it amounts to administrative action - original jurisdiction of the Labour Appeal Court in terms of Section 38(A) of the Labour Code (amendment) Act 2000

ANNOTATIONS

Cited Cases

1. Lesotho Revenue Authority v Moutloatsi Dichaba C of A (CIV) 21/2019
2. Futho Hoohlo v Water and Sewerage Company (Pty) Ltd LC 84/20
3. Thato Putsoa v Standard Bank LAC/REV/03/07
4. Matsoso Ntsihlele and 125 Others v IEC and Others LAC/REV/15/2019
5. Lebone Mofoka v Ministry of Labour LAC/REV/07/2016

6. NUL v Thabane C of A (CIV) 67/19
7. Director of Public Prosecutions v Ramoepana C of A (CIV) 49/2020
8. Malehole Poopa v LENPWA and Another LC/14/2018
9. Minister of Trade and Industry v Lesotho National Development Cooperation and Others C of A CIV (78/19)
10. Mapiloko v Pioneer Seeds RSA (Pty) Ltd and Others LAC/APN/08/08
11. The Minister of Defence and Military Veterans v Maomela Motau and 2 Others [2014] ZACC 18
12. Grey Marine Hout (Pty) Ltd and Others v Minister of Public Works and Others 2005(6)313 (SCA)
13. Metcash Trading Limited v Commissioner of the South African Revenue Service and Another 2001(1) SA 1109(CC)
14. Chirwa v Transnet Limited and Others 2008 (4) SA 367 (CC)

Legislation

1. The Labour Code (Amendment) Act 3 of 2000
2. The Communications Act 18 of 2012

BANYANE J

Introduction

[1] This application centres around the exercise of power by the Minister of Communications (hereinafter minister) pursuant to sections 6, 8,9,10 and 14 of the Communications Act 18 of 2012 in relation to appointment, suspension and removal of Directors of the Lesotho Communications Authority (LCA) Board and Chief Executive Officer. The LCA is a body corporate established by the Lesotho Telecommunications Act of 2000. This Act was repealed by Section 56 of the Communications Act of 2012. Section 3 of this repealing Act provides for the continued existence of the Authority. It is managed and controlled by the board of Directors. These Directors are all appointable and removable by the minister.

Background facts

[2] The first applicant, was, in 2019 appointed by the minister as the chief executive officer (CEO) of the LCA. She became, by virtue of her designation, a member of the board of directors chaired by the 2nd applicant.

[3] On the 3rd June 2021, the 1st applicant was suspended from her position of CEO and evidently as board member by the Minister on allegations of corruption or irregular involvement in the tendering process and award of a certain tender to Global Voice Group company SA (the 09th respondent). In essence, the suspension letter penned by the minister reveals that the board resolved, in its meeting allegedly held on the 02nd June 2021, that an investigation into the award of the tender must be conducted and that her presence in the workplace during the period of investigation would not be viable. It thus resolved that she be placed under precautionary suspension pending the outcome of the investigations. The suspension, according to this letter was made pursuant to section 14 of the Act.

3.1 The 2nd applicant's chairmanship and membership to the board was on the other hand terminated on the 31st May 2021 principally on three grounds; namely; a) alleged incompetence to act as chairman of the board, b) irretrievable breakdown of the working relationship with the Minister and; c) suspicious relationship with the CEO. This removal from chairmanship and membership was preceded by a suspension made on the 27th May 2021 and subsequently a show-cause letter dated the 29th May 2021.

[4] It is also common cause that consequent upon the suspension and removal respectively, the Minister appointed Ms Keneuoe Mohale (4th respondent) as the acting chairperson of the Board and Mr Nizan Goolam (5th respondent) as acting CEO.

[5] Discontent with the minister's decision, the applicants approached this court on urgent basis to challenge chiefly, the suspension and membership termination respectively. They also seek a host of reliefs in the form of mandamus and prohibitory interdicts against some Government Ministers. The prayers appear fully in the originating application. They are couched as follows;

1. 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.
2. The rules relating to the modes of service and time limits provided for in the Rules are dispensed with due to urgency of this matter.
 - 2.1 The Minister of Communications, Science and Technology is interdicted, prohibited and restrained from;
 - 2.1.2 Proceeding with the coercive order of suspending the 1st Applicant as contemplated in his letters addressed to 2nd Applicant dated 19th May 2021 and 28th May 2021 pending finalization hereof;

- 2.1.3 Proceeding with the implementation of the decision to recruit anybody the position of 1st Applicant pending finalization hereof.
- 2.1.4 Taking any steps in relation to the performance of any activity pursuant to the contents of the letter addressed to 1st Applicant dated 3rd June 2021 pending finalization hereof;
- 2.1.5 Authorizing Mr Nizan Goolam from transacting any business for and on behalf of 1st Respondent before finalization of the matters in CCA/0129/2020 & CIV/APN/424/2020.
- 2.1.6 Allowing Mr Nizan Goolam from carrying out any functions of the CEO to the extent of his conflict of interests arising from the contractual relationship with his brother who is the current shareholder in Sekhametsi Consortium that manages Vodacom Lesotho (Pty) Ltd.
- 2.1.7 An order directing the 2nd Respondent to dispatch the record and documents incidental and connected with the resolutions of the 2nd Respondent in its Extra-Ordinary meeting of 25th May 2021 to this Honourable Court seven days after the service of this order.
- 2.1.8 An order directing the 1st and 7th Respondents to furnish a record of the proceedings and resolutions of the Extra-Ordinary meeting of the Universal Service Fund dated 16th February 2021 to this Honourable Court seven days after the service of this order.
3. It be declared that the positions of the contracting parties as contemplated in the "Master Service Agreement" signed on the 21st December 2020 was approved by the 2nd Respondent with the concurrence of the 1st Respondent.
4. An order declaring the submission and presentation of the Communications (Subscriber Identity Module and Mobile Device Registration) Regulations, 2021 to Cabinet by Hon. Keketso Sello and subsequent approval thereof by Cabinet as a binding collective decision of the government of Lesotho.

5. An order directing the Hon. Tsoinyane Sam Rapapa to cause signing of the Communications (Compliance Monitoring & Revenue Assurance) Regulations, 2021 in accordance to section 55 of the Communications Act, 2012.
6. It be declared that at the time the parties entered into and signed the Master Service Agreement on the 21st December 2020 they would have not anticipated that the Minister would want **M 3,000,000.00** and other conditions before signing the Regulations set out above.
7. An order declaring that the suspensive conditions of the Minister as set out in the letter of Applicant dated 19th May 2021 and addressed to him [**marked C**] are null and void.
8. An order reviewing and setting aside the decision of the Minister to remove 2nd Applicant from the position of Chairman and Director of the 2nd Respondent.
9. An order reviewing and setting aside the decision of the Minister to suspend 1st Applicant based on the grounds set out in the letter dated 3rd June 2021.
10. An order reviewing and setting aside the decision of the Minister to appoint Mr Nizam Goolam as the Acting CEO as irrational, unreasonable and of no legal effect.
11. Declaring the probing of only Applicants in relation to the Master Service Agreement that was approved by both officials of 1st and 2nd Respondents to be unfair, abuse of process, and of no legal force to the extent of discriminating against the Applicants contrary to sections 18, 19 and 26 of the constitution.
12. An order reviewing and setting aside the Resolutions of the 2nd Respondent taken on its Extra-Ordinary Board sitting on 25th May 2021 as irregular and of no legal effect.
13. An order declaring the decision of Mr. TANKISO PHAPANO to divert the funds of Universal Service Fund for the construction of

the BTS using electricity in Menyameng, Mosalemane Constituency in the district of Berea contrary to the Manual of Operating Procedures of USF as abuse of office.

14. An order permanently interdicting Hon. SAM RAPAPA from trading off the right of Global Voice Group SA to the contract awarded to it.
15. An order reviewing as setting aside the decision of Hon. Keketso Sello in terms of which he cherry-picked the 1st Applicant as Chief Executive Officer of 1st Respondent when dealing with the enquiry into an award of the tender to Global Voice Group SA by auditors.
16. Granting further or alternative relief.
17. That prayers 1-2, 1-5 operate as interim orders with immediate effect, and will remain in full force and effect until the final determination of this application and, if the rule nisi should be confirmed, also thereafter.

Jurisdiction of the Labour appeal Court

[6] The 1st, 2nd, 3rd, 4th, 6th and 7th respondents oppose this application. In their answering affidavits, they take issue with the jurisdiction of this court.

[7] The essence of their contention on this issue is that the dispute before court falls beyond the scope of section 38A of the Labour Code (Amendment) Act of 2000 and that suspension of the CEO is an issue arising out of employment and industrial relations. For this reason, it falls to be determined by the Labour Court.

The approach to the preliminary issue

[8] While Mr Lephuthing was desirous to have the matter argued both on the points of law and the interim reliefs, the respondents counter-argued on the strength of the recent Court of Appeal decision in **Director of Public Prosecutions v Ramoepana C of A (CIV) 49/2020** that where

competence of a court to hear and determine a dispute is challenged, the challenge must first be addressed and disposed of. We thus adopted this approach and arguments presented by all parties were confined to this jurisdiction issue.

Submissions

[9] On behalf of the 1st, 2nd, 4th and 5th respondents, Mr Letsika advanced a three-pronged argument to substantiate the jurisdictional challenge.

[10] The first relates to the relationship of the 2nd applicant with the LCA. His major contention is that the 2nd applicant's appointment and conversely, removal, is not done pursuant to the Labour Code or any labour Law but is governed solely by the Communications Act. He submits that an employer-employee relationship between the corporation and the 2nd applicant does not exist and therefore, any decision pertaining to his removal is not challengeable before the Labour Appeal Court.

[11] The second ground for the jurisdictional challenge relates to the nature of the impugned decision. In his view, a suspension amounts to no more than a managerial function, thus falls outside the scope of reviews contemplated under section 38 (A). He contends that suspension of an employee falls squarely within the Labour Court jurisdiction in terms of section 24(d) of the Labour Code of 1992 (as amended).

[12] He relied on **Lesotho Revenue Authority v Moutloatsi Dichaba C of A (CIV)21/2019** to support his contention that the Labour Court has jurisdiction to determine a dispute in which fairness of a suspension is challenged by reason that an employee suspension is a matter arising out of employment and industrial relations.

[13] He additionally referred this court to **Hoohlo v Water and Sewerage Company (Pty) Ltd LC 84/20** to buttress the point that suspension of an employee falls under the definition of industrial relations.

[14] He contends that in suspending the 1st applicant, the Minister, being the appointing authority was merely exercising a prerogative of management of the LCA pending finalization of investigations into the 1st applicant's conduct and this suspension amounted to nothing more than a cautionary and temporary managerial step.

[15] He also referred the Court to **Thato Putsoa v Standard Bank LAC/REV/15/2019** wherein this Court interpreted the provision under scrutiny and distinguished an administrative action from managerial functions.

[16] His third leg of submissions relates to all other reliefs sought. He contends that this Court, being a creature of statute, does not have the power to deal with the reliefs sought because the issues raised by these, fall outside the scope of section 38A.

[17] Mr Ndebele, on behalf of the 06th & 07th respondents aligned himself with these arguments. He added that matters falling within the purview of the Labour Court and other labour forums can only be brought before this Court under section 38A (3). He relied on **Mapiloko v Pioneer Seeds RSA (Pty) Ltd and Others LAC/APN/08/08** to submit that good cause must be shown to justify removal of a matter from such forums into this Court.

[18] Mr Lephuthing on behalf of the applicants conversely argued that this Court has jurisdiction to hear this matter and grant all the reliefs sought. He relied on the case of **Matsoso Ntsihlele and 125 Others v IEC and Others LAC/REV/15/2019**, (confirmed on Appeal under **C of A (CIV)**

17/20) and Malethole Poopa v LENPWA and Another LC/14/2018
in support.

[19] He contends that the Minister in suspending and removing the 1st and 2nd applicant respectively and subsequently replacing them, exercised administrative powers or functions under section 14 of the Act. That this action amounts to an administrative action reviewable by this Court in terms of section 38A.

[20] He also referred the Court to the case of **Lebone Mofoka v Ministry of Labour LAC/REV/07/2016** to submit that the exercise of power by the Minister is reviewable and for this reason, this matter is properly before this Court.

[21] He also relied on **LRA v Dichaba** (*supra*) to submit that the applicants are entitled to approach this court to review the decision of the Minister, who was, according to him, exercising public authority in so suspending the 1st applicant and removing the 2nd applicant.

[22] He contends that the Minister was not exercising managerial functions as suggested by the respondents because he is no manager to the 1st applicant.

[23] He also sought to distinguish this matter from **Futho Hoohlo v WASCO** (*supra*). According to him, the distinguishing factor in the two matters is that in the instant case, the Minister was exercising public authority while in **Futho**, this was not the case because the applicant there, was suspended by the Board of Directors.

[24] With regard to the relationship of the 2nd applicant with the LCA, he is of the view that the 2nd applicant is entitled to approach this court to

challenge termination of his membership despite the fact that he is no employee of the LCA, because rejection of his claim will render him remediless.

[25] Mr Letsika in reply contended firstly that the 2nd applicant is not remediless but must pursue his claim before a Court of competent jurisdiction.

[26] Secondly that both **Matsoso Ntsihlele** (*supra*) decision and **Poopa** decisions are inapplicable to this present matter because they are factually dissimilar. According to him, the IEC employees were entitled to challenge the issues relating to their organizational structure before this Court while in the present matter, we are dealing with a suspension. He also distinguished **Mofoka** from the facts of this matter. He stated that in **Mofoka**, the officers there were appointed in terms of the Labour Code while in the instant matter, we are dealing with appointments under a different legislation.

[27] He further submitted that it is implicit in section 13(4) and 13(8) of the Act that the Minister is the Manager of the CEO and in suspending her, was exercising the prerogative as a manager and this amounts to no administrative decision.

Discussion

[28] In addressing the respective arguments, I propose to distinguish the relationship of each applicant to the LCA before addressing the justiciability of their respective claims before this court. The classification is important on the determination of the issue of jurisdiction.

[29] Each claim stands on a different footing. The 1st applicant's position cannot be equated to that of the 2nd applicant because the relationship of the 2nd applicant to the LCA is not the same as that of the CEO. There are

significant differences between executive and non-executive directors. The 2nd applicant has no contract of employment with the LCA while the 1st applicant does. The contract of employment creates rights and obligations which do not exist in case of the non-executive directors. The 1st applicant has been suspended as an employee while this is not the case for the 2nd applicant.

29.1 In terms of section 6 of the Act, the board consists of the chairman and 5 other members all of which are appointable by the Minister. Their removal from office is governed by section 8 of the same Act. It is common cause that these Directors are not employees of the organisation of which they are appointed. See **Minister of Trade and Industry v Lesotho National Development Cooperation and Others C of A CIV (78/19)**. For this reason, the 2nd applicant's claim does not arise out of labour relations with the LCA. The Labour courts are therefore not competent forums to inquire into his discontentment on termination of his board membership. In other words, his claim is not justiciable before the labour forums.

[30] With regards to the other reliefs sought, they are similarly indeterminable before this court. This court is a creature of statute. Its jurisdiction is not unlimited and cannot be extended beyond matters not provided for under the empowering provisions, as I will shortly demonstrate. To put it differently, this court being a creature of statute deals only with disputes it is empowered to adjudicate.

[31] I turn now to the 1st applicant's claim. As stated earlier, she cannot be seen the same way as the other directors of the LCA because firstly, she is an employee and only becomes a director by virtue of her designation. I proceed to consider whether her claim for review of the suspension is properly before this court in terms of section 38(A) of the Labour Code (as amended), the statute that begets this court.

[32] The Labour Appeal Court derives its jurisdiction from section 38A (1) of the labour Code (amendment) Act No.3 of 2000 which clothes it with exclusive jurisdiction to hear and determine;

- a) All appeals against the final judgements and the final orders of the Labour Court
- b) All reviews;
 - i) From the judgements of the Labour Court
 - ii) From arbitration awards issued in terms of the Act, and
 - iii) of any administrative action taken in the performance of any function in terms of the Labour Code or any other Labour Law.

[33] For any decision or action to qualify for review by this court, it must amount to an administrative action, b) taken in the performance of a function C)in terms of the Labour Code or any other Labour Law **NUL v Thabane (C of A (CIV)67/19 para 24.**

[34] I proceed now to evaluate the divergent approaches to nature of the impugned act or decision based on the Court of Appeal decision in **Lichaba**. As stated earlier, the applicants contend on its basis, that this matter is properly before this court by reason that the impugned decision was made by the Minister excising public power, and that the facts therein are dissimilar to the facts in the instant matter in that the suspension in **Dichaba** was not made by the Minister, hence the classification of the impugned decision as an administrative decision. The respondents conversely argue that a suspension constitutes no administrative action but amounts to an issue arising out of labour relations and thus falls within the jurisdiction of the Labour Court in terms of section 24 as amended.

[35] In view of these divergent views, it is necessary to embark on an inquiry into whether the decision to suspend the 1st applicant amounts to an administrative action.

[36] The phenomenon is not defined in the Act. The vexed question of whether a particular act or decision amounts to an administrative decision and the criteria used to determine same for purposes of section 38 A, was first considered by this Court in **Thato Putsoa v Standard Bank LAC/REV/03/07** wherein the applicant sought to review the decision of her erstwhile employer to institute disciplinary action against her.

36.1 Mosito J (as he then was), after reviewing South African authorities on the subject, interpreted the section under scrutiny. He held that in embarking on this difficult inquiry, the consideration is not whether the action is performed by a member of the executive arm of government, but whether the task itself is administrative or not. In other words, it is the function rather than the functionary that is important in classifying an action. That the nature of the power being excised, its source and subject-matter, whether it involves the exercise of a public duty e.t.c are relevant considerations in determining whether it constitutes an administrative action. He stated that where the decision or action is taken in the exercise of a public power or in the performance of a public function affecting the rights, interests or legitimate expectation of others, it is an administrative action.

[37] He held further (at para 16) that if the exercise of power involves implementation of legislation, it amounts to an administrative action. He stated that the respondent was not established by statute but as a private company in terms of the Companies Act; that when the employer made the decision to institute disciplinary proceedings, it was not carrying out any powers imposed by statute nor exercising a public function or administrative action, but was carrying out a purely managerial function, a power that flows from the common law and the contract of employment between itself and the applicant. He importantly remarked that in

appropriate circumstances, such as where a functionary takes disciplinary action in terms of empowering registration, such decision would amount to an administrative action.

[38] In South African, the concept is defined in their **Promotion Administrative Justice Act 3 of 2000** (PAJA). For any decision or action to be susceptible to review under this Act; it must be a) of an administrative nature, b) taken by an organ of state or a natural or juristic person; c) exercising a public power or performing a public function; d) in terms of any legislation or empowering provision; e) that adversely affect rights; f) that has a direct, external effect. see **The Minister of Defence and Military Veterans and Maomela Motau and 2 Others [2014] ZACC 18 (available on Safflii)**, see also **Chirwa v Transnet Limited and Others 2008 (4) SA 367 (CC)**.

[39] I should point out that the South African Law draws a distinction between acts that are administrative on the one hand and executive ones on the other. The classification is important in determining the review standard applicable, depending on whether a decision is challenged under the PAJA or legality review. In spite of this classification, its jurisprudence is helpful in the determination of the issue at hand.

[40] In **Grey Marine Hout (Pty) Ltd and Others v Minister of Public Works and Others 2005(6)313 (SCA)**, (cited with approval in Motau above), Nugent J defined administrative action as follows;

Administrative action means any decision of an administrative nature made under the empowering provision[and] taken...by an organ of state, when exercising a power in terms of the constitution or a provisional constitution, or exercising a power or performing a public function in terms of any legislation, or [taken by] a natural or juristic person, other than an organ of state, when exercising public power or performing a public function in terms of the empowering

legislation, which adversely affects the rights of any person and which has a direct external effect...”

[41] In **Metcash Trading Limited v Commissioner of the South African Revenue Service and Another 2001(1) SA 1109(CC)**, the Constitutional Court confirmed that excise of statutory powers constitutes implementation of legislation and that such action is administrative.

[42] In **Popo Molefe and Others v the Minister of Transport and Others (177748/17) ZAGPPHC 120**, it was held that the minister’s power to appoint and dismiss board members involves the implementation of national legislation and that the minister’s decision therefore amounted to an administrative decision.

[43] I Revert now to the facts of the instant matter. The subject matter involved here is suspension of the CEO by the minister pending investigations into the alleged irregularities in the award of Global Voice Group SA tender. The minister’s source of power is not the employment contract but the Communications Act. The impugned decision was made by the minister performing a function in terms of legislation. It cannot be gainsaid that the suspension adversely affects the applicant’s rights because she is temporarily prohibited from rendering services to LCA pending the outcome of investigations on the alleged irregularities. To put it differently, the Minister’s source of power to remove or suspend the CEO does not arise from the employment contract but excised in terms of the empowering legislation. We are of the opinion that such excise of statutory powers constitutes administrative action in the circumstances of this case.

[44] We are alive to the fact that both the Lesotho Revenue Authority and WASCO are creatures of statute like the LCA. What distinguishes the present matter from the suspensions in **Lichaba** and **Hoohlo** is the nature and source of power involved. As correctly pointed out by the applicants’

counsel, we are concerned here with the Minister's excise of legislative powers, which was not the case in two matters.

[45] In the light of this conclusion, the next question that must then be addressed is whether the action was taken in the performance of a function in terms of the Labour Code.

[46] It is indisputable that the Minister does not derive his power from the Labour Code. This power is conferred on him by the Communications Act. As stated in **Thabane v NUL** (*supra*), the review envisaged in the provision under consideration relates to functionaries under the Labour code. Clearly the Minister of Communications is no such functionary.

[47] I may add that **Mofoka** is illustrative of a function performed under the Labour Code in terms of which the minister appointed arbitrators under the empowering provisions. **Mofoka** cannot therefore support the applicant's argument that the matter is properly before this court.

[48] The last inquiry is then whether the action was taken in the performance of a function under "*any other labour Law*".

[49] What may fall into this category is not clearly discernible from the Code. It is our considered view that what the legislature envisage herein is perhaps legislation such as Workmen's compensation Act 13 of 1977, the common law, International Labour Organisation Conventions etc. The communications Act does not in our view fall under "any labour law".

Conclusion

[50] Having concluded that the decision under scrutiny amounts to an administrative action, but not taken in the performance of a function under the Labour Code nor any other labour law, we conclude further that it fails to meet the section 38A requirements. For this reason, the applicant's claim

is not justiciable in this court. We however refrain from expressing any view on the question whether a decision to suspend an employee made by a functionary pursuant to a specific empowering statute is challengeable before the Labour Court. This is because no comprehensive argument was made in this regard. It suffices to conclude that this Court does not have jurisdiction to hear this matter.

Order

[51] In the result, the point of law is upheld and the application is dismissed with costs for lack of jurisdiction;

[52] My Assessors Agree.

**P. BANYANE
JUDGE**

For Applicants: Advocate Lephuthing

For 1st and 2nd Respondents; Mr Letsika

For 3rd, 6th and 7th Respondents: Advocate Ndebele

For 11th respondent: Advocate Teele KC