

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

**C of A (CIV) 21/2022
CIV/APN/180/2018**

In the matter between:

QHALEHANG LETSIKA

APPELLANT

AND

BASOTHO CONGRESS PARTY

RESPONDENT

CORAM: P. T DAMASEB AJA
J.W VAN WESTHUIZEN AJA
N.T MTSHIYA AJA

HEARD: 11 OCTOBER 2022

DELIVERED: 11 NOVEMBER 2022

SUMMARY

Civil procedure - respondent's locus standi to institute proceedings in the court a quo - sublease agreement cannot be used to oust landlord's direct interest in its property - landlord has the right to protect its interests- bill of costs to be submitted for taxation per Rule 56 of the High Court Rules - appeal dismissed

JUDGMENT

MTSHIYA AJA

Introduction

[1] This is an appeal against the judgment of the High Court where the appellant was ordered to submit his bill of costs to the Taxing Master for taxation. That decision was in line with what the respondent had prayed for. The respondent had prayed for the following relief:

“(a) Directing First Respondent to submit to the Second Respondent for taxation his bill of costs in respect of the amount he deducted as fees from the funds collected in CCA/0203/2015

In the said proceedings, CCA/0203/2015, the Taxing Master was cited as the second respondent.

[2] The order appealed against was granted on 2 May 2022, by his Lordship Justice Makara. In granting the order, the Judge, in his short judgment, reasoned, in part, as follows:

“(2) It transpires from the pleadings that it is common cause that the 1st Respondent Attorney had, at all material times, collected the rentals in respect of the property the subject matter of the sub-lease which was in dispute pending the finalisation of the proceeding. This was pursuant to the order of the Court by Molete J on 18 December 2015 which, in precise terms, authorised the attorney to pay to the Applicant who is the Land Lord, the sum of Seventy-five thousand maloti (M75,000.00) per month and keep the balance to pay whoever is a successful party in their pending proceedings which was concluded on 25 September 2017.

(3) It is further common cause that the 1st Respondent charged and deducted from the amount he had collected, the sum of Three Hundred and

Fifty-Nine Thousand Two Hundred and Eight Maloti (M359,280.00) as fees and disbursement.

(4) In the stated factual scenario, the Applicant is by operation of law, entitled to ask that the amounts be subjected under the taxation process by Taxing Master who is Registrar of the High Court and the Court of Appeal.”

[3] This appeal now arises as a result of the appellant’s dissatisfaction with the ruling of the court a quo.

[4] In its submissions, the respondent had initially argued that the appeal was filed out of time. It was therefore argued that there was need for an application for condonation. There was no such application before the court. However, the parties immediately noted and agreed that there was an error with respect to the date of the final court order. Both parties then agreed that the appeal was properly before the court.

We noted and agreed that indeed there was a mistake relating to the date of the judgment. That being the case, we ruled that the appeal was properly before us.

Accordingly, I shall now proceed to deal with the appeal before us.

Background

[5] In 2015, a dispute arose between the respondent and a Company called Busstop Holdings (Pty) Ltd (the Company). The dispute was over a sublease agreement between the parties. The Company then took the matter to the High Court (Commercial Division).

[6] On 18 December 2015, Molete J issued an interim order 'authorizing' the appellant "to collect and receive rentals through Mei & Mei Attorneys Trust Account."

Justice Molete's interim court order read as follows:

'It is hereby ordered that:

- 1. By consent and agreement of the parties, it is ordered that Mr Letsika be the one to be used to collect and receive rentals through Mei & Mei Attorneys Trust Account. This shall be rentals from December 2015 until the matter is finalized.*
- 2. He is authorized to pay the landlord (1st respondent) the sum of M75 000 per month and keep the balance to pay whoever is the successful party to these proceedings.*
- 3. The 6th and 8th Respondents are hereby interdicted from registering the Sublease in issue before this court.*
- 4. The matter is postponed to 15th February 2016 for mention to allocate date for the hearing."*

[7] It is important to note that, in court, to receive the above consent order on behalf of the parties were Advocate K. Ndebele, for the Company and Advocate Posholi, for the respondent. There were other 7 respondents, namely Tradorette Wholesalers (PTY) LTD, H. HH Osman, DU Preez, Libetrau & CO, Steve Buy, Registrar of Deeds, First National Bank of Lesotho LTD, Land Administration Authority. The papers are silent with respect to their representation.

I found it necessary to mention Advocates Ndebele and Posholi at this stage because under paragraphs 17,18,19 and 29 of his answering affidavits, the appellant avers, in part:

“17. I aver that before my appointment I had discussions with Mr Ndebele who expressed desire to have me appointed so that I would collect rentals.....”

18. The court order specifically directed that I should “be the one to be used to collect and receive Rentals through Mei & Mei Attorneys Trust Account. This shall be Rentals from December 2015 until the matter is finalised. “I was further “authorised to pay to the Landlord (1st Respondent) the sum of M75 00.00 per month and keep the balance to pay whoever is successful party in these proceedings.”

19. The basis for agreeing to the second portion of the court order by the parties is not readily clear to me because I was not supplied with the sub-lease agreements informing me about monthly rentals payable by the tenants of this building.”

29. The applicant does not explain that I agreed with Mr Ndebele and Mr Posholi who worked with T Mahlakeng & Co that I would charge collection commission in respect of moneys collected and legal fees for services rendered.....”

[8] Given the forgoing, I do not think it is unreasonable to suggest that, if at all, the appellant needed any guidance with respect to the operative clauses of the order that placed him in his position, namely the interim court order of 18 December 2015, he could have easily approached Messrs Ndebele and Posholi who, he knew, were representing the main parties in the dispute. He has, however, found it necessary or convenient to tell us that *“The applicant does not explain that I agreed with Mr Ndebele and Mr Posholi who worked with T Mahlakeng & Co that I would charge collection commission in respect of moneys collected and legal fees for services rendered.....”*.

[9] I can only assume that it was on the basis of this, that he then proceeded, without accounting to the court and the litigants cited in CCA/0103/2015, to deduct from the moneys collected the following sums:

- “1. Expenses amounting to M353, 470.29*
- 2. Bank Charges totalling M73, 029.67*
- 3. Collection Commission amounting to M190,552.50*
- 4. Fees in the sum of M359,280.00”*

[10] In making the above deductions, the appellant conveniently ignored clause 2 of the order which stated:

“He is authorized to pay the landlord (1st respondent) the sum of M75 000 per month and keep the balance to pay whoever is the successful party to these proceedings.”

[11] Following the finalisation of the matter on 25 September 2017 and after deducting expenses, bank charges, collection commission and the sum of M150,000.00 paid to the respondent, the appellant then paid the rest of the balance of the money in the Trust Account of Mei & Mei Attorneys Busstop Holdings (Pty) Ltd through Mr K Ndebele.

[12] I must point out that the said some of M150 000.00 paid to the respondent became the subject of debate between the appellant, the respondent’s lawyers and Mr K. Ndebele.

[13] Indeed, on 25 September 2017, the matter was finalised in favour of the Company through an order which, in part, read as follows.

“1. That 2nd and 3rd Respondent are hereby interdicted and restrained from taking occupation or possession of the property described as Plot 13283-76 situated in the Bus Stop Area Maseru.

5. The Applicant’s right to possession and occupation of Plot 13283-76 situate in the Bus Stop Area Maseru be restored forthwith.

6. The 1st to the 5th Respondent are hereby interdicted restrained from frustrating and interfering with Applicant’s rights including the right to collect and receive any benefits or rentals accruing from its sub-tenants.

7. The 1st Respondent is directed to adhere to the terms of the registered sublease between it and the Applicant.”

I take the above as the relevant parts of the court order of 25 September 2017, in as far as this appeal is concerned

[14] From 18 December 2015 until the final determination of the dispute in terms of the order of 25 September 2017, the appellant had retained his mandate to collect rentals through Mei & Mei Attorneys Trust Account. In the execution of his duties, the appellant further assumed the role of caretaker and resultantly, ended up deducting funds from the rentals for maintenance purposes. However, let me hasten to say the respondent’s prayer in the court a quo was restricted to *“the amount he deducted as fees from the funds he collected in CCA/0103/2015”*.

[15] In his report dated, 20 October 2017 and entitled **“FIRST AND FINAL CARETAKERS REPORT: BCP MINIMARKET BUILDING BUS STOP AREA, MASERU”**, the appellant, in part, states:

“1.2 The court order specifically directed that I should “be the one to be used to collect and receive Rentals through Mel & Mel Attorneys Trust Account. This shall be Rentals from December 2015 until the matter is finalised.” I was further “authorized to pay to the Landlord (1st Respondent) the sum of M75 000.00 per month and keep the balance to pay whoever is successful party in these proceedings.

1.3 The basis for agreeing to the second portion of the court order by the parties is not readily clear to me because I was not supplied with the sub-lease agreements informing me about monthly rentals payable by the tenants of this building. In fact, this defect made it possible for a Mr HH Osman to give instructions to tenants in January 2016 to pay him specified rentals. In addition, it was not clear to me as to who was responsible for payment of expenses associated with the upkeep of the building such as security services, cleaning of the premises, electricity (lighting), water and sewerage refuse collection and rates payable to the Maseru City Council.

1.4 In the absence of clarity and in the interests of retaining tenants I then decided to take responsibility for payment of these expenditure and the full vouchers relating to such expenditure are attached to the bank deposits already served upon BCP and Bus Stop Holdings (Pty) Ltd.”

Clearly the appellant testifies that he went beyond the mandate given to him under the court order of 18 December 2015. I believe the additional duties he gave himself have a bearing on

the computation of his bill of costs. He, however, refuses to be questioned on same.

[16] The underlying cause for litigation, as alleged in the papers before us is that in January 2018, the appellant delivered his report and a statement of account to both the respondent and the Company. The statement reflected that he had deducted the sum of M359 280.00 as fees and disbursements. The respondent was dissatisfied with the statement of account and on 15 February 2018, its lawyers wrote to the appellant expressing its concerns and requesting the respondent to submit his bill of costs to the Taxing Master for taxation.

[17] For the sake of clarity, I feel compelled to reproduce in full, hereunder, the contents of the letter sent to the appellant by the respondents' lawyers. This is so because, the letter, in my view, summarises the actions of the appellant that in the mind of the respondent dictated the need for proper accounting and taxation.

The letter read as follows:

"Re: CCA/103/2015- Bus stop Holdings (PTY) Ltd vs Basotho Congress Party

We refer to the above-mentioned matter and your statement of account or report dated 31st January, 2018 and served upon us on the 1st February 2018. You will notice that on page 7 the report is dated 20th October 2017, which is wrong, considering the correspondence that ensued after the 20th October, 2017 and seeking the report.

We have since taken instructions from clients on the issues of; -

1. Expenses amounting to M353,470.29
2. Bank Charges totalling M73, 029.67
3. Collection Commission amounting to M190, 552.50\Your fees in the sum of M359, 280.00

Our instructions are to seek some clarifications and raise concerns on the propriety or otherwise of these charges in relation to our client.

1. It is not clear as to why you have decided to burden our client with expenses of running and maintaining the premises when the Sublease agreement provides that these are the responsibility of the Sub lease.
2. Funds/Rentals collected from the premises were deposited directly into your trust account on a monthly basis. You are holding our client liable for bank charges to your trust account. The propriety of this is not understandable to us; hence our client's request for a clarification.
3. Why should our client be liable for collection commission in the amount of M190,552.50? You collected M1, 910, 15500. You seem to have charged 10% on that. There is no agreement to this effect. What is the basis of that when the provisions of Part 11 item 5 of the Law Society Rules of 1983 are so clear and unambiguous?
4. Your fees are in the amount of M359.280. First of all, the concern is that our client was not your client in the matter. You were only directed by the Court to collect rentals.
5. Secondly, there is no agreement between you and our client to pay yourself M359,280.00 from the funds collected.
6. In our view this amount is grossly unreasonable in the circumstances. It smacks of an attempt to overreach a party on whose "behalf" some work is deemed to have been done.

7. *We therefore request you to be agreeable to an independent assessment of these fees by the law Society.*
8. *We await your responses as matter of urgency, in order to enable us to take and execute our client's mandate further.*

Yours Sincerely"

[18] There was no immediate response to the above letter. There is, however, evidence that the respondent continued to write to the appellant demanding a response to the issues that it had raised. On 24 November 2017, the appellant finally responded with the following statement:

"We maintain that we are dealing with voluminous documentation covering almost two (2) years and we confirm that we should be able to account to all the parties i.e., the court and the litigants in the above matter by end of this month. We trust that this addresses the concerns of your client"

[19] Given the fact that the appellant had already submitted a report, which report summarised his actions under the court order of 18 December 2015, I find it difficult to understand what further voluminous documentation had now emerged.

[20] It is clear from the above response that the appellant was always fully aware that he had an obligation to account to "*the court and the litigants*" in CCA/0103/2015. The said litigants included the respondent. There was never any issue formally raised by the appellant regarding the correct interpretation of the operative paragraphs of the interim order of 18 December

2015, namely paragraphs 1 and 2. As already intimated the appellant was always aware of the lawyers representing the main players in CCA/0103/2015.

[21] However, at the end of it all, the appellant refused to submit to the respondent's demand on the ground that the Company and not the respondent was entitled to receive the rentals collected from the property. The appellant, contrary to paragraph 2 of the order that he was executing, went further to argue that the respondent had no interest at all in the rentals that he was collecting. To that end, the appellant argued, that the respondent could not legally proceed against him in order to have his bill of costs subjected to taxation.

[22] Due to the stance taken by the appellant, the respondent took the dispute to court. The court *a quo* ruled in favour of the respondent and hence this appeal by the appellant.

GROUND OF APPEAL

[23] Dissatisfied with the judgment of the court *a quo*, the appellant appealed to this court citing the following grounds of appeal in this court:

"a. The learned Judge erred and misdirected himself when he held that the appellant collected rentals for and on behalf of Basotho Congress Party (BCP) pursuant to the mandate he received from BCP in as much as the appellant never collected rentals for and on behalf of BCP. The evidence of record demonstrated that the rentals were collected for a Company called Company in circumstances where the Commercial Court made an order that the Company, Bus stop Holdings (Pty) Ltd retained the clear right to collect rentals from the premises situated on plot number 3263-761

and that the rentals collected from the said property belonged to Bus stop Holdings (Pty) Ltd.

- b. *Had the learned Judge applied his mind to bear on the full conspectus of evidence, he should have made a finding that the respondent did not have the right to moneys collected by the appellant in as much as such moneys were not due and payable to the respondent.*
- c. *The learned Judge should have held, in view of the full conspectus of evidence, that the respondent was not entitled to institute legal action against the appellant in as much as the appellant and respondent did not have any relationship at law.*
- d. *Had the learned Judge applied his mind to bear on the evidence, he should have made a finding that the party entitled to rentals in respect of plot number 13283-761 was Bus stop Holdings (Pty) Ltd by virtue of the Commercial Court order in CCA/ 0103/2015 holding that Bus stop Holding (Pty) Ltd had the clear right to collect rentals from the same property.*
- e. *Consequently, the learned Judge erred and misdirected himself when he granted the respondent's application to have the appellant submit his fees for taxation before the Taxing Master in circumstances where the respondent lacked the necessary locus standi to be granted the order. The appellant did not collect rentals on behalf of the respondent and the rentals were collected on behalf of Bus stop Holdings (Pty) Ltd. The fees charged by the appellant for collecting rentals were charged on the rentals collected for and on behalf of Bus stop Holding (Pty) Ltd, not the respondent.*
- f. *The learned Judge erred and misdirected himself, because the appellant's fees in CCA/0103/2015 were paid by Bus stop Holding (Pty) Ltd, not the respondent. The respondent, therefore, lacked the locus standi to have appellant submit and subject fees paid by Bus stop Holdings (Pty) Ltd to taxation by the Taxing Master."*

Issues for determination

[24] Given the above grounds of appeal, my view is that the only issue that falls for determination is: **whether or not the court a quo was in error in holding that the respondent has *locus standi* to call upon appellant to submit his bill of costs to the Taxing Master for taxation.**

[25] I believe that this is the central issue and an answer to same will dispose of all the grounds of appeal listed in paragraph 14 above.

[26] A proper consideration of this issue requires an interpretation of the interim order granted by consent on 18 December 2015. This is very important because, as I see it, the appellant has decided not place any importance to the interim order. He has instead, as can be seen from his arguments, anchored his case on the court order of 25 September 2017, which order brought his mandate to an end. He even attempts to rely on the reliefs granted to the Company in that order particularly reliefs under paragraphs 1, 5 and 6 that is not tenable because the final order does not in any way attempt to interpret the interim order of 18 December 2015. All it does is to put an end to the life of the interim arrangements and indeed his own role in the resolved dispute.

Whether or not the respondent has locus standi to institute proceedings against the appellant to protect its interests.

Arguments

[27] The appellant has placed the respondent's *locus standi* in dispute. He challenges the respondents right to receive rentals and equally the respondent's right to challenge him to submit his bill of costs for taxation. It is his argument that the respondent only has a sub-lease with the Company and therefore lacks the right to receive rentals collected from the property. He avers that the final order of 2017, particularly paragraph 6 thereof, interdicts the respondent from interfering with the Company's rights to receive rentals. He further asserts that the said order overrides the interim order granted by the same court in 2015 and grants the Company full rights over rentals.

[28] The appellant argues that before the interim order of 2015, he had a prior discussion with Ndebele who represented the Company. The discussion was to the effect that he would collect rentals for the Company and charge collection commission.

[29] Not only that, the appellant argues that any funds received from the tenants as rentals were due to the Company and not the respondent and any moneys deducted as fees and disbursements were also due to the Company. Consequentially, the appellant argued, there was no basis for the respondent to institute proceedings in the *court a quo* as it has no interests in the matter. That cannot be correct.

[30] On its part, and correctly so, the respondent argues that its right to order the appellant to submit his bill of costs to the Taxing Master for taxation, stems from the interim order of 18

December 2015. The order clearly indicated that the appellant was to remit to it M 75 000 monthly from rentals collected and to keep the balance to pay whoever was the successful party in CCA/0103/2015. This is common cause and, apart from giving his own interpretation, the appellant himself does not dispute the contents of the consent order. The appellant's role in the exercise was dictated by the terms of the interim order of 18 December 2015.

The Law

[31] It is trite that the question of *locus standi* concerns the sufficiency and directness of a person's interest in litigation in order for that person to be accepted as a litigating party. The sufficiency of interests depends on the facts of each case hence there are no fixed rules.

In Sandton Civil Precinct (PTY) Ltd v City of Johannesburg and Another (458/2007) [2008] ZASCA 104 at para. 19, where the issue of locus standi arose, Cameron JA (as he then was) said:

"[19] As Harms JA has pointed out, while procedural, it also bears on substance. It concerns the sufficiency and directness of a litigant's interest in the proceedings which warrants his or her title to prosecute the claim asserted..... While in a sense this is technical, and procedural, it also goes to the substance of the applicant's entitlement to come to the court."

Also, in David Mochochoko v The Prime Minister & Others CIV/APN/141/2020, it was correctly stated:

"A litigant who institutes legal proceedings must set out his or her locus standi and prove it. Locus standi is both procedural and substantive as the applicant must prove

the directness of his interest to sue, and his interest in the relief sought. The onus, in a true sense, is upon him to prove his locus standi."

The above cases lay out the principles of law required to establish *locus standi*.

[32] It is trite that the person whose *locus standi* is in dispute bears the onus of proving that he or she has *locus standi*. In all cases a party must allege sufficient facts to indicate that he has the necessary *locus standi* to institute the proceedings. Indeed, the test is whether the applicant has a direct personal interest in the matter to be considered "his cause". Whether a party has *locus standi* boils down to whether or not a party has a direct substantial interest in the subject matter of the litigation.

Disposition

[33] *In casu*, I am satisfied that the respondent, as landlord has a direct interest in the matter. The property in question is its own and as confirmed by the interim order it is entitled to rental from its property. The sub-lease agreement does not take away the landlord's interest in its property, from which it collects rent determined by itself. It is that rental that created a fiduciary relationship between itself and the collector of rent, namely the appellant per his mandate granted under paragraphs 1 and 2 of the interim order dated 18 December 2015. In fact, there is a fiduciary relationship between the appellant and all the parties cited in the order that appointed him as collector of rent. I have under paragraph 8 of this judgment listed the parties cited in CCA/0103/2015. There is

nothing in the interim order which allows or suggests that the appellant can retain the monthly rental of M75 000.0 mentioned in paragraph 2 of the interim order until the matter is finalised. That action by the Appellant was his own unauthorised act to vary an order of court.

Paragraph 2 of the interim order reads as follows:

“2. He is authorized to pay the landlord (1st respondent) the sum of M75 000 per month and keep the balance to pay whoever is the successful party to these proceedings.”

[34] It is only the balance, upon paying the respondent, that the appellant was authorised to keep until the matter was finalised. The finalisation of the matter came on 25 September 2017. Accordingly, if there was any balance, that balance, is what the appellant could legitimately place in the hands of the winning party.

[35] In analysing this case, I find that, for reasons best known to himself, the appellant, apart from collecting rentals assuming additional duties, ignored the second part of the order. When the matter had been finalised, he then sought to find comfort from an order that came into force when his mandate had terminated, namely the order of 25 September 2017. To that end, the respondent is correct when it submits:

*“3.1.3 It is submitted that the appellant appears to be deliberately misdirecting himself. He wants to wish away the **Interim order of Court** made on the **18th December 2015.**”*

*3.3.1 We submit that the Appellant and the Respondent had a relationship and obligations arising out of and/ or brought about by the **Interim Order Court dated 18th December, 2015** (Annexure C). The appellant was under a binding obligation to collect and pay an amount of M75,000.00 to the Respondent on a monthly basis. It is common cause that the Appellant actually collected funds as authorised by the interim Order of Court but failed to pay the amount as authorised to the Respondent.”*

[36] The interim order directed the appellant to collect rentals from December 2015 up to the date the matter was finalised. The interim order, in recognition of the respondent's interest in its rented property, authorised the appellant to pay it the monthly rental of M75 000. It also allowed him to keep the balance for payment to the winning party upon the finalisation of the matter. That being the case, if any balance after paying the respondent as directed in the court order of 18 December 2015 was available in the Mei & Mei Attorneys Trust Account as at 25 September 2017, such balance is what the appellant could have paid to the Company. I dare say, after proper accounting to the court and all the litigants in CCA/0103/2015, the role of the appellant came to an end on 25 September 2017.

[37] The new arrangements that came into force as from 25 September 2017 had nothing to do with the appellant. His mandate had terminated and he cannot be seen to be executing the court order of 25 September 2017. Apart from acknowledging that, this final order terminated the interim arrangements and his role under the interim order of 18

December 2015, there is nothing else that the appellant can say about that final order.

[38] Furthermore, the final court order had nothing to do with the rights that accrued to the parties when the interim order was still in place. As I have already said, the interim order was, in my view, clear and did not require the respondent to seek permission from advocate Ndebele for it to receive M 75 000 or part thereof. The respondent was in terms of the interim order entitled to receive that amount of rental as from December 2015.

[39] It is of cardinal importance for the maintenance of the rule of law that judgments of the courts should be respected and honoured. I therefore find that the appellant's conduct in withholding payment of M75 000 to the respondent was contrary to obeying a lawful court order.

[40] It is true that the appellant, *in casu*, was carrying out his duties in his capacity as an attorney. There was, however, no agreed fee and to that end. If the other party was not happy with his bill of costs, it had the right to call for taxation as is always the practise in legal litigation. *In casu*, the respondent, having shown dissatisfaction with the appellant's bill of costs, it was imperative that the said bill be subjected to taxation before the Taxing Master in line with rule 56 (1) of the Lesotho High Court Rules. The rule provides as follows;

'It shall be competent for the taxing master to tax all bills of costs actually rendered by an attorney in his capacity as such, whether or not in connection with litigation...'

[41] In view of the foregoing, I am unable to interfere with the order of the court a quo.

Order

[42] It is accordingly ordered as follows:

- a. The appeal is dismissed with costs.
- b. The judgment of the court *a quo* is confirmed.



N.T MTSHIYA
ACTING JUSTICE OF APPEAL

I Agree:



P.T DAMASEB
ACTING JUSTICE OF APPEAL

I Agree:



J.W VAN WESTHUIZEN

ACTING JUSTICE OF APPEAL

FOR APPELLANT: ADV T FIEE

FOR RESPONDENT: MR T. MAHLAKENG