

**IN THE HIGH COURT OF LESOTHO**  
**(COMMERCIAL DIVISION)**

**HELD AT MASERU**

**CCA/0143/2022**

**TEBOHO MOLUMO**

**APPLICANT**

**AND**

**LESOTHO POLICE STAFF ASSOCIATION**                      **1<sup>ST</sup> RESPONDENT**

**NEC – LESOTHO POLICE STAFF ASSOCIATION**   **2<sup>ND</sup> RESPONDENT**

**THE MINISTRY OF FINANCE**

**(DEPARTMENT OF TREASURER)**                                      **3<sup>RD</sup> RESPONDENT**

**CENTRAL DEDUCTION ADMINISTRATION**

**SYSTEMS**    **4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL**    **5<sup>TH</sup> RESPONDENT**

**Neutral Citation:** Teboho Molumo v Lesotho Police Staff Association & 4 Others  
[2023] LSHC ---- Comm. (14 SEPTEMBER 2023)

**CORAM:**                      **MOKHESI J**

**HEARD:**                      **14<sup>TH</sup> JUNE 2023**

**DELIVERED:**              **14<sup>TH</sup> SEPTEMBER 2023**

## **SUMMARY**

**Civil Practice:** *The approach to fact-finding in an application for an interim interdict pendente lite- The approach in the case of Gool v Minister of Justice and Another 1955 (2) SA 682 (C) applied- Abuse of urgency procedure met with the dismissal of the case with costs on a punitive scale.*

## ANNOTATIONS

### **Legislation**

High Court Rules 1980

Cases:

### **Lesotho**

Commander, LDF and Another v Matela LAC (1995 – 1999)

Makoala v Makoala LAC (2009 – 2010) 40

Vice Chancellor of NUL v Putsoa LAC (2000 – 2004) 458

### **South Africa**

Beinash v Wixley 1997 (3) SA 721 (SCA)

Bester v Bethge 1911 EDL 18

Bricktec (Pty) Ltd v Pantland 1977 (2) SA 489(T)

Commissioner SARS v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA)

Gool v Minister of Justice and Another 1955 (2) SA 682 (C)

Knox D'Arcy Ltd v Jamieson 1996 (3) SA348 (A)

Plascon-Evans Paints Limited v Van Riebeek Paints (Pty) Ltd 1984 (3) SA 623 (A)

South African Traders Forum and Others v City of Johannesburg 2014 (4) SA 371 (CC)

## JUDGMENT

### [1] INTRODUCTION

The applicant is a police officer. He is the member of the 1<sup>st</sup> respondent and its office bearer. The 1<sup>st</sup> respondent issued summons against the applicant on the 24 April 2023 seeking repayment of an amount of One Hundred and Ten Thousand Nine Hundred Maloti (M110,900.00) termed as being “unlawful loans the plaintiff advanced to himself” together with interest and costs. In the meantime, on 22 May 2023, the applicant/defendant in the main, instituted a counterclaim against the 1<sup>st</sup> respondent for the reliefs that:

- (i) The defendant be ordered to pay the applicant M17,202.00 (Seventeen Thousand, Two Hundred and Two Maloti, interest, costs and to cease making any deductions from the applicant’s salary.

[2] During the pendency of the matters alluded to above, the applicant lodged the current interlocutory application seeking the following interim reliefs:

1. That a Rule Nisi be issued calling upon the respondents to show cause, if any, why;-
2. The rules of this court pertaining to modes and periods of service may not be dispensed with on account of the urgency hereof.

- (a) 1<sup>st</sup> to 4<sup>th</sup> Respondents should be interdicted and/or restrained from deducting funds in the tune of M1101.00 (One Thousand One Hundred and One Maloti) from the applicant's salary pending finalization of CCT/0143/22
- (b) Costs of suit in the event of opposition on attorney and client scale.

[3] **Background Facts**

The application is opposed. The applicant, has, since 2015 been the office bearer of the 1<sup>st</sup> respondent in the capacity of Deputy General Secretary and Deputy President respectively. During this period, he was advanced loans following verbal agreement for such. The amounts advanced are in dispute as between the parties. However, nothing turns on those as regards the resolution of this matter. The monthly instalment was M1101. For the month of November 2022, the 1<sup>st</sup> respondent unilaterally increased the instalment to M3000.00 prompting the applicant to lodge an urgent application for interdict in CCA/0124/2022. The applicant got judgment in his favour to the effect that the unilateral act of the 1<sup>st</sup> respondent was unlawful. The monthly instalment reverted to M1101.00.

[4] Following his victory in CCA/0124/2022, the applicant, on 27 April 2023, wrote a letter to the Secretary General of the 1<sup>st</sup> respondent requesting that deductions from his salary be stopped as he had finished servicing his debt.

The applicant's query was not responded to. It was following this indifference on the part of the 1<sup>st</sup> and 2<sup>nd</sup> respondents that the applicant lodged the current application seeking the reliefs outlined in paragraph [2] above. After hearing arguments on the matter on 14/06/2023, I gave an *ex tempore* ruling dismissing the matter for lack of urgency and awards attorney and client costs. I promised to deliver written reasons in due course. This judgment provides the reasons for the *ex tempore* order.

[5] **Respective Parties' Cases**

The applicant's case is that he was shocked to be served with summons in CCT/0143/2023 which is premised on the total loans of M110,900.00 he allegedly advanced himself. He argues that at the time of instituting the above matter there had been a consolidation of loans totalling M36,333.00 (Thirty-Six Thousand, Three Hundred and Thirty-Three Maloti). This consolidation resulted in him having to make a monthly loan repayment of M1101.00 for a period of thirty-three months. He avers that these loan agreements were concluded verbally. He avers that October 2022 would have been his last month, but the 2<sup>nd</sup> respondent continued to deduct money from his salary, and in consequence instituted CCA/0124/2022 seeking an interdict against the 1<sup>st</sup> respondent as stated in the preceding paragraphs. He

avers that he instituted the current application to prevent incurring further losses due to what he sees as unlawful deductions by the 1<sup>st</sup> respondent.

[6] **Respondent's Case**

Before pleading over the 1<sup>st</sup> respondent, through its National Treasurer Mrs 'Mathebe Motseki raised four of what she called points in *limine*, namely, lack of urgency, material dispute of fact, abuse of court process and the failure by the applicant to establish the elements of an interim interdict.

[7] On the merits the 1<sup>st</sup> respondent avers that it instituted summons against the applicant because he owes it an amount of M110 900.00 representing what it calls "unlawful loans that the Applicant has taken from the 1<sup>st</sup> Respondent". The 1<sup>st</sup> respondent contends that these loans have not been settled hence the decision to deduct an amount of M1101.90 from the applicant's salary. The 1<sup>st</sup> respondent contends that since the applicant has instituted counterclaim for the amounts he feels were unlawfully deducted, should the counterclaim be granted in his favour he will get back the money which would have unjustifiably been deducted. The 1<sup>st</sup> respondent contends that the current application is unnecessary as it amounts to abuse of court process.

[8] **Issues for determination**

(i) Points in *limine* raised;

(ii) The merits

[9] Rule 8(22) of the Rules of this court provides that:

*“(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure as the court or judge may deem fit.*

*(b) In any petition or affidavit filed in support of an urgent application, the applicant shall set forth in detail the circumstances which he avers render the application urgent and also the reasons why he claims that he could not be afforded substantial relief in an hearing in due course if the periods presented by this Rule were followed.*

*(c) Every urgent application must be accompanied by a certificate of an advocate or attorney which sets out that he has considered the matter and that he bona fide believes it to be a matter for urgent relief.”*

[10] It is trite that urgency relates to abridgment of the periods and forms which the rules provide. Urgency, therefore, has nothing to do with the merits of the application and therefore cannot be the basis dismissal of the application. **(Commissioner SARS v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA)** at para. 9). Notwithstanding this position, where the court is of the opinion that its processes are being abused through unjustified invocation of urgency procedure, it will protect itself through utilisation of its inherent power to deal with such abuses and may in the exercise of its discretion

dismiss the application on that score. (See: **Vice Chancellor of NUL v Putsoa LAC (2000 – 2004) 458** at 462 F – I: **Beinash v Wixley 1997 (3) SA 721 (SCA) 734 – G**).

[11] In terms of Rule 8 (22)(b) in an urgent application, the applicant must firstly set forth in detail the circumstances on the basis of which the application is rendered urgent. It is common cause that the applicant has a loan or loans with the 1<sup>st</sup> respondent and that as a result of the 1<sup>st</sup> respondent increasing the amount of instalment in October 2022, he approached the court in CCA/01124/2022. It is also evident that he was always of the view that October 2022 was the last month for making loan repayments. He sat on his rights from that point in time until 27 April 2023 when he raised a query with the respondents. When his query could not be dealt with, on 25 May 2023 when moved the current application. The inordinate delay between the time he knew the loan repayment to be coming to an end and the time when he lodged complaint about what he considered to be unjustified deductions and the lodging of the current applicant is not explained.

[12] The second requirement which the applicant must satisfy in terms of Rule (22)(b) is that he must give reasons why he claims he could not be afforded substantial relief at a hearing in due course. As stated in the introductory



part of this judgment, after being served with summon, the applicant lodged a counterclaim in terms of which he claims the amount he says were unlawfully deducted. The applicant does not anywhere state that he could not be afforded substantial relief at a hearing in due course. It is common cause that if his counterclaim is successful that will be a substantial relief. He seems to equate the requirement of substantial relief at the hearing in due course with prejudice because he states that unless the court comes to his assistance on urgent basis “*then I stand to suffer great prejudice.*”

- [13] What is required by the sub-rule is for the applicant show that he cannot be afforded substantial redress at a hearing in due course, and not that he will suffer irreparable harm. The applicant will get a substantial redress at the hearing of his counterclaim if it is found that the 1<sup>st</sup> respondent withdrew more money than it was entitled to. The amount claimed can even be amended at any stage before judgment in terms of the Rules to reflect the accumulated amounts deducted. In the circumstances of the case, I find that the applicant has not fulfilled the requirements of Rule 8(22), and this can only be attributable to abuse of this procedure. The courts have time and again decried the practice of abusing urgent procedure, but the practice does

not seem to be come to an end. (**Commander, LDF and Another v Matela LAC (1995 – 1999)**).

[14] As regards material dispute of fact, it is trite that it is not a point to be taken in *limine* (**Makoala v Makoala LAC (2009 – 2010) 40** at 45 C – D). In the exercise of my discretion, I find that the appropriate way to deal with this matter is to dismiss it with costs on a punitive scale.

[15] Assuming, without conceding, that I am wrong to dismiss the application for abuse of urgency procedure, even on the merits, the application stands on a shaky ground. This an interim interdict *pendente lite*. Fact – finding where interim interdict is sought *pendente lite* does not follow the approach in **Plascon-Evans Paints Limited v Van Riebeek Paints (Pty) Ltd 1984 (3) SA 623 (A)** at 634 H – 645 C. The proper approach was stated in **Gool v Minister of Justice and Another 1955 (2) SA 682 (C) 688 D – E** where the court said:

*“...[I]n Webster v Mitchell, Supra, the head-note which reads as follows:*

*‘In an application for a temporary interdict applicant’s rights need not be shown by a balance of probabilities; it is sufficient if such right is prima facie established, though open to some doubt. The proper manner of approach is to take the facts as set out by the*

*applicant together with any facts set out by the respondent which applicant cannot dispute and to consider whether, having regard to the inherent probabilities, the applicant could not on those facts obtain final relief at the trial. The facts set up in contradiction by respondent should then be considered, and if serious doubt is thrown upon the case of applicant he could not succeed,'*

*With the greatest respect, I am of opinion that the criterion prescribed in this statement for the first branch of the inquiry thus outlined is somewhat too favourably expressed towards the applicant for an interdict. In my view the criterion on an applicant's own averred or admitted fact is: should (not could) the applicant on those facts obtain final relief at the trial. Subject to that qualification, I respectfully agree that the approach outlined in Webster v Mitchell, supra, is the correct approach for ordinary interdict applications."*

- [16] It is trite that the requirements for interim interdicts are : (i) a clear right or a *prima facie* right, though open to some doubt (ii) if the right which sought to be protected is not clear but only *prima facie* established there is a well-grounded apprehension of irreparable if the interim interdict is not granted and the applicant at the trial succeeds in establishing a clear right (**Bester v Bethge 1911 EDL 18; Bricktec (Pty) Ltd v Pantland 1977 (2) SA 489(T);** (iii) balance of convenience; (iv) the absence of a satisfactory remedy. (**Knox D'Arcy Ltd v Jamieson 1996 (3) SA348 (A)** at 372E-G)

[17] **Prima facie right**

A *prima facie* right may be established by showing the prospects of success in the pending action (**South African Traders Forum and Others v City of Johannesburg 2014 (4) SA 371 (CC)** at para. 25). The applicant avers that he has loans with the 1<sup>st</sup> respondent following verbal agreement and that he has already paid them off. The 1<sup>st</sup> respondent does not deny existence of loans, but however, aver that they remain unpaid in full hence the applicant's approach in CCA/0124/2022 that the 1<sup>st</sup> respondent was entitled to deduct on M1101 not M3000.00. As it is apparent, the exact amounts the applicant says were deducted in excess of the agreed amounts has not been backed up by any documentary proof nor are the terms of the loans regarding repayments stated by the applicant. The applicant has failed to establish even a *prima facie* right to have the have the deductions temporarily stopped.

[18] **Apprehension of irreparable harm and balance of convenience**

The applicant contends that he will suffer irreparable harm if this court does not grant an interim relief, because by the time the two matters are heard and determined, the 1<sup>st</sup> respondent will have deducted an amount in excess of what it advanced to him as a loan. Although as already stated, on being faced with summons for recovery of what the 1<sup>st</sup> respondent considers to be

unlawful loans, the applicant instituted a counterclaim in terms of which he claims the amounts he says were deducted after the date he supposedly paid off his loans. It is trite that in terms of Rule 33 of the High Court Rule 1980 the plaintiff may amend the pleadings to include all the amounts he considers were unlawfully deducted. In the absence of evidence showing the terms of the loan agreement, I find that the applicant has failed to show that there will be irreparable harm when 1<sup>st</sup> respondent deducts money from his salary towards repayment of the loans.

[19] On the requirement of the balance of convenience, the balance of convenience favours the repayment arrangement being left as it is. If the deductions are halted and it later turns out that the applicant owes substantial amounts it would be onerous for him to make payments, but if he succeeds the 1<sup>st</sup> respondent will refund all the monies as it has not been suggested that it is an impecunious litigant. If indeed it is later proved that the deductions should not have been made, an appropriate order will be made.

[20] Absence of a satisfactory remedy. The applicant has already issued a counterclaim claiming the amounts he says were unlawfully deducted. In my view this constitutes an available satisfactory remedy.

[21] When the totality of the applicant's case is considered, it shows that it improbable that the 1<sup>st</sup> respondent made deductions in excess of the agreed amounts since November 2022. Had this genuinely been the case the applicant would not have sat on his rights from that time until 22 April 2022 when he first lodged the query. When this is considered together with the common cause fact of the applicant having been advanced loans, my view is that the applicant should not succeed at the trial. It follows that the application should not succeed.

[22] In the result, the following order is made:

- (i) The application is dismissed with costs on attorney and client scale.

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**MOKHESI J**

**For the Applicant:      Adv. L. D Makhalanyane instructed by K.D Mabulu Attorneys**

**For the 1<sup>st</sup> to 2<sup>nd</sup> Respondents:      Adv. Lesenyeho instructed by T. Maieane & Co. Attorneys**

**For the 3<sup>rd</sup> to 5<sup>th</sup> Respondents: No Appearance**