

LESOTHO / JUDGMENT

Lesotho Communications
Authority V Mamarama Matela &
3 Others (CIV/APN/0120/2022)
[2024] LSHC 167 (31 October 2024)
[2024] LSHC 167

COURT

High Court

CASE / FILE NUMBER

CIV/APN/0120/2022

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IN THE HIGH COURT OF LESOTHO
Held at Maseru

In the matter between:

CIV/APN/0120/2022
LESOTHO COMMUNICATIONS AUTHORITY
APPLICANT
And
MAMARAME MATELA
1ST RESPONDENT
OFFICER COMMANDING MASERU CENTRAL 2ND RESPONDENT
CHARGE OFFICE
COMMISSIONER OF POLICE
ATTORNEY GENERAL
3RD RESPONDENT
4TH RESPONDENT
Neutral citation: Lesotho Communications Authority v ‘Mamarama Matela & 3
Others [2024] LSHC 167 CIV (31st October 2024)
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DATE HEARD
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T. J. MOKOKO J
19/09/2024
31/10/2024
SUMMARY
ANNOTATIONS
Cited Cases
Lesotho

1. Limema v Commissioner of Police CIT/T/407/2014 [2021] LSHC 8 South Africa
 1. Govan v Skidmore 1952 (1) 1952 (1) S. A 732 (N),
 2. National Employers' General Insurance Co Ltd v Jagers 1984 (4) SA 437 (E) at 440 E-G
 3. Pillay v Krishna 1946 AD 946
 4. Stellenbosch Farmers Winery Group Ltd and Another v Martell and Ciea and Others 2003 (1) SA (SCA)
 5. The National Employers' General Insurance v Jagers 1984 (4) S. A 437 (ECD)
- Rules
1. Superior Courts Practice Direction No. 4, 2021.

JUDGMENT

Introduction

- [1] Applicant instituted these proceedings seeking the first respondent to return the following items to the applicant.
- (a) a vehicle bearing registration letters and numbers A 798BBN, engine number 1366866306DT, a Range Rover Sport utility vehicle.
 - (b) an iPhone 12.
 - (c) a Dell inspiron laptop with spare laptop adapter.
 - (d) 12-inch iPad Pro.
 - (e) Philips recording device/audio recorder.
 - (f) LCA uniform.
 - (g) LCA Office keys (Office of CEO and others)
 - (h) LCA Credit Card.
 - (i) LCA Identification Card
 - (j) Board minutes and resolutions and other documents of confidential nature, which are in the possession of the first respondent.
- [2] The first respondent opposed the matter and promptly filed the opposing affidavit. The case was prolonged due to the first respondent's procedural steps, as shown below. The first respondent's counsel moved the recusal application from the bar on 11th May 2022. The court instructed the first respondent to apply for recusal and directed both parties to submit their pleadings on specific dates. The recusal application was eventually heard on 24th May 2022, and the judgment on the recusal application was delivered on 17th June 2022. The court first addressed the recusal application and considered the lack of jurisdiction to

determine the matter. The lack of jurisdiction was heard on 12th July 2022, and the judgment was delivered on 15th August 2022. Dissatisfied with the court's jurisdiction decision, the first respondent appealed to the Court of Appeal. The appeal was heard during the Court of Appeal Session in October 2022, and the judgment was subsequently delivered. On 25th November 2022, the applicant's and the first respondent's legal representatives appeared before the court. The first respondent's counsel informed the court that her client was dissatisfied with the Court of Appeal's judgment and intended to seek a review of its decision on the issue of jurisdiction. As a result, the court postponed the matter to allow the first respondent to file an appeal with the Court of Appeal. The case was rescheduled for a later date. The appeal was then heard during the Court of Appeal's April 2023 session.

- [3] On 15th April 2024, the applicant's and the first respondent's counsel appeared before the court. The first respondent's counsel informed the court that she had served the other party with a notice of her withdrawal as the first respondent's counsel. The applicant's counsel opposed the application because the first respondent's counsel withdrawal was in contravention of Superior Courts Practice Direction (Withdrawal by Legal Practitioners Appearing for Litigants) No.4, 2021.
- [4] It was a matter of common cause that the first respondent's counsel had served the applicant's counsel with her withdrawal application at 09:42 am on the same day of the hearing (15th April 2024). Section 4 of the Superior Courts Practice Direction provides that, because of sudden and repeated withdrawal by legal practitioners in pending and continuing criminal and civil proceedings, it has become necessary to regulate withdrawals by providing a minimum period within which such withdrawals may be made as follows-
- (a) a legal practitioner shall not be allowed to withdraw fourteen
- (14) days prior to the date of trial or proceedings except with leave of court upon good cause being shown.
- [5] The reason that was advanced from the bar by the first respondent's counsel was that her client was in the Republic of South Africa, where she is posted as a Consular-General, and that the applicant had not accepted their settlement proposal. The court noted that the first respondent was aware of the hearing date, so it was not a valid excuse that she was working outside the country. The court also considered section 4 of the Superior Courts Practice Direction, which states that a lawyer cannot withdraw from a case within fourteen days of the trial date unless they have the court's permission and a good reason for doing so. I must emphasize that the applicant's lawyer received the withdrawal notice on the day of the hearing. This clearly violated section 4(a) of the Superior Courts Practice Direction. Because of this, the court refused the withdrawal application. The court had directed that oral evidence be heard to determine whether the applicant's properties were in the possession of the first respondent, per section 8(14) of the High Court Rules 1980. APPLICANT'S CASE PW1- 'Masechaba Qathatsi

- [6] She stated that in 2000, she worked as a secretary for the applicant in the Office of the Chief Executive Officer. On 3rd June 2021, while at work as usual, PW2- Thato Ponya and PW4- Nizam Goolam, along with two security guards, entered the office of the first respondent. The first respondent had a visitor (Mr. Motanyane Makara) who had entered the office before PW2 and PW4. The first respondent left the office carrying her handbag and a laptop bag, which she usually took. She mentioned that when the first respondent began working at the applicant offices, she was provided with an iPad and a laptop. However, since 3rd June 2021, she has not seen the iPad or the laptop in the first respondent's office. She explained that the first respondent and the board secretary oversaw the recording device. After the board secretary resigned around October or November 2020, the first respondent became responsible for the recording device. Since 3rd June 2021, she has not seen the recording device in the Office of the Chief Executive Officer.
- [7] Under cross-examination, the witness confirmed that she did not see what was in the laptop bag. It was suggested to the witness that the first respondent did not take the voice recorder, the iPad, or the laptop when she left her office on the 3rd of June 2021. She replied that she believed the first respondent put those items in her bag because she did not leave them in her office when she left. PW2- Thato Ponya
- [8] He stated that he began working as the Chief Regulatory Officer at the applicant's office on 01st June 2021. On 3rd June 2021, between 11:00 am and 12:00 pm, he went to the first respondent's office to submit reports. He found two security guards and PW4 in the office when he arrived. Upon entering, he saw the first respondent packing her belongings. She placed a laptop, iPad, voice recorder, and cell phone in her bag. She printed two documents and handed them to him while putting another document in her bag. The security personnel then escorted the first respondent out of the applicant's premises. He clarified that it was not true that he and others knew about the whereabouts of those items, as he witnessed the first respondent putting them in her bag.
- [9] During cross-examination, it was suggested to the witness that he arrived at the first respondent's office with PW4 and two security personnel. The witness replied that he found them in the office of the first respondent. The witness firmly stated that the first respondent took the gadgets when she left her office. It was suggested to the witness that the first respondent was told to vacate the office, and she had no time to pack her belongings. The witness replied that this was incorrect, as he remained in the office of the first respondent for approximately five minutes while she took her belongings, including the gadgets. PW3- Keneuoe Mohale
- [10] In her testimony, she stated that she has been serving as a board member for the applicant since 2018. Additionally, she mentioned that the first respondent was appointed as the applicant's Chief Executive Officer in 2019 and was suspended from work in June 2021. Furthermore, she highlighted that the first respondent had a laptop and iPad as essential working tools. She noted that in the absence of the board secretary, the first respondent had the audio recorder. In conclusion, she mentioned that the first respondent failed to inform

the board about the disappearance of the audio recorder.

- [11] During cross-examination, the witness testified that on 25 May 2021, the first respondent left the board meeting and inadvertently left behind the audio recorder that was being used during the meeting. Subsequently, during the next board meeting, the audio recorder was noticed to be missing. During the cross-examination, the witness verified that following the meeting on 25th May 2021, Mr. Motanyane Makara retained possession of the audio recorder and was tasked with delivering it to the first respondent. It was suggested to the witness that she had kept the audio recorder, but the witness denied it. PW4- Nizam Goolam
- [12] He testified that in July 2023, he had been designated as the applicant's Chief Executive Officer. On 03 June 2021, the first respondent was suspended from her employment. Following this suspension, he went to the first respondent's office accompanied by two security personnel to request that the first respondent vacate the applicant's premises, as she had been suspended from her position. The witness kindly granted the first respondent time to print some documents. While the witness was printing, another individual, PW2, entered the office. The first respondent provided PW2 with some documents and instructed PW2 to deliver the letters to their intended recipients. Additionally, she placed other documents in her bag and took a laptop, putting it in her bag as well. Mr. Motanyane Makara and he then accompanied the first respondent out of the office. It was mentioned that the first respondent was provided with a cell phone, laptop, and iPad.
- [13] During the cross-examination, the witness remained unwavering in his statement that he observed the first respondent placing the laptop into the laptop bag, taking the bag, and exiting the office. The applicant then closed its case. RESPONDENT'S CASE DW1- Motanyane Makara
- [14] He testified that he held the position of a board member for the applicant starting from November 2018 and continued in this role until June 2021. Moreover, in 2021, he was assigned the position of board chairperson. On the 25th of May 2021, during the board meeting, PW1 brought a voice recorder to capture the discussions. Once the meeting concluded, he placed the voice recorder in the CEO's boardroom. However, to his surprise, he learned from other board members that the voice recorder had gone missing. Consequently, he was suspended as a board member on the 27th of May 2021. On 03 June 2021, at approximately 08:00 am, he went to the first respondent's office. As he approached the office, he encountered PW2, approximately 10 feet from PW1's office. About 40 minutes later, PW4 arrived at the first respondent's office accompanied by two security personnel. PW4 held a document as he informed the first respondent that she had been suspended from work. He mentioned that PW4 instructed security personnel to escort the first respondent out of the office. He mentioned that he did not catch sight of the iPad or the voice recorder, only the desktop. Additionally, he claimed that PW2's assertion that he witnessed the first respondent placing the laptop, iPad, and voice recorder in her bag is entirely fabricated.

- [15] During the cross-examination, the witness affirmed that the board utilized a voice recorder to document the meeting minutes. Upon the conclusion of the meeting, the witness placed the recorder in the boardroom as the first respondent had already departed. Subsequently, the witness locked the boardroom door and entrusted the key to the security guards stationed at the reception. During cross-examination, the witness was asked about the accounts of PW1, PW2, and PW4, who stated that the witness was still in the first respondent's office when PW4 arrived with the security personnel. The witness affirmed this to be true. However, the witness strongly refuted the claim that PW2 was present when the first respondent departed her office. The witness strongly contradicted PW1's account that the first respondent was carrying a laptop bag when she left the office. Instead, the witness testified that the first respondent was pulling a trolley bag. It was brought to the witness's attention that in July 2021, a cell phone was delivered to the first respondent, and the witness was unaware of this. The witness did not contest that the applicant had provided the first respondent with a laptop. DW2- Seth Griffith Lerotholi
- [16] During his testimony, he mentioned that he had been a member of the applicant's board from 2018 to 2021. He recalled a specific meeting on the 25th of May 2021, during which a voice recorder was used to capture the proceedings. However, he was unsure about the whereabouts of the voice recorder after the meeting ended. He remembered that Mr. Motanyane Makara (DW1) had placed the recorder on the table following the meeting.
- [17] During cross-examination, the witness verified that the first respondent had a voice recorder when the board secretary was absent. It was anticipated that either PW1 or the first respondent would have the recorder on the first working day. If PW1 had it, she was supposed to pass it on to the first respondent. The witness couldn't remember if the board questioned PW1 about the voice recorder or if they questioned the first respondent. Furthermore, he couldn't recall if the board reported the disappearance of the voice recorder to the police. Lastly, the witness affirmed that the applicant had provided the first respondent with a laptop, cell phone, and iPad. DW4- 'Mamarama Matela
- [18] She stated that she assumed the applicant's Chief Executive Officer role in April 2019, with her contract concluding on 31st March 2022. She was suspended from employment on 03rd June 2021. She mentioned that on 25th May 2021, PW1 brought a voice recorder to the meeting to document the discussions. On 3rd June 2021, PW4, accompanied by two security personnel, entered her office, where she was with Mr. Motanyane Makara (DW1). PW4 instructed her to discuss her suspension with the minister and then asked her to leave the office. She picked up her bag and exited the office. She contested the account provided by PW1, who claimed that she departed the office with a laptop bag. She also contested PW2's statement that he witnessed her placing a laptop, iPad, and voice recorder into the bag, asserting that PW2 was not present when she left her office. Additionally, she refuted the allegations made by PW4, who claimed to have seen her packing the iPad and the laptop, stating that she did not have sufficient time to pack those items. She said she had left the laptop in the office before departing. Additionally, she mentioned that the laptop was

password-protected and, therefore, inaccessible since it had been locked. She stated that she used the laptop more, so the iPad had always remained in the office. After the board secretary resigned in October 2020, the voice recorder was specifically handed over to the first respondent's office.

- [19] She confirmed that the voice recorder disappeared after the meeting on the 25th of May 2021, and she was not part of that meeting. On the 27th of May 2021, she made the unsettling discovery that the voice recorder, which held valuable recordings, was nowhere to be found. The witness strongly denied taking the voice recorder. She also contradicted PW2's account of seeing her pack the iPad, the voice recorder, and the laptop in her bag. Additionally, she disputed PW1's testimony that she left the office with the laptop bag and refuted PW4's claim of seeing her place the laptop in the bag. APPLICANT'S SUBMISSIONS
- [20] The applicant's counsel, Mr. Letsika argued that the parties involved presented conflicting narratives regarding the incident in question. The applicant's two witnesses firmly maintain that they observed the first respondent physically taking possession of the laptop. Additionally, one of these witnesses, PW2, claimed that he witnessed the first respondent taking the laptop, a voice recorder, and an iPad. On the other hand, DW1 provided a contrasting account. He said he left the voice recorder in the board room after a board meeting convened on 25 May 2021. He emphasized that he securely locked the board room doors before departing.
- [21] Mr. Letsika argued that the first respondent's theory was based on the premise that the cleaners and her secretary had access to the boardroom keys. He contended that this theory could be dismissed, as the cleaners were not presented with the claim that they had taken the voice recorder. Consequently, it was suggested that the inclusion of the cleaners appeared to be a matter of convenience, and the evidence provided by the first respondent was characterized as opportunistic.
- [22] Mr. Letsika articulated that the likelihoods strongly favour the applicant for several compelling reasons. Firstly, the meeting convened on 25 May 2021 was primarily focused on the serious allegations made by the Minister against the first respondent. This context implies that the first respondent would naturally hold a unique, personal interest in the outcomes of the discussions and decisions made during that meeting. Moreover, despite being explicitly instructed by the board not to attend, the first respondent's unexpected presence at the meeting further underscores her unusual eagerness to engage with the proceedings. This defiance highlights her desire to be part of the conversation and suggests a deeper, more personal stake in the deliberations on that significant day, as she seemed determined to grasp the developments related to her situation first-hand. The first respondent was responsible for keeping the voice recorder, while the laptop and iPad had been assigned to her use. The suspension did not revoke her right to possess the laptop and iPad. The first respondent has not provided any reasons why PW1, PW2, and PW4 would believe she took the disputed items, as that was not the case. Therefore, he argued that the probabilities favour the applicant. He noted that the applicant's witnesses were

straightforward in their conduct and answers. In contrast, the first respondent was evasive, as was DW1. DW2 pretended to be unaware of obvious facts, often claiming he would be "lying" if he remembered certain crucial details. Lastly, he asserted that the first respondent did not inform the acting chief executive officer that she had left the items in her office, as she knew they were in her possession. He referred the court to the case of *National Employers' General Insurance Co Ltd v Jagers*¹, and *Stellenbosch Farmers Winery Group Ltd and another v Martell and Ciea and Others*². FIRST RESPONDENT'S SUBMISSIONS

- [23] Advocate Khesuoe, representing the first respondent, argued that the first respondent's testimony was credible. She recounted how the first respondent had meticulously packed her personal belongings before leaving alongside DW1. This assertion was notably supported by DW1, who echoed her account. Additionally, witnesses PW4 and PW1 provided compelling testimony regarding DW1's presence in the first respondent's office during this crucial moment. In a contrasting observation, PW2 reported a different scene upon his arrival, stating that he encountered only PW4, accompanied by two security guards and DW3. PW2, in a striking contradiction to the details presented in his supporting 1 1984 (4) SA 437 (E) at 440 E-G 2 2003 (1) SA (SCA) par [5]; [2002] ZASCA 98 par [5] (6 September 2002) affidavit, vividly recounted witnessing DW3 in the act of seizing the laptop, the iPad, and the voice recorder. His account painted a clear picture of the scene, emphasizing the swift and deliberate way DW3 gathered these items, leaving no doubt about the moment's gravity. PW4's testimony does not support the claims made by PW2 regarding the incident in question. In his replying affidavit and during his oral evidence, PW4 specifically stated that he witnessed DW3 taking the laptop. This assertion introduces a significant discrepancy in the accounts provided, casting doubt on the reliability of PW2's evidence. PW1's statements appeared inconsistent during the proceedings. In her supporting affidavit, she asserted that she witnessed DW1 taking the laptop along with several other items, though she could not recall what those items were. However, when giving her testimony, she clarified that she had not seen DW3 take the laptop; instead, she only observed DW3 carrying the laptop bag. Additionally, PW2 did not provide any evidence or testimony confirming that PW1 was present in the office at the time of the incident.
- [24] Adv. Khesuoe asserted that the first respondent who possessed the voice recorder on the most recent occasion was on the 25th of May 2021. This claim was further supported by the testimony of PW3, who confirmed that the last individual known to have had the voice recorder in their custody was DW1. PW3's account added credibility to the first respondent's statement, establishing a clearer timeline regarding the whereabouts of the voice recorder and its chain of custody. DW2 confirmed the account provided by DW1, stating that DW1 had left the voice recorder in the boardroom following the meeting on May 25, 2021. In contrast, it was only PW2 who claimed to have witnessed DW3 placing the voice recorder into her bag on the day she was suspended.

- [25] Advocate Khesuoe emphasized a lack of credible evidence to support the claim that the first respondent had the applicant's laptop and iPad. Despite assertions suggesting that these devices have been continuously within her possession, she pointed out the absence of reliable proof to substantiate such a statement. Ultimately, she argued that the applicant had not met the burden of proof required and that the balance of probability does not favour its claims, rendering its evidence inaccurate. Therefore, she prayed that the application be dismissed with costs on the attorney and client's scale. Adv. Khesuoe referred the court to the case of *Limema v Commissioner of Police*³, *Pillay v Krishna*⁴, and submitted that the applicant bore the onus to prove that the first respondent has in her possession the items in dispute. THE LAW
- [25] In the matter of *The National Employers' General Insurance v Jagers* (supra) the court held as follows: "It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case, the onus is obviously not as heavy as it is in criminal cases, but nevertheless, where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not, the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the 3 CIT/T/407/2014 [2021] LSHC 8 4 1946 AD 946 probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If, however, the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false".
- [26] In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others*⁵, the Supreme Court of Appeal explained how a court should resolve factual disputes and ascertain, as far as possible, where the truth lies between conflicting factual assertions: "To come to a conclusion on the disputed issues, a court must make findings on:
- (a) The credibility of the various factual witnesses,
 - (b) Their reliability and
 - (c) The probability or improbability of each party's version on each of the disputed issues. In the light of the assessment of (a), (b), and (c), the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be a rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors

equipoised, probabilities prevail". 5 2003 (1) S. A 11 (SCA) at para 5

[27] In *Govan v Skidmore*⁶, the following principle was enunciated: "In finding facts or making inferences in a civil case, it seems to me that one may, as Wigmore conveys in his work on evidence... by balancing probabilities select a conclusion which seems to be more natural or plausible from amongst several conceivable ones even though that conclusion, may not be the only reasonable one". ANALYSIS AND DISCUSSION

[28] The following are matters of common cause.

- (a) Upon stepping into her position as the applicant's chief executive officer, the first respondent was provided with essential technology to facilitate her new role, including an iPad, iPhone, and laptop, to manage her daily tasks and responsibilities effectively.
- (b) On June 3rd, 2021, the first respondent was suspended from work.
- (c) The iPhone was delivered to the first respondent while she was suspended from work.
- (d) After the meeting on 25 May 2021, Mr. Motanyane Makara left the voice recorder in the CEO's boardroom.
- (e) On the 3rd of June 2021, the laptop and the iPad were in possession of the first respondent in her office.
- (f) The iPad and the laptop were on the first respondent's desk on 3rd June 2021.

[29] The issue for determination is whether the applicant has discharged the onus on it to prove that the first respondent has the applicant's properties.

[30] I have already alluded to the fact that it is a matter of common cause that the first respondent, upon stepping into the office of the applicant's Chief Executive 6 1952 (1) 1952 (1) S. A 732 (N) Office, was issued with a laptop and iPad. At all material times, these gadgets were in her possession. It is not disputed that on the 3rd of June 2021, these items were seen on the desk of the first respondent. However, the first respondent said that she left the iPad and the laptop on her desk when she left the office on the 3rd of June 2021. I must state that these items were issued to the first respondent as her working tools. The first respondent said she left these items in her office for two reasons. The first reason she advanced was that PW4 and the security personnel hurried her out of the office. The second reason is that she left the laptop because it was password-locked, so it was useless to her. [31] However, the first respondent did not suggest to PW4 that the laptop had been password-locked when PW4 was being cross-examined. This demonstrates that this was an afterthought. On the first reason that the first respondent was hurried out of the office, I have considered the evidence of both PW2, PW4, DW1, and DW3. PW2 said that upon entering the office of the first respondent, the first respondent was printing some documents, which he handed to him to deliver to the relevant recipients. PW4 corroborates PW2's evidence that the first respondent handed some documents to PW2 with instructions to deliver the letters to the addressees. PW4 stated that after instructing the first respondent to leave the office, the first

respondent requested him to print some documents. He said he gave the first respondent the requested indulgence, and she printed the documents. DW1 confirmed that the first respondent handed over letters to PW2. The first respondent corroborated the evidence of PW2 and PW4 that after doing printing, she handed show cause letters to PW2. If the first respondent's version that she was hurried out of the office by PW4 and security personnel were correct, the first respondent would not have been able to print the documents. PW2 and PW4 corroborated that after giving some of the printed material to PW2, the first respondent put the other documents in her bag. The first respondent did not dispute that she put the remaining documents in her bag. This evidence shows that the first respondent's version that she was hurried out of the office by PW4 and security personnel is incorrect.

- [32] PW2 said he witnessed the first respondent putting the iPad, the laptop, and the voice recorder in her bag. PW4 said he witnessed the first respondent placing the laptop in her bag before she left the office. PW1 said she saw the first respondent carrying the laptop bag and the handbag when she left the office. PW1 testified that the first respondent usually carried her laptop in her laptop bag when she came in and left her office. PW1 stated that the laptops allocated to the first respondent's predecessors are still in the CEO's office, but the first respondent's laptop is not there. On the issue of the laptop, PW2 and PW4 corroborate each other that they saw the first respondent placing the laptop in bag and carrying it away with her. On the other hand, the first respondent said she had left the laptop on her desk in her office.
- [33] PW1, in her examination in chief, said that since 3rd June 2021, she had not seen the iPad and laptop in the first respondent's office. Under cross-examination, it was suggested to PW1 that the first respondent left the iPad and laptop, in her office. PW1 responded that she believed the first respondent had put those items in her bag because she had not left them in her office when she left. I am mindful that these were the working tools issued to the first respondent to carry out her duties effectively. On the 3rd of June 2021, the first respondent was not dismissed from work, but she was sent on suspension. I have already found that the two reasons she advanced for leaving the laptop in her office do not hold water. PW4 said that when they got to the first respondent's vehicle, the first respondent put the laptop bag in her car and drove away. The first respondent did not dispute this piece of evidence. PW1 said she saw the first respondent carrying the laptop bag as usual when she left the office. However, PW1 did not know what was contained in the laptop bag. When considering the evidence of PW2 and PW4, who saw the first respondent placing the laptop in the laptop bag, and the evidence of PW1 that the first respondent was carrying the laptop bag, it leaves no doubt in my mind that the laptop bag, PW1 saw the first respondent carrying was containing the laptop as she usually carried in and out to the office. Under cross-examination, it was suggested to the first respondent that PW1 had no reason to say the first respondent carried the laptop bag when she did not. The first respondent responded she did not find any reason why PW1 would say something negative about her. She further admitted under cross-examination that PW1 would not harbor any resentment toward her. I find PW1's evidence that the first respondent was carrying a laptop bag on the 3rd of June 2021 credible.

- [35] Coming to the evidence of DW1 on the laptop, he stated that he did not see the laptop on the first respondent's desk on the 3rd of June 2021. He said the first respondent used the desktop to assist him with typing his document. It was put to him that what he saw on the first respondent's desk was a monitor. He did not dispute this fact. He said he did not witness the first respondent placing the laptop in her bag; rather, the first respondent used the trolley bag. None of the applicant's witnesses say the first respondent was pulling a trolley bag. The first respondent admitted that the laptop was there on that day. I don't believe that DW1, whom the first respondent was helping with typing letters, could not have seen what the first respondent used to type his document. I find DW1's evidence untruthful because he wanted to conceal the obvious fact that the first respondent possessed the laptop that day.
- [36] Regarding the iPad, the first respondent said that she used the laptop more, so the iPad had always remained in the office. I must state from the onset that the first respondent did not put this version to PW1, who was best suited to have reacted to that version, as she was the personal secretary to the first respondent and, therefore, could have reasonably been aware if the first respondent had always left the iPad in her office. PW1 was denied an opportunity to react to this version. As it is now, the court, in the same vein, has been denied what would have been the reaction of PW1 to that suggestion. Be that as it may, PW2 stated that he saw the first respondent placing the iPad in her bag. Under cross-examination, PW2 was unshaken and stood his ground on the iPad issue. For this reason, I found the first respondent's version that she had always left the iPad in her office as an afterthought.
- [33] With regard to the voice recorder, it is a matter of common cause that after the meeting on the 25th of May 2021, DW1 left the voice recorder in the CEO's board room. The first respondent said she last saw the recorder in the meeting on the 25th of May 2021. Under cross-examination, the first respondent stated that she became aware of the disappearance of the voice recorder on the 27th of May
2021. It was put to the first respondent that PW2 said he saw her placing the voice recorder in her bag. She responded that PW2 was not present in her office when she left her office. Further, under cross-examination, it was suggested to her that PW2 had no reason to implicate her falsely, to which she responded that anybody who worked with PW4 was susceptible to making such allegations. When giving evidence in chief, the first respondent said that when PW4 entered her office in the company of two security personnel, PW2 had already left her office. Under cross-examination of PW2, it was put to him that he entered the office of the first respondent in the company of PW4 and two security personnel. PW2 was adamant that he found PW4 and two security guards in her office. I have observed that in the examination in chief, the first respondent said when PW4 entered her office, PW2 had already left. However, under cross-examination, it was suggested to PW2 that he came to the office of the first respondent in the company of PW4 and two security guards. This clearly indicates that the first respondent is not taking this court into her confidence. Further under examination in chief, the first respondent said when PW4 came to her office, PW2 had already left with the two show cause letters. It should be recalled that PW2

testified that the first respondent gave her two letters after printing them in the presence of PW4 and two security guards. Under cross-examination of PW2, the first respondent did not challenge PW2's version of events regarding printing the letters and being handed over to PW2 by the first respondent. Further, under cross-examination of PW4, the first respondent did not challenge PW4's evidence that after printing the letters, she gave some documents to PW2 to deliver to the relevant recipients. The first respondent's conduct demonstrates that she is not a credible witness. Back to the issue of the voice recorder, PW2 said he saw the first respondent placing the voice recorder in the bag. It is worth mentioning that this device contained classified and confidential information and, therefore, was a valuable tool, especially to the board and the first respondent's office.

[37] PW1 stated that the first respondent was issued working tools like a laptop, iPad, and iPhone, just like her predecessors. She stated that the laptops issued to former CEOs were still present in the CEO's office. According to DW3- (the first respondent) on 03 June 2021, the day of her suspension from work, she had an iPad, phone, and laptop in her office. However, she left the iPad and the laptop in her office for two reasons. The first reason was that the laptop was password- locked; therefore, it would not be useful to her. The second reason was that she did not have time to pack her things as she was hurriedly escorted out of her office. On the issue of the voice recorder, she stated that she last saw the voice recorder on the 25th of May 2021, as it was utilized during the meeting on the 25th of May 2021. According to her, she learned on the 27th of May 2021 that the voice recorder had disappeared. She confirmed that she did not report that disappearance to the police. She did not tell the court what measures she took about the disappearance of the voice recorder. Under cross-examination, the first respondent affirmed that she had not reported the disappearance of the voice recorder to the police. She further admitted that reporting it as missing to the police would have been a reasonable thing to do. PW3- Keneuoe Mohale said that the first respondent failed to inform the board about the disappearance of the audio recorder. I am persuaded to believe that the first respondent did not take the necessary measures about the voice recorder because it had not disappeared, as claimed by the first respondent. The reason is that PW2 saw the first respondent placing the voice recorder in her bag before she exited her office on the 3rd of June

2021. I must state once again that PW2 was unshaken in his evidence regarding the iPad, the laptop, and the voice recorder. I, therefore, find his evidence truthful and credible.

[38] At this juncture, it is essential to highlight that the first respondent was provided with an iPad and a laptop, which served as critical tools in carrying out her responsibilities as the Chief Executive Officer for the applicant. These devices were integral to her day-to-day operations and communication. Upon the conclusion of her employment contract, she was required to return these items to the applicant. However, there is a noticeable absence of any documentation or proof indicating that she returned these gadgets when her contract officially ended.

[35] Applying the principles in *National Employers General Insurance v Jager* (supra), I believe that the probabilities in the case favour the applicant. The reasons are that I find the applicant's evidence true and credible, while the first respondent's evidence is not true and credible. The applicant has managed to discharge the onus on it by proving that the first respondent has the applicant's properties, to wit:

- (a) a laptop.
- (b) an iPad.
- (c) voice recorder. ORDER I make the following Order.
- (a) The first respondent is ordered to release to the applicant the following properties.
 - (i) A Dell laptop with a spare adapter bearing serial number 8Y68NF2. (ii) 12-inch iPad Pro bearing serial number DLXY15D2K7RG. (iii) Philips recording device/audio recorder bearing serial number DVT27108GB.
- (b) Applicant is awarded costs of this matter.

T. J. MOKOKO JUDGE APPLICANT'S COUNSEL : Mr. Q. LETSIKA FIRST RESPONDENT'S
COUNSEL : Adv. M. V. KHESUOE 23

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Prepared on 26 October 2026 · Esheria