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CIV/APN/46/83

IN THE HIGH COURT OF LESOTHO

In the Application of :

MULTIMEX BUSINESS CONSULTANTS
(Pty)Ltd

Applicant

v

BERT SCHUBERT

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice T.S.
Cotran on the 7th March, 1983

This is the return date of a rule nisi granted to applicant against respondent calling upon him to show cause why:

- "(a) Respondent shall not be interdicted from operating and doing trade business in the business premises of Applicant at Shop No.S5 situated at Block No.S at Sebaboleng Trade and Industrial Centre, Maseru.
- (b) Respondent shall not be restrained from interfering with Applicant's business operations at the business site mentioned in Para.1(a) supra.
- (c) Respondent shall not be ordered to return and restore to Applicant, certain Invoices in the name of Applicant from various creditors.
- (d) Respondent shall not be ordered to return to Applicant cheque books for the Account of Qiloane Fruit and Vegetables, a branch trade name of Applicant.
- (e) Respondent shall not be directed to vacate forthwith the business and office premises of the Applicant.
- (f) Respondent shall not be ordered to pay costs of this application."

On the papers before me this application must be dismissed with costs. The crux of the applicant's(Multimex Business Consultants(Pty)Ltd case is that the trade names

/Qiloane,

Qiloane, and/or Makoanyane Investments are the applicant's property or brain child and the respondent has been usurping these. On balance of probabilities the respondent was one of the promoters, perhaps the most active one, amongst a group of persons, who included the managing director (Mrwebi) and at least one other director and a shareholder of the applicant.

Neither Qiloane or Makoanyane Investments have been incorporated into a company, or formed into a partnership or registered as a business name. Everything concerning these two outfits is yet "in formation" although Qiloane has been trading in the purchase and sale of fruits and vegetables for some two or three months under the umbrella of the applicant (apparently without any written agreements but for a contribution of R75 towards expenses) who had offices (phone, telex etc...) and storage facilities as well as a licence to trade and at the material time the respondent had not. Suppliers of fruits and vegetables appear to have addressed at least some of the correspondence to the applicant.

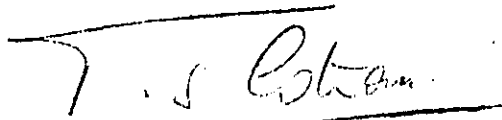
It is clear that the applicant, as a limited company, was not doing particularly well and Mrwebi the managing director thereof (and other shareholders as well) were of the view that Qiloane, trading in fruits and vegetables, had better prospects of success. Indeed the affidavits and documents show that at any rate Mrwebi the managing director of the applicant, in a personal capacity, did some promotional work, perhaps not so much as the respondent's, to put Qiloane on its feet but differences having occurred the applicant launched this application, not on his behalf, but as the representative of the applicant, claiming the "ownership" of Qiloane's business of which group of promoters he formed a part, but only a part.

There are far too many disputes about the facts and it is impossible to resolve these on papers. By the return date (which was anticipated) things appear to have changed also on the ground and some of the applicant's premises used by Qiloane (by virtual grace and favour of the applicant when major differences had not developed) formally leased by Bedco to applicant have now been leased by Bedco to

/respondent

respondent using the name Qiloane and Qiloane(Pty)Ltd as if such an entity has been incorporated or formed into a partnership. I am skeptical about Bedco's move as also about respondent's moves since the application was launched. In particular if the applicant has been thrown out from the premises by Bedco aided and abetted by respondent there might well be an act of spoliation for which there is a remedy. If applicant has suffered damages or seeks other relief where viva voce evidence is necessary as seems to be the case he is at liberty to sue by way of action in the normal way.

Since the main argument of the applicant is that it "owns" Qiloane has not been established even on balance of probabilities, I find no justification to grant relief as matters stand, and as I intimated earlier the application must be dismissed with costs.


CHIEF JUSTICE
7th March, 1983

For Applicant : Mr. Jobodwana
For Respondent: Mr. Buys