

CIV/T/404/84
CIV/T/140/84
CIV/T/42/81
CIV/APN/44/83

IN THE HIGH COURT OF LESOTHO

In the Matter of :

FREDDY HIRSCH-BIZERBA SCALES (PTY) LTD. Applicant

v

MOFOKENG MEAT COMPANY (PTY) LTD. 1st Respondent
MALEFETSANE MOFOKENG 2nd Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice Mr. Justice
T.S. Cotran on the 24th day of September 1984

The applicant in CIV/T/404/84 and CIV/T/140/84 is a company by the name of Freddy Hirsch-Bizerba Scales (Pty) Ltd. In the first case two respondents are cited (a) Mofokeng Meat Company (Pty) Ltd. and (b) Malefetsane Mofokeng. In the second case the respondent is Mr. Malefetsane Mofokeng t/a as Mofokeng Meat Company.

In the first case the applicant had sold goods described as CD 8315 scale to Mofokeng Meat Company and in the second case the applicant sold goods described as W-Wall Scale Prod 010211 to Malefetsane Mofokeng t/a Mofokeng Meat Co. (Pty) Ltd. The transactions were on suspensive sale agreements which provided, inter alia, that the ownership of the goods would not pass to the buyer until payment has been made in full.

The goods have not in fact been paid for in full and in each case the respondents and respondent respectively have fallen into arrears on the instalments, in the first to a relatively small amount of the outstanding balance and in the second to virtually

/the whole

the whole of the purchase price.

Action has been instituted in both cases and the applicant now seeks an order directing the sheriff to attach the goods and place them in the High Court premises pending the finalisation of the proceedings in the two trials.

Now in CIV/T/42/81 the man Malefetsane Mofokeng, a butcher, has been placed under provisional sequestration and a trustee appointed pending the return date.

Now Mr. Gwentse, who is representing the respondent (and respondents) opposes the applications for attachment of the goods subject matter of the suspensive sale agreements. He does not say that his client is (or clients are) not in arrears, nor does he say that the plaintiffs/applicants are not owners of the goods nor does he say that his clients or clients are not in breach of the agreement. His ground of opposition is based on the result of CIV/APN/44/83 in which on 16th May 1983, the Court found that a writ of attachment on the immovable property of Malefetsane Mofokeng issued out of the office of the Registrar by Mr. Harley representing a different Judgment Creditor was, for reasons there given, set aside. Malefetsane the man, was aggrieved, and he may have had a cause of action in respect of a lorry seized and sold by the deputy sheriff, but the fact of the matter is that he took no action whatsoever. He is relying on that ill fated occurrence to resist actions by other creditors who have no connection with that case at all.

I decide these two cases in favour of the applicants on the ground I have attempted to explain above. There is no need to go into any matter relating to the provisional sequestration order but I direct that the applicants/plaintiffs join the trustee in the provisional sequestration as a party, and serve

/him

him with the papers.

In both applications the respondents and respondent respectively will pay the costs.

CHIEF JUSTICE
24th September 1984

For Applicants : Mr. Harley

For Respondent/s: Mr. Gwentshe