

IN THE HIGH COURT OF LESOTHO

In the Application of

FORTUNE ENTERPRISES (PTY) LTD

Applicant

v.

KHALI, DLAMINI & PARTNERS  
E M KHALI  
B.S DLAMINI

1st Respondent  
2nd Respondent  
3rd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice J L. Kheola  
on the 24th day of February, 1986

---

This is an application for the sequestration of the estates of the respondents. The second respondent is the managing partner of the first respondent.

It is common cause that first respondent is truly and lawfully indebted to the petitioner company in the sum of R11,900-00 together with interest thereon at the rate of 11% per annum from the 25th July, 1985, in respect of a judgment by this Court in favour of the petitioner company on the 19th August, 1985 in a civil case No CIV/T/499/85. The taxed costs in the above-mentioned case amount to R272-01. A warrant of execution has been issued.

It is also common cause that apart from the first respondent's indebtedness to the petitioner company, it is indebted to the following creditors who have obtained judgment against first and second respondents and who have issued warrants of execution in respect of those judgments

CIV/apn/275/83- N. Khali	- R 1,208 - 61
CC, 1315/85- Lesotho Building Finance Corp.	- 5,348 - 38
CIV/T/513/85 - A R. Abubaker	- 1,082 - 51
CC, 1179/85 - Panorama Motors	- 986 - 45
CIV/T/251/85 - Lesotho Bank	- 80,170 - 89
CIV/T/175/83 - Ernest Campos & Partners	- 4,839 - 25

/The petitioner.... .

The petitioner company has attached warrants of execution in respect of its debt and the debts of the creditors mentioned above.

Two deputy-sheriffs of this Court who are also messengers of the Magistrate's court have filed supporting affidavits. In his affidavit Mr. W J. Lemena deposes that on the 13th December, 1985 he and Mr. P Masienyane went to the second respondent and insisted that he should make payment of the various warrants of execution they showed to him, failing which he should point out sufficient assets which they could attach in satisfaction of those writs. He avers that the second respondent became most abusive, calling them "rubbish" and he stated that he could never allow them to attach his or first respondent's assets as long as he lived. He threatened them by stating that if they continued going to his place to attach, he would arrange for someone to kill them.

Mr Masienyane has confirmed what Mr. Lemena has stated. Several returns of service have been attached to confirm what the deputy-sheriffs stated in their affidavits.

The second respondent admits that he and first respondent are indebted to the petitioner company in the sum of P11,900-00 but he deposes that the respondents are holding this money in pursuance of the authority of the petitioner company. Attorneys for the petitioner were humbly requested on the 19th February, 1985 to nullify all legal actions undertaken by respondents on behalf of the petitioner. He says that as soon as this done he told Mr. Buys, attorney for the petitioner, that R11,900-00 would be released. I must point out that the so called agreement to withhold the money appears to have been entered into on the 19th February, 1985. The judgment in respect of that sum of money was obtained on the 19th August, 1985 i.e. six months after the so called agreement was allegedly entered into. If the second respondent subsequently agreed to release the money why did he not pay it to the

/deputy-sheriff. ....

deputy-sheriff when he was served with a writ of execution?

On the 11th February, 1986 when this application was moved before me the second respondent stated that he was prepared to pay the sum of R11,900-00. I postponed the matter to the 17th February, 1986 and advised the second respondent that he must instruct a lawyer because his submissions clearly showed that he did not understand what sequestration was all about. Most of what was in his affidavit was also irrelevant. On the 17th February, 1986 when Mr Masoabi instructed by the second respondent appeared before me with the petitioner's attorney, the matter was postponed to the 24th February, 1986. On that date Mr Masoabi did not appear and Mr. Koornhof informed the court that Mr. Masoabi had telephoned him that morning that he would not be appearing. I then granted the order of sequestration as prayed in the Notice of motion. I was convinced that the second respondent is playing delaying tactics. He had promised to pay the money but three weeks after he had made the promise he had not paid the money. It is very clear that he is unable to pay his creditors.

Section 8 (b) of the Insolvency Proclamation No 51 of 1957 provides that a debtor commits an act of insolvency if a Court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment. The second Respondent refused to satisfy the judgments granted against him and the other respondents when demand was made to him by the deputy-Sheriffs. He also failed to indicate to them any disposable property to satisfy the judgments.

I have come to the conclusion that the petitioner company has proved that the respondents have committed acts of insolvency.

/The order.....

The order of sequestration is granted as prayed in the Notice of Motion.

*[Handwritten signature]*  
J. I. KHEOLA  
J U D G E .

24th February, 1986