

IN THE HIGH COURT OF LESOTHO

In the matter between

INTERNATIONAL ROAD TRANSPORT (PTY) LTD
M B NKUEBE

and

BARCLAYS BANK P. L C

J U D G M E N T

Delivered by the Hon. Acting Mr Justice D Levy
on the 20th day of May, 1986

In this matter an application was brought by way of a certificate of urgency for interim relief pending an application for an order on the Respondent bank to freeze the account of the Applicant and to permit the appointment of auditors by the parties to audit the Applicants' banking account with the Respondent. A rule nisi was granted in the matter freezing the account of the Applicant with the Respondent pending the determination of these proceedings. The matter comes before me today, but on notice only of opposition by the Respondent and no affidavits are filed on its behalf. The Applicant persists in its application for the relief that has been sought.

In my view this matter should never have been brought by way of application unless there was some urgent protection required by the Applicant of its assets. The Respondent bank I may well take notice is an international bank with resources far beyond the amount claimed by Applicant and there is no possibility that any prejudice may be suffered by him pending the eventual outcome of any
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further relief that he may seek. The Applicant bases his application upon allegations of thefts and falsification of his banking account by employees of the Respondent all of which he says leads him to believe that monies have been falsily debited to his account and that credits have not been properly accounted for. That may well be so, I am in no position to make any finding in that regard. But what is palpably clear to me is that there cannot have been any doubt at all in the Applicant's mind, if he had given the matter any thought, that none of the allegations made by the Applicant would ever be admitted by the Respondent. He should have known that allegations of theft against the Respondent were bound to be denied and whether or not there is any proper explanation of the various items about which he complains, is a matter which can only be determined on the hearing of evidence.

In that light, the Applicant should not have brought an application nor should he have sought any kind of interim relief which he did not really require since the resources of the bank more than adequately protect him against any falsification of his account for the few thousand rand about which he complains.

If the Applicant has any remedy at all, it certainly is not for the appointment by auditors, that is a matter beyond the jurisdiction of this Court. His remedy is to sue by way of rou actie for a statement of account and for debatement of that account in the Court if he is not satisfied with the statements so far furnished or that may be furnished in the future by the Respondent.

In such a trial, the evidence of auditors would be heard and the bank account of the Applicant with the

/Respondent ...

Respondent would be examined by the Court and by such expert witnesses that they might decide to employ. That would have the proper way to approach this problem and not by way of an application without notice for interim relief which was totally unnecessary

Whatever may be the outcome of the trial, this application should never have been brought and I am satisfied on the principles that are well established in this Court that the application should be dismissed with costs and it is so ordered.

ACTING JUDGE
20th May, 1986

For the Applicants Mr. Kambule

For the Respondent Mr Harley