

IN THE HIGH COURT OF LESOTHO

In the appeal by

ATTORNEY GENERAL  
ROADS DEPARTMENT

1st Appellant  
2nd Appellant

C. SEIPOBI

Respondent

JUDGMENT

Delivered by the Hon. Acting Mr. Justice D Levy  
on the 29th day of May, 1986

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This is an appeal from a judgment of the Senior Resident Magistrate of Maseru and which appeal I upheld with costs and set aside the judgment of the Court a quo with costs. My reasons follow.

An ex parte application was brought in the Magistrate's Court, Maseru seeking an interdict restraining the Second Respondent (now the Appellant) which is the Works Department (Roads) from directing storm water on to sites 75A and 154, the property of the Appellant. The supporting affidavit of the Applicant contains the allegation that the Works Department (Roads) is busy constructing a water drainage system which threatens his properties as they stand lower than the water drainage scheme. The Applicant further stated that he apprehended grave damages to his buildings if the storm water were to come over his properties.

On this application the magistrate granted a temporary interdict in terms of paragraph 1 of the notice of application.

/I take ...

I take this opportunity of expressing my grave concern at the readiness with which Courts are prepared to grant interdicts albeit temporary interdicts on ex parte applications. There appears to be not the slightest hint of urgency in the matter. No damage would normally be anticipated from faulty road storm water drainage works before the rains come in October or November of this year, and, certainly, there is no allegation in the application of any ground of urgency which would justify an ex parte application. At the very least the magistrate should have insisted that notice be given to the Respondents of the application and if there were any grounds of urgency that notice could be short enough to meet the exigency of the situation.

In opposing confirmation of the rule that was issued by the magistrate Respondents filed the affidavit of the Acting Chief Roads Engineer who said

1. that the value of the matter in dispute is well beyond the limits of jurisdiction of the magistrates Court,
2. that the construction of the road in question and drainage works is being carried out in discharge of the statutory obligations imposed on the road authority by the provisions of Section 13(1) of the Roads Act 1969.

1 Jurisdiction

In civil matters, jurisdiction in respect of causes of action is confined to claims where the value of the subject matter in dispute does not exceed R2,000 (See Proclamation 5 of 1964 amending Proclamation 58 of 1938)

The subject matter of this interdict is the right of the Respondent to discharge storm water from a drainage

/system ...

system already constructed. To interdict the discharge of water from that drainage system would render the drainage system unusable and worthless. In order to comply with the interdict the Respondent would have to design and construct a new system or design and bring about a modification of the existing system. Either way the value of such modifying works and/or of the present drainage system which will be rendered useless must exceed R2,000. Even if the onus was on the Respondent to show that the value of the subject matter of the dispute exceeded R2,000, as to which I respectfully share the doubts expressed by Van Wyk J, in Gallman v Dombrovsky 1973 S.A.(2) 261 at 263(C), I am satisfied that on the balance of probabilities the Respondent has shown that the matter in dispute is beyond the jurisdiction of the Magistrate's Court and the rule should have been discharged.

2. The Applicant did not state the grounds for his apprehension that his property was liable to be damaged save to say that it was below the level of the road. In particular he does not say that the natural flow of water has been altered by the drainage system.

The Respondent has said that the construction of the drainage system has been carried out in discharge of its duties under Section 13(1) of the Road Act. This amounts to an averment that the drainage system is necessary, and that its construction is such that it safely leads storm water to its nearest natural drainage point.

The Applicant does not say that that the drainage is not necessary. Indeed, in reply he says only that he does not approve the making of the drain, nor does he say that there has been any alteration of the natural flow of water.

/For this ...

For this reason also, I would allow the appeal notwithstanding Counsel's apparent agreement at the hearing before the magistrate to stand or fall on the question of jurisdiction.

The appeal is upheld with costs. The magistrate's order is set aside with costs and the rule is discharged.

D. LEVY

A C T I N G J U D G E

29th May, 1986

For the Appellant      MR K.R.K. TAMPI  
For the Respondent    MR. W. C. MAQUTU