

IN THE HIGH COURT OF LESOTHO

In the Applications of:

HANK STELZER
VISUAL PROBLEM CENTRE

Applicant
Applicant

v

ROSE MPHONG RAMABITSA
HENRY STELZER

Respondent
Respondent

J U D G M E N T

Delivered by the Hon Mr. Justice J.L. Khenla
on the 6th day of June, 1986

Although the two applications were consolidated and argued at the same time, I shall set out what orders were sought in each of them.

In CIV/APN/110/86 Hank Stelzer was the applicant and the respondent was Rose Mpho Ramabitsa. The application was brought as an urgent ex-parte application for an order in the following terms:

- "(a) (i) That Respondent be and is hereby ordered to return to Applicant forthwith the keys, Personal files and Society files referred to in paragraph 6 of the Applicant's Affidavit.
- (ii) And also to account to Applicant the monies realised for sale of the 2 Passap Knitting Machines sold by Respondent and referred to in paragraph 7 of Applicant's Affidavit.
- (b) That the Sheriff or his lawful Deputy takes the said keys and money for the 2 Passap Knitting Machines sold by Respondent and delivers them to Applicant;

- (c) That Respondent be and is hereby ordered to refrain from obstructing Applicant in the performance of his duties;
- (d) That Respondent be and is hereby called upon to show cause within 21 days why this Interim Order or Rule shall not be made final; and that she shall give notice of her intention to oppose confirmation of the Order and may anticipate the return date within 48 hours."

The Rule Nisi was issued on the 4th April, 1986 and made returnable on the 28th April, 1986. After several extensions of the rule the matter was finally argued before me on the 19th May, 1986.

In CIV/APN/117/86 Visual Problem Centre represented by Rose Mpho Ramabitsa was the applicant and Henry Stelzer was the respondent. The application was brought as an urgent ex-parte application for an order in the following terms:-

- "1. That a Rule Nisi issue, returnable on the date and time to be determined by this Honourable court, calling upon the Respondent to show cause (if any) why:-
 - (a) The Respondent shall not be restrained from removing, taking with him, alienating and or unilaterally affecting change of ownership of a Toyota Hilux Van, registration A 8478, the lawful property of and registered in the name of the Applicant;
 - (b) The Respondent shall not be ordered to place the said vehicle in the hands of the Registrar and or Deputy Sheriff, pending the outcome of this Application;
 - (c) The Respondent shall not be ordered to hand over the bank books and books of accounts to the Applicant;
 - (d) The Respondent shall not be ordered to account for the finances which have at all material times been in his custody;

- (e) The Respondent shall not be arrested by the local Police and or ordered to pay reasonable security to the Registrar to found jurisdiction pending the outcome of this application;
- (f) The Respondent shall not be ordered to restore to the Applicant, Applicant's equipment utilised by the blind people under the care and supervision of the Applicant;
- (g) The Respondent shall not be ordered to pay costs of this application;
- (h) The Applicant shall not be given such further and or alternative relief.

2. That prayers 2 (a), (b), (c), (d) and (f) operate as an interim order with immediate effect."

The application was heard on the 4th April, 1986. The rule nisi was granted as prayed and returnable on the 14th April, 1986. After several extentions the matter was finally argued before me on the 19th May, 1986.

The applicant in CIV/APN/110/86 is the treasurer of the applicant in civ/APN/117/86. Rose Mpho Ramabitsa is the director of the Visual Problem Centre (hereinafter to be referred as the Centre). The Centre was registered as a society under the Societies Act of 1966 on the 15th July, 1983. According to Article 5 of the Centre's constitution the Executive Committee shall consist of the Director, the Secretary, the Treasurer and three (3) Regional Representatives Article 5 seems to be in direct conflict with Article 16 which provides that the committee of the Centre shall consist of the following members:

Director

Mrs Rose Mpho Ramabitsa
P.O. Box 2395,
MASERU

Secretary

Mrs Mapeete Mokhosi,
P.O. Box 111,
MASERU

Treasurer

Mr. Henry D. Stelzer,
P.O. 2395,
MASERU

Rose Mpho Ramabitsa has attached to her founding affidavit in CIV/APN/117/86 an extract of minutes of a meeting of the Visual Problem Centre Committee held at Maseru on the 4th April, 1986. At that meeting she was given authority to make the application for an interdict against Henry Stelzer. This resolution is being challenged by Stelzer on the ground that there was no quorum. Article 6 (d) provides that one half of the members of the Executive Committee shall constitute a quorum. The contention of Stelzer is that three members form a quorum while Ramabitsa contends that two members form the required quorum. At the meeting referred to above it seems that there were only two members, i.e. the Director and the Secretary who signed the minutes. The minutes are rather ambiguous because under the heading showing who were present the word "Quorum" has been inserted.

Article 5.1 provides that the Executive Committee shall consist of no more than six members and not less than three members. The Director is given the right to appoint any person (s) who he/she deems fit and proper to fill the other portfolios in the Executive Committee. It is quite clear from the constitution that only three members of the Executive Committee whose names appear in Article 16 have been appointed. The Director (Ramabitsa) shall hold office for an indefinite period. Hank Stelzer has given the names of Bernard Mahase and Lelimo as members of the Executive Committee of the Centre. Rose Ramabitsa has denied this and has averred that the names of the members of the Executive Committee appears in the constitution. It is surprising that Stelzer has not found it necessary to obtain a supporting affidavit from either Mr. Lelimo or Mr. Mahase.

I come to the conclusion that the meeting at which a resolution was passed giving authority to the Director of the Centre to make the

application for an interdict against Stelzer was properly convened and that there was a quorum of two members of the Executive Committee.

In founding affidavit in CIV/APN/110/85 the applicant deposes that on the 23rd March, 1986 the respondent took the keys to the filing cabinet which contained all the Centre's files and his personal files and has refused to let him have access to the said files and still continues to do so up to the date the application was lodged. This conduct of the respondent is to the detriment of the business of the Centre and has brought the business of the Centre to a standstill. He further alleges that the respondent has sold or disposed of certain Passap Machines valued at approximately R4,000-00. The applicant is one of the founders of the Centre and has contributed the sum or equipment worth a quarter of a million maloti to the Centre.

In her opposing affidavit the respondent has admitted that she took the keys to the filing cabinet ^{after} discovering that a number of files had gone missing and the applicant could not account for same when she confronted him with the information, which she verily believed, that applicant had removed the said files as well as some other property of the Centre and was keeping same at Hotel Victoria where applicant stays without intending to return them to the Centre. She denies that she removed the applicant's personal files.

She avers further that the two Passap Machines have been sold for R3,190-00 to people who do business with the Centre and that the machines were sold to them so as to strengthen business relationship with them. Part of the money from the sale of the machines was deposited in the Standard Bank account and the rest is being used at the Centre to settle accounts and to buy other necessities like wool and food and for the everyday running of the Centre as applicant refuses to sign bank forms to enable respondent to withdraw money from the bank, and respondent has to rely on cash in hand for the Centre's daily needs.

The respondent further deposes that the most substantial assistance to the Centre so far has come from the Canadian Embassy, the Irish Consulate and the Unitarian Services of Canada which contributed a total sum of M40,000-00 which was used to construct the building which houses the centre. The alleged sum of a quarter of a million maloti is even far in excess of the value of the assets of the Centre.

She further avers that the applicants fear that the equipment of the centre may be lost is unfounded. It is the applicant's actions which are likely to result in the loss of the property of the centre. On the 25th March, 1986 the applicant wrote a letter (Annexure "A" to the opposing affidavit) addressed to various business firms with which the Centre had dealing, informing them that as from the 5th April, 1986 he was resigning as Treasurer of the Centre. He informed the business firms that the Director of the Centre, Mrs Rose Ramabitsa would be responsible for all future business transaction. He warned the business firms that he would not be responsible for any debts, obligations and/or commitments made by any individual other than himself. On the 4th April, 1986 just a day before the date he intended resigning from the centre, the applicant changed the ownership of a motor vehicle Reg. No. A 8478 which lawfully belonged to the centre and registered it in his name.

The respondent further avers that on the 4th April, 1986 the applicant withdrew R2,800-00 from the two accounts of the Centre and failed to account to her or to the Board of the Centre as to how the money was expended. Even after his resignation and after he had been served with a court order (Annexure "B" to the opposing affidavit) the applicant bought a cheque book and withdrew huge amounts of money totalling R10,554-70 from the Centre's funds in the Standard Bank between the 7th and 11th April, 1986 (Annexure "D" to the opposing affidavit).

As far as I can see the applicant has not filed any replying affidavit. Rule 3 (11) of the High Court Rules 1980 provides that within seven days of the service upon him of the answering affidavit the applicant may deliver a replying affidavit. The purpose of the replying affidavit is to adduce any piece of testimony which is relevant to the issue and which serves to refute the case put up by the respondent in his answering/opposing affidavit (the Civil Practice of the Superior Courts in South Africa, 3rd edition, p.72). It follows that the case put up by the respondent in her answering affidavit has not been refuted. That case is that she discovered that a number of the Centre's files had gone missing and that she has information, which she verily believed, that the applicant had removed them and was keeping them at Hotel Victoria where he lived. She admits that she took the keys to the filing cabinet and told the applicant that she would not allow him to have access to the filing cabinet until he had accounted fully to her on what he had done with the files and other property belonging to the centre.

It is further alleged that the applicant withdrew large sums of money for which he has account to nobody. All these serious allegations have not been denied. In fact as a result of a Court Order in CIV/APN/117/86 some property belonging to the Centre was recovered from the applicant at Hotel Victoria.

It seems to me that the respondent, as the Director of the Centre, was entitled to take the keys of the filing cabinet in order to protect the records of the Centre which were being removed and taken to the wrong place by a person who was intending to resign from being the Treasurer of the Centre. On the 23rd March, 1986 when the respondent took the keys the applicant was intending to resign on the 5th April, 1986. He had no right to remove the property of the Centre and keep it in his hotel room. The fact that some property was retrieved by order of the Court shows that respondent's fears were not unfounded. The most

serious allegation against the applicant is that after the cheque books of the Centre were taken from him by Court Order he subsequently bought another cheque book and withdrew large sums of money. This serious charge against the integrity of the applicant has not been denied and the Court is bound to accept it as the truth. The respondent has attached a bank statement (Annexure "D" to her answering affidavit) which tends to confirm her allegations. I use the word "tends" because the dates on the bank statement do not refer to the dates on which the cheques were drawn but to the dates on which the account was debited with the amounts, the cheques could have been drawn long before the dates appearing on the bank statement. On the other hand they could have been drawn on the dates shown on the statement and cashed on the same dates.

It was the duty of the applicant to file a replying affidavit and refute these allegations if they are not true. The respondent has denied that she took any personal files of the applicant. It is most improbable that the applicant could leave his personal files at the Centre when he had made up his mind to resign from the Centre and had even removed some property that did not belong to him.

The applicant claims to be the administrator of the Centre and that he has contributed about a quarter of a million maloti in cash and equipment. The constitution makes it very clear that the administration and control of the centre shall be in the hands of the Executive Committee (Article 5 (1)). The applicant seems to be under the wrong impression that because he claims to have contributed more money than any other donor of Centre, he is the Centre's administrator and has better rights than the Director of the Centre. There is no reason why the Treasurer should have more administrative powers than the Director.

The vehicle claimed by the Centre in CIV/APN/117/86 was bought by the Centre on the 24th July, 1985 for R12,295-00 cash. It was bought from Orange Toyota in Zastron and subsequently registered in Lesotho under the name of the Centre Reg. No. A 8476 (see invoice No. 02953 dated the 24th July, 1985 annexed to respondent's answering affidavit). In her supporting affidavit Rose Ramabitsa deposes that the vehicle is the property of the Centre and further deposes that on the 4th April, 1986 the respondent transferred the ownership of this vehicle and had it registered in his own name (See Annexure "M" to her replying affidavit)

The respondent admits that the vehicle was registered in the name of the Centre and that on the 4th April, 1986 he transferred ownership and registered it in his name. The reason for doing this being that it has been registered in the name of the Centre for convenience and by agreement with the Director. He avers that between the 23rd July, 1985 and the 15th August, 1985 he withdrew an amount of R46,000-00 from his personal Call Account from the Bank for the purchase of an automobile for the Director and for the Toyota Hilux Bakkie for himself. It was by mutual agreement that the automobile would be for the personal use of the Director and the bakkie would be for his use; both vehicles were bought with his personal funds and not the Centre's funds at all. He has annexed three current account deposit slips (Annexure "E") as proof that the money used for the purchase of these two vehicles came from his call account. The first slip shows that on the 23rd July, 1985 an amount of R12,300-00 was deposited into the Centre's Current Account, Ex Call Deposit a/c (Henry D. Stelzer). The second one shows that on the 12th August, 1985 an amount of R14,000-00 was paid into the Centre's Current Account Ex Call Deposit a/c (Henry D. Stelzer) and the last one shows that on the 15th August, 1985 an amount of R10,000-00 was paid into the Centre's Current Account Ex Call Deposit a/c (Henry D. Stelzer).

If the respondent intended to buy the Toyota Hilux van for himself and had an amount of R12,300-00 on the 23rd July, 1985 just a day before he bought the van, why did he first pay the money into the Centre's account only to withdraw it on the following day to buy the van? The truth of the matter is that the respondent intended to buy the van for the Centre. There was no reason why he paid the money into the Centre's account before withdrawing it immediately to buy the van and register it in the name of the Centre. He claims to have been the main donor to the Centre and cannot be heard to say that all the monies he donated to the Centre are still his property. He donated all these monies with the good intentions of helping the Centre which has done a commendable work for the blind people in this country. His personal vendetta with the Director of the Centre should not be allowed to destroy the Centre in any way. This Court cannot allow him to take back what he donated to the Centre simply because he has a personal clash with the Director.

According to Annexure "F" to respondent's answering affidavit the Cressida car was bought on the 9th August, 1985. This clearly shows that the amounts deposited into the applicant's current account on the 12th August, 1985 and on the 15th August, 1985 had nothing to do with the purchase of the two vehicles as the deposits were made after the vehicles had been bought and paid for in cash. This creates a suspicion even on the deposit made on the 23rd July, 1985 whether it had anything to do with the purchase of the Hilux van. The respondent has not even attached a bank statement to show that between the 23rd July, 1985 and the 15th August, 1985 the applicant did not have enough funds to buy the two vehicles. A treasurer of any organisation does not pay his funds into the organisation's bank account so that he can later claim things he bought after he has made such deposits as his own. The Director deposes that the Centre makes about R1,000-00 per day through the sale of wool. This means that...

applicant still had its own money with which it bought the two vehicles.

On the 4th April, 1986 the respondent changed the registration of the Hilux van into his own name. He did not consult the Director or any member of the Executive Committee to get their approval for the change. The change of ownership form (Annexure "M" to Ramabitsa's replying affidavit) provides for the signature of the previous owner and that of the new owner. The respondent signed as the new owner but there is no signature in the space for the signature of the previous owner. If it was by mutual agreement that the van was registered in the name of the Centre, why did the respondent ^{not} approach the Director of the Centre and ask her to sign as the previous owner? The change of ownership as it stands now is incomplete and irregular. The Traffic Commissioner acted wrongly by agreeing to change the registration of the van without the signature of the previous owner. The new registration is null and void.

The respondent has now resigned as Treasurer of the applicant but he left the Centre before he had accounted for the Centre's monies to the Director which had ^{at} all material times been in his custody. This he must not be allowed to do. He must do a proper handing over of the books of account and files to the Director .

That the respondent is misusing the Centre's funds is confirmed by Mr. K.L.M. Jonathan, the Director of Immigration, who avers that after the Ministry of Interior had received complaints from donor agencies that funded the Centre, a commission of inquiry was appointed. It consisted of the Director of Immigration and Mrs Mokhobo of Social Welfare. The report of their findings was that:-

- "(a) The teachers at the Centre complained bitterly that Mr. STELZER was a difficult person to work with. In fact one Danish teacher made it clear that she was leaving the Centre as she found it intolerable to work with MR. STELZER;
- (b) Parents of female students and some female students at the Centre complained about MR. STELZER's sexual advances towards female students;
- (c) No proper books of accounts were kept. And in fact there were hardly any records of receipts.
- (d) No records were available to show how the funds raised by the Centre itself and those donated had been utilized;
- (e) Before he left for America on holiday, MR. STELZER withdrew huge sums of money from the Centre's accounts. In fact one of the Centre's accounts at a Ladybrand Bank was closed, but MR. STELZER could not account for how he had used all that money. All he said was that that was his money he had brought with him from America although that could not be verified;
- (f) MR. STELZER did not keep a separate Bank Account from the Centre's. This made it impossible to say which funds were his personal funds and which were the Centre's."

For the reasons I have attempted to summarise above the order in CIV/APN/110/86 is discharged with costs to the respondent. The interim order in CIV/APN/117/86 is confirmed with costs to the applicant.

J.L. KHEOLA
J U D G E .

6th June, 1986.

For Applicant - Mr Mofolo
For Respondent - Mr Mohau