

IN THE HIGH COURT OF LESOTHO

In the matter of:

VISUAL PROBLEM CENTRE

Applicant

v

THE STANDARD BANK (MASERU)
HENRY STELZER

1st Respondent
2nd Respondent

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice D. S. LEVY
on the 30th day of June 1986

Visual Problem Centre which is a customer of First Respondent (the Bank) applies for an order directing the Bank to allow certain Ramabitsa who is the officer-in-charge of the affairs of the Applicant to conduct its affairs in respect of the moneys deposited with the Bank on behalf of the Applicant.

It is alleged by the Applicant that although there are moneys of the Applicant held on deposit by the Bank, the Bank has repeatedly refused to allow Ramabitsa to withdraw funds on behalf of the Applicant despite the fact that appropriate authority to her by the Applicant had been lodged with the Bank.

Before this application was brought, an application number 136 of 1986 had been brought in this Court, by the Second Respondent (Stelzer) who was formerly an officer of the Applicant, against the Applicant and Ramabitsa in which he claimed against them:

1. An order for delivery of certain vehicles which were the property of the Applicant;
2. That they deliver to him all the books and records of the Applicant;

/That ...

3. That they allow him, his attorney and his accountant to enter the premises of the Applicant to evaluate and take stock of every item of the Applicant and to interdict and bar Ramabitsa from entering the premises of the Applicant.

The wide range of relief sought in this application was for nothing less than a complete handing over of the affairs of the Applicant in these proceedings to Stelzer. That application proved abortive, as in the result, on the 19th May 1986, it was withdrawn by Stelzer and he was ordered to pay the costs of the proceedings. However in its attempt to regain control of its affairs, the Applicant approached the Bank to recognise its right to conduct Applicant's banking account but was refused such recognition. It is alleged by the Applicant that such approach had been made both before and after the abortive application by Stelzer.

The Applicant alleges that Stelzer had in fact resigned on the 5th April 1986 so that clearly from that date onwards he would have had no right or interest in the affairs of the Applicant. The Applicant also says that an attempt was made to communicate with Stelzer through his attorney and through their intervention a letter was written by Stelzer's attorneys to Barclays Bank indicating that he had no interest in the account of the Applicant with that Bank. No such letter has been placed before me, indicating a similar attitude by Stelzer in respect of the Bank in this application.

In the result, the Applicant brings this application for an order on the Bank directing it to allow the Applicant to conduct its banking account with the Bank and asking for an order for costs on the attorney and client scale against the Bank. An order is also sought restraining the First Respondent from allowing Stelzer to withdraw any moneys standing to the credit of the Applicant with the Bank.

/As far ...

As far as costs against Stelzer are concerned, the Applicant sought no order for costs against him unless he opposed the application. At that stage I am satisfied that there was more than adequate justification for Applicant to have made the allegations it did in respect of Stelzer which were to the effect that it genuinely believed and feared that Stelzer would continue to operate the account of the Applicant with the Bank notwithstanding his resignation. The relief sought by Stelzer in his application is so wide and so unjustifiable that it could only lead to a fear that notwithstanding his withdrawal of that application he might nevertheless persist in regarding himself as being in authority in respect of the operation of the Applicant's accounts with the Bank.

I am informed from the bar by Counsel who appears on behalf of Stelzer today that the attorney whose office had brought Stelzer's application did so without his authority and that the allegations made therein were not authorised by him. That may be, but unfortunately Stelzer is fixed with responsibility for his attorney's conduct of his affairs vis-a-vis the Applicant in this matter and if that attorney has so grossly overstated his client's case against the Applicant, that it could lead the Applicant reasonably to demand that its affairs should not be left open to any kind of attack by Stelzer, he must take the blame for what his attorney has done on his behalf.

Stelzer has opposed this application, not because any of the relief sought against the Bank is opposed by him, or that he claims any right to the Bank account of the Applicant with the Bank or any right to operate that account, but only clear his name in view of the allegations made by the Applicant

/in these ...

in these proceedings. I have already indicated that what was said by the Applicant was that it genuinely believed and feared that he would continue to operate the account of the Applicant with the Bank. And I have also indicated my view that that fear was fully justified in the light of the previous abortive proceedings.

It is true that a person whose name has been defamed in Court proceedings most probably has the right to intervene in those proceedings in order to protect his name. But in this instance even if the inference that Stelzer seeks to draw from the fact of his joinder in these proceedings is a justifiable one, and about which I have some reservation, the allegation that was made was fully justified by the conduct of Stelzer through his attorney. In my view there was a proper joinder of him in these proceedings and there was by no means an excessive enlargement of the true facts for the Applicant to have made the statements it did in these proceedings. It is also a fact in these proceedings that no relief was sought against Stelzer and costs were asked against him only in the event of him appearing to oppose. He has done that and he has done that unsuccessfully in my view.

In so far as the costs are concerned, the Bank has not opposed the matter at all but I see no reason why it should not pay the costs of these proceedings up to the grant of the order that I am going to make.

I will therefore order the Bank to pay the Applicant's costs on the basis of an unopposed application and I intend to order the further costs occasioned by the opposition of Stelzer to be paid by him. I also will order that the Bank should pay the costs for which it is liable on the attorney

/and

and client scale. I am satisfied that it has acted frivolously and contemptuously of the rights of the Applicant, that its persistent refusal to allow the Applicant to operate its banking account is deserving of dis-approval and that it is solely and wholly responsible for the necessity for the Applicant to seek an order of this Court to allow it to operate its account and only after a considerable delay occasioned by the conduct of the bank.

The order I will make then is that:

- (a) The First Respondent is ordered to allow Rose Mpho Ramabitsa to continue to withdraw Applicant's funds held by it on behalf of the Applicant.
- (b) That the First Respondent is restrained from allowing Second Respondent to withdraw money deposited with the First Respondent on behalf of the Applicant.
- (c) That the First Respondent shall pay on the attorney and client scale the costs of this application as an unopposed application and that the costs of this application which have been occasioned by the oppositor of the Second Respondent shall be paid by the Second Respondent.

(Sgd)

D. S. LEVY
ACTING JUDGE

30th June, 1986

For the Applicant : Mr. Mohau

For the Respondents : Mr. Seotsanyana