

IN THE LESOTHO COURT OF APPEAL

In the Appeal of

INTERNATIONAL ROAD TRANSPORT
(PTY) LTD and M B. Nkuebe

Appellants

v

BARCLAYS BANK PLC

Respondent

HELD AT MASERU

Coram

Schutz, P
Odes, J A.
Miller, J A.

J U D G M E N T

Schutz P

This is an appeal against a judgment of Levy A J in the High Court. The Appellants, who were the applicants below, were customers of the Respondent in both Courts namely Barclays Bank. The Appellants complained that there were numerous inaccuracies in the bank statements recording the transactions between them and the Bank, and that these errors were adverse to them. They made the allegation that these errors demonstrated that there was fraud being committed by the Respondent, and that employees of the Respondent were stealing their monies.

The Applicant sought the following relief, namely

- (a) Freezing, temporarily, all the accounts of first and second applicants
- (b) Respondent be ordered to make available or produce the accounts for both the applicant and all other documents related thereto.
- (c) That the Respondent and applicants be allowed to appoint independent auditors for the purpose of auditing applicants' accounts at the expense of the Respondent
- (d) That the above prayers (a) and (c) operate with immediate effect as interim orders pending the findings of the auditors.
- (e)
- (f) Costs of this application

A rule nisi was then granted and the return day came before Levy A J

There is a dispute between the legal representatives as to what happened on that day. According to the Respondent's attorney the Respondent asked for the dismissal of the application on the basis that no case was made, and certainly not such as could be disposed of on paper. The Respondent elected not to file affidavits. However, the Respondent had filed a notice of opposition. On the other hand the Appellant's counsel says or implies that the learned acting judge took it upon himself to dismiss the application. I find it very difficult to believe that that could have occurred. However, there is a dispute. Even if it be assumed that the judge did what Appellant's counsel said he did, and if it be assumed that the Respondent adopted a neutral attitude, in my opinion the judge was entitled to dismiss the application if he regarded it as being ill-founded.

It appears from the argument of Mr. Kambule for the Appellants

that on balance the Appellants were indebted to the Bank in a large sum. To me it seems perfectly obvious that if they were dissatisfied with their accounts all that they had to do was to close their accounts with the Respondent. The Respondent, being the creditor on balance, could then have sued them and if the applicants did not accept the amounts claimed, there would have been defended actions in which the matter could have been thrashed out with the aid of discovery

There seems to me to have been no basis whatsoever / for bringing an application, and more particularly an application in the form in which it was brought, and even more particularly an ex parte application. A rather bald allegation was made by the applicants that fraud had been committed. I do not wish to deal with all that the judge below said. I am not to be taken to agree with him when he says that a bank will never admit that fraud has been committed by its employees. Such things had been known to happen. But, notwithstanding that, this was clearly the sort of case that should not have been brought on application.

The third prayer sought by the applicants was something that is entirely unknown to our law. I know of no common law basis on which a debtor or a creditor is entitled to send his auditors in to investigate the books of the other contracting party at the expense of that other contracting party. In the result, whilst not necessarily agreeing with all the reasons given by the judge below, my opinion is that the application was wholly unfounded and that it was rightly

dismissed with costs. The order that I would propose is that
this appeal be dismissed with costs.

Signed
W.P. SCHUTZ
President of the Court of Appeal

I agree Signed
M.W. ODES
Judge of Appeal

I agree Signed
S. MILLER
Judge of Appeal

Delivered ex tempore at Maseru on the 24th day of July, 1986.

For the Appellants Mr. Kambule

For the Respondent Mr. Beckley SC.