

IN THE HIGH COURT OF LESOTHO

In the matter between:

K & M OFFICE SUPPLIES (PTY) LTD

APPLICANT

and

COMMISSIONER OF SALES TAX

1st RESPONDENT

ATTORNEY GENERAL

2nd RESPONDENT

JUDGMENT

Delivered by the Honourable Acting Justice Mrs. J.K. Guni
On the 25th day of September, 1995

On 12th September, 1995 this application was brought on an urgent basis and as an ex parte application. There were no reasons why the respondents should not be given notice of this application. On that ground alone an order was made for the respondents to be served. The matter came before me for argument on 14th September, 1995 after all the necessary papers had been filed of record.

In the founding affidavit, filed on behalf of the applicant, by one KHAUHELO MAPHELEBA, it appears that she is the director of two separate and different companies: K & M Office Supplies (Pty) Ltd. and DALLA BOUTIQUE (PTY) LTD. This sentiments were expressed in paragraphs 5 and 6 of the founding affidavit.

There appear to be no dispute that the officers of first respondent together with the members of R.L.M.P. executed the distress on the authority of the Commissioner of Sales Tax office. It is an established fact, that a company known as DALLAS BOUTIQUE (PTY) LTD. owed Sales Tax that was due and payable to the First Respondent. It is also accepted by both parties that the execution of a distress was duly authorised to be carried out upon the moveable property of DALLAS BOUTIQUE (PTY) LTD.

The hotly disputed issue is the location where the distress was executed. The applicant contested that the office where distress was executed has nothing to do with DALLAS BOUTIQUE (PTY) LTD. which owes Sales Tax that was due to First Respondent. According to the averments at paragraph 8 of MALOKA MAPETLA's opposing affidavit, the office in question has been indicated to the officers of the First Respondent, by the director of DALLAS BOUTIQUE, one KHAUHELO MAPHELEBA, as the office of DALLAS BOUTIQUE (PTY) LTD.

Previously on other occasions when the officers of First Respondent had dealings with DALLAS BOUTIQUE (PTY) LTD., in that office in question, they were made to believe that it is the office of DALLAS BOUTIQUE (PTY) LTD. (Paragraphs 4 of affidavits PULE CHERE and FULENG MAKAKOLE.

In the list of the goods seized MM3 attached to the opposing affidavit and also in the list annexure 'D' attached to the

founding affidavit, there are documents which are clearly marked by the applicant as belonging to DALLAS BOUTIQUE (PTY) LTD. How the property that belongs to DALLAS BOUTIQUE (PTY) LTD. come to be found in this office, if the office did not belong to DALLAS BOUTIQUE, was not explained by the applicant. It is apparently not quite correct that this office has absolutely nothing to do with DALLAS BOUTIQUE (PTY) LTD.

Further more in the replying affidavit by the applicant, KHAUHELO MAPHELEBA describes the offices allegedly that of applicant company as "My headquarters" (Paragraph 8). KHAUHELO MAPHELEBA who is a director of both companies namely K & M Office Supplies (PTY) LTD. and DALLAS BOUTIQUE (PTY) LTD. and has always told the officers of First Respondent that the office belong to DALLAS BOUTIQUE (PTY) LTD. is most probably running both companies from the same office more especially that she described that office as her headquarters. It is claimed on behalf of the applicant company that the property seized belongs to it. There seems to be alleged on behalf of the applicant that, its claim that the property seized belong to it must be proved by the respondents. The legal position has always been very clear and unequivocal on this point, he who alleges must prove that allegation.

The First Respondent's officers have, at all times been prepared and willing to release the property the applicant is claiming if the applicant proved that the property belongs to it. Before this Court no attempt was made by the applicant or on its

behalf by director of both companies to assist to separate the property of the applicant company from that of DALLAS BOUTIQUE. It appears that the applicant is persisting in its contention that all the property seized belong to K & M OFFICE SUPPLIES (PTY) LTD., despite there being documents that are clearly marked by the applicant in her papers for example in Annexure 'D' as those of DALLAS BOUTIQUE.

The deponent of both the founding and replying affidavits on behalf of the applicant, does not deny that she always informed the officers of the First Respondent that the office in question is that of DALLAS BOUTIQUE (PTY) LTD. What is not denied especially by the person who is alleged to have given that specific impression by words and actions, must be regarded as admitted.

I am satisfied that the officers of First Respondent were legally authorised to carry out the distress upon the moveable property of DALLAS BOUTIQUE (PTY) LTD., as evidenced by Annexure MM1.

I am also satisfied that the moveable property seized in the execution of that distress is the property of DALLAS BOUTIQUE (PTY) LTD., as the claim made by the applicant, has not been supported in anyway.

It is in this circumstances that this applicant is dismissed
with costs.

K.J. GUNI
ACTING JUDGE

For the Applicant : Mr. T. Hlaoli

For the Repondents: Mr. Putsoane