

IN THE HIGH COURT OF LESOTHO

In the matter of:

ABSA BANK LIMITED

APPLICANT

and

MOOROSI EZEKIEL LATELA

RESPONDENT

**Review Case No. 8/2001
Review Order No. 1/2001**

**CC773/2000
In the Maseru District**

ORDER ON REVIEW

On 6th February, 2001 the Registrar of the High Court placed the file in this matter before me for attention. I have read through the papers in the file.

It appears that the applicant herein filed, with the Clerk of the Court for the Maseru Magistrate Court, a notice of motion in which the court was moved *ex-parte* for the order framed in the following terms:

- “(1) Recognising the Judgment of the Magistrate’s Court of Bloemfontein dated 27th October 1999 in the matter between the above litigants

under case number 37241/99;

- (2) Ordering costs against the respondent on an attorney and client scale;
- (3) Ordering the respondent to pay the costs of suit granted in favour of plaintiff in case 37241/99 above in the sum of M986.18;
- (4) Granting applicant such further and/or alternative relief as the above Honourable Court may deem fit.”

The application was moved before Chobokoane, the Magistrate, who, on 14th August 2000, decided:-

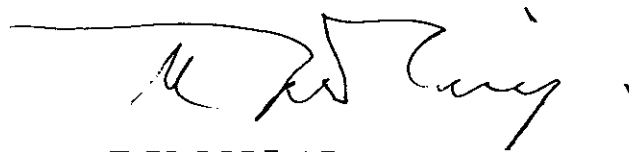
“I reluctantly grant the order in this matter in the light of the fact that there is no authority at hand which allows recognition of foreign judgments in the Magistrate’s Court, unlike in the High Court where it has been provided for in the Rules.

Under the circumstances the matter will be sent to the High Court for review.”

I must say I find the decision of the Magistrate, in this case, rather puzzling. He was aware that only the High Court and **NOT** the Magistrate Court, had the jurisdiction to grant orders for the recognition of foreign judgments. Notwithstanding his awareness, the Magistrate proceeded to grant the orders. In my judgment, a logical thing for the Magistrate to have done, in the circumstances, was to dismiss the application and accordingly refuse to grant the orders. However, contrary to his awareness and logic the Magistrate deliberately did quite the opposite.

It must be emphasised that a Magistrate Court is a creature of statute and, as such, cannot do things for which it is not authorised by the statute. In deciding as he did, to grant the orders, which the statute had not empowered his Court to grant, the Magistrate clearly acted *ultra vires* and, therefore, irregularly.

In the result, the orders which the Magistrate irregularly decided to grant, on 14th August 2000, ought to be set aside. It is accordingly ordered, on review. As the application was moved *ex-parte* and in all probabilities the respondent incurred no costs, I make no order as to costs.



B.K. MOLAI

JUDGE

16th February, 2001

CC: The Magistrate - Maseru

All Magistrates