

**IN THE COURT OF APPEAL OF LESOTHO**

In the matter between:

**STANDARD BANK LESOTHO LIMITED**

**APPELLANT**

and

**TROPICAL INFO. TECH. SOLUTIONS  
(PTY) LIMITED**

**RESPONDENT**

Held at Maseru.

**CORAM:**

Steyn, P

Smalberger, JA

Kumleben, JA

**JUDGMENT**

***Summary***

*Appellant paid a sum of M40,000 from the respondent's bank account. The presented cash cheque on the face of it bore the signatures of two directors of respondent. It was alleged that one was a forger. On appeal it was held that, whether or not fraud was proved, the signature of the alleged forger was unauthorized in the light of an interdict protesting payment of a cheque signed by the alleged forger. The order of the High Court granting a refund confirmed.*

**Kumleben JA**

In the High Court the respondent (the "Company",) applied for relief against the appellant (the "Bank") as a matter of urgency by way of motion proceedings. The substantive order sought was for payment of M40,000 from the Bank. It had notice of the application

and lodged on answering affidavit in response to the averments in the founding affidavit. No replying affidavit was forthcoming. The matter was argued before Majara A.J., who ordered the refund of an amount of M40,000 “fraudulently withdrawn from applicant’s [the Company’s] account No. 0140098060301.”

The grounds of appeal against this decision are rather prolix. They raised a number of preliminary and procedural objections *inter alia* that there are disputes of fact that cannot be resolved in motion proceedings and that on this account the matter should be referred to trial action or that the application be dismissed. These submissions were, however, not pursued before us. In any event, if on appeal the cardinal issue on the merits can be decided upon facts in respect of which there is no dispute, it is in the interests of the parties and the cause of justice to do so. The facts that are relevant are the following:

- (i) As at 7 August 2003, according to a minute of the Company, Mr. Lebohang Sepepane (described as a “representative” of the Company) and two of its directors, namely Mr. Thabiso Thakaso (“T”), who deposed to the

founding affidavit, and Mr. J. Makhalanyane (“M”) had signing powers in respect of the Company account with the Bank. Any two of them were authorized to co-sign a cheque drawn on the Bank.

(ii) Apparently Sepepane did not remain in good standing with the Company for, on 28 June 2004 the Company obtained an interdict from the magistrate’s court at Maseru in these terms:

- “1. That Respondent [Sepepane] should release to the applicant [the Company] all company documents in his possession, including the trading licence.
2. That Respondent [Sepepane] should stop carrying on business in the name of the applicant [the Company] and/or using the applicant’s [the Company’s] logo.”

(iii) On 15 September 2004 Sepepane presented for payment a Company cheque for M40,000 bearing on the face of it the signatures of “T” and Sepepane as drawers. These signatures appear under the imprint on the cheque “TROPICAL INFO TECH SOLUTIONS.” It was a cash cheque and the sum of M40,000 was paid to Sepepane.

The contention of “T”, as stated in his founding affidavit, is that his signature on this cheque was forged by Sepepane. It was on this footing that the case was argued in the High Court and before us on appeal. The sequence of events in this regard, were these: On 15

September 2004 the cheque was cashed. On 22 September 2004 the Managing Director of the Company wrote to the Bank alleging that one of its ex-employees had fraudulently cashed the cheque. The Bank's reply by letter dated 22 September 2004, did not admit or deny the fraud. It said the matter was still under investigation and, when finalized, the Company would be told of the outcome. Such finality either way was not reached when the answering affidavit was sworn to sometime in October (its date is omitted and the date stamp is not sufficiently legible). In this affidavit it is again said that the matter "is presently being investigated by the Police". In the judgment the learned judge is correct in concluding on these facts that the Bank is "saying 'I am still in the process of verifying your allegation' which means 'I am in no position to either deny or admit it'" but is plainly wrong in concluding that this amounts to an admission of the forgery. The reply simply cannot be thus interpreted. Having said this, I find it unnecessary to consider whether on a full conspectus of all the evidence the forgery was established on the papers. I prefer to decide the matter on the supposition – some might say a charitable one – that the forgery alleged by the Company has not been admitted by the Bank and that this question remains in

issue.

I return to the Magistrate's Order and particularly the second paragraph that interdicts Sepepane from "carrying on business in the name of the Company". The general manager of the Bank in the answering affidavit has this to say, after acknowledging that the Bank had received the order:

"The contents of the Court Order are admitted. The Respondent points out that the interdict order does not stop Sepepane from signing any documentation on behalf of or as an authorize director of the Company. There is no allegation by the Applicant that Sepepane's signing powers to cheques and other Company documents were ever stopped." (Emphasis added).

This proposition is untenable. For what reason, one may ask, would the Company inform the Bank of this court order if it were not to ensure that Sepepane would not be permitted to operate on the Company account with the Bank? The cheque, with the inscription of the Company on it, was on the face of it clearly being cashed for business purposes and as plainly falls within the proscription in the court's order.

Mr. Buys, who appeared for the appellant, in due course during his argument quite correctly conceded that this was the import of the interdict. He, however, submitted that it was not satisfactorily proved that the order was received by the Bank before the cheque was presented and paid. There is no substance in this submission. Had

that been the case the general manager of the bank in the answering affidavit would never have sought to avoid the effect of the order by contesting that its terms did not apply to the payment of a cheque presented by Sepepane. His obvious reply would have been that the Bank was not bound by its terms because it was only after such payment that the injunction was brought to its notice.

It was accepted without debate that the unauthorized payment of the cheque entitled the Company to the refund Cf TEDCO MANAGEMENT SERVICES (PVT) v GRAIN MARKETING BOARD (1997 (1) SA 196 (ZSC) at 202).

In the result the Bank on account of its unauthorized payment is liable to refund the M40,000 to the Company as ordered by the High Court.

The appeal is dismissed with costs.

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M.E. KUMLEBEN  
JUDGE OF APPEAL

I agree: \_\_\_\_\_  
J.H. STEYN  
PRESIDENT OF THE COURT OF APPEAL

I agree: \_\_\_\_\_  
J.W. SMALBERGER  
JUDGE OF APPEAL

DELIVERED ON THIS THE 20<sup>TH</sup> DAY OF OCTOBER, 2005

For Appellant : Mr. S.C. Buys

For Respondent : Mr. T. Matooane