

CIV/T/160/79

IN THE HIGH COURT OF LESOTHO

In the Application of:

THE TRUST BANK OF AFRICA LIMITED

Applicant

v

PALEO TLELAI

Respondent

REASONS FOR JUDGMENT

Filed by the Honourable Mr Justice F.X. Rooney
on the 8th day of January 1980

By summons dated the 12th July 1979 the plaintiff
herein is claiming:-

- (1) The cancellation of a Hire-Purchase Agreement entered into by and between the plaintiff and the defendant on the 15th day of December 1977.
- (2) Delivery by the defendant to the plaintiff of the two Toyota tipper trucks the subject matter of the aforesaid Hire-Purchase Agreement.
- (3) Payment as damages of the difference between the value of the said trucks and the outstanding balance in terms of the said Hire Purchase Agreement.

On the 16th July 1979 in a separate application (Civil Application 142/79) the plaintiff obtained a rule nisi from Cotran C.J. in terms of which the Deputy Sheriff was ordered to attach, remove and retain in his custody the two tipper trucks, then in the possession of the defendant. The rule called upon the defendant to show cause why the trucks should not be placed in the custody of the plaintiff pending the final determination of the action instituted on the 12th July 1979.

On the 15th/....

On the 15th October 1979 I made the rule nisi absolute subject to the plaintiff giving security to make restitution in the event that he was unsuccessful in the main action. The rule was opposed by Mr Masoabi on the grounds - firstly that in making the application, ex parte the plaintiff had omitted to disclose material facts and secondly that the defendant was not in breach of the Hire-Purchase Agreement and that the plaintiff was not entitled to the relief claimed. In regard to the first ground I was unable to agree that the plaintiff had omitted any facts in his application which were material. The dispute in this case arises out of the interpretation of the Hire-Purchase Agreement itself and in particular as to the amounts payable thereunder in monthly instalments by the defendant to the plaintiff. The fact that the defendant has been making regular payments which the plaintiff denies are sufficient or in accordance with the terms of the contract is immaterial.

An interlocutory application is not the forum in which a decision on the merits of the case can be made. Consequently the plaintiff was granted the order subject to the conditions to which I have already referred.

The defendant filed a plea in the main action on the 25th September 1979. This was within the time permitted by an Order of the Court dated 24th September setting aside a bar imposed by the plaintiff. On the 15th October the defendant filed a counter-

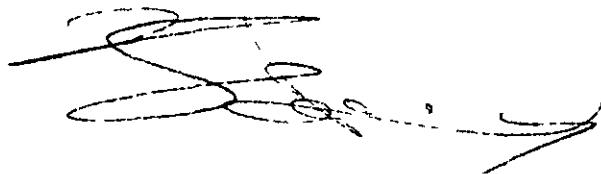
claim, in /....

claim, in which he claims damages for the wrongful attachment of the two trucks in the interlocutory proceedings already referred to. On the 1st November the plaintiff applied to set aside the counterclaim as an irregular or improper proceeding.

The counterclaim ought to have been filed with the plea following the removal of the bar. However, it appeared to me that to avoid further duplication of litigation it was desirable that that leave be given to the defendant to proceed with his counterclaim. I was again not prepared to decide on the merits of the issues raised therein in an interlocutory matter. Accordingly on the 19th November 1979 I made an order:-

- (1) condoning the late filing of the counterclaim.
- (2) giving leave to the plaintiff to plead, except or demand particulars within 30 days.

I dismissed the application, but, I ordered the defendant to pay the costs and directed that they be paid within 10 days of the taxation.



F.X. ROONEY

JUDGE

8th January, 1980

For Applicant: Mr C.M. Masoabi
For Respondent: S.C. Harley