

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**STANDARD LESOTHO BANK LIMITED**

**Applicant**

**and**

**T. J. CONSTRUCTION (PTY) LTD**

**1<sup>st</sup> Respondent**

**THABANG THAKASO**

**2<sup>nd</sup> Respondent**

**THABISO THAKASO**

**3<sup>rd</sup> Respondent**

**‘MAMOHOU THAKASO**

**4<sup>th</sup> Respondent**

**ABI LITEBOHO SEROBANYANE T/A**

**ABI SUPPLY AND SERVICES**

**5<sup>th</sup> Respondent**

**MOEKETSI DENIS TSOEU T/A**

**GOODYEAR TYRES**

**6<sup>th</sup> Respondent**

**DEPUTY SHERIFF**

**7<sup>th</sup> Respondent**

**COMMISSIONER OF POLICE**

**8<sup>th</sup> Respondent**

**COMMISSIONER OF TRANSPORT & TRAFFIC**

**9<sup>th</sup> Respondent**

**REGISTRAR OF DEEDS**

**10<sup>th</sup> Respondent**

**REGISTRAR OF COMPANIES**

**11<sup>th</sup> Respondent**

**ATTORNEY GENERAL**

**12<sup>th</sup> Respondent**

**NEDBANK LESOTHO LIMITED**

**13<sup>th</sup> Respondent**

**FIRST NATIONAL BANK OF LESOTHO LIMITED 14<sup>th</sup> Respondent**

**Coram:** **Hon. Hlajoane J**

**Date Heard:** **31<sup>st</sup> May, 2013.**

**Date of Ruling:** **14<sup>th</sup> August, 2013.**

**Points in Limine**

- [1] The Applicant has instituted these proceedings for an Application *pendente lite* for an interdict *securitatem debit* usually referred to as *mareva injunction*. The application was moved *ex parte* and *rule nisi* was sought and granted on 20<sup>th</sup> December, 2012 and made returnable on 7<sup>th</sup> February, 2013.
- [2] It has been the Applicant's case that it had received a complainant from one of its customers, a company known as **Nien Hsing International Lesotho (Pty) Ltd**, that its funds were being withdrawn from its current account with the Applicant and transferred to 1<sup>st</sup> and 2<sup>nd</sup> Respondents accounts respectively. That as a result of such complaint Applicant has thus applied for a interdict against the Respondents in order to secure their assets as he intends to institute an action for the recovery of the said monies.

[3] The 1<sup>st</sup> to the 6<sup>th</sup> Respondents in their answering affidavit have raised certain points of Law on Urgency, non-compliance with **Rule 8(4) of the High Court Rules**, Non-Joinder, Jurisdiction, Perpetual silence and *locus standi*.

[4] **On Urgency**

It has been the Respondents case that the *ex parte* procedure taken by the Applicant was not justified much as they are no reasons given why they were not afforded notice. They argued that since a *rule nisi* is a negation of the *audi alteram partem* rule, applicant ought to have shown that irreparable loss would be suffered, so that issuance on notice would defeat the very purpose for which the rule was issued *ex parte*, **Commander LDF and Another v Matela**<sup>1</sup> and many more other authorities.

[5] Applicant responded by showing that the application is by its very nature *ex parte*. He has termed the application in his papers a *mareva injunction* which should be viewed as an extraordinary interim remedy as it restricts the right to deal with assets and showed it is usually granted without notice.

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<sup>1</sup>1995 – 99 LAC

[6] Applicant referred to the case of **Mareva Compania Naviera S.A v International Bulk Carriers**<sup>2</sup> to show the type of assets that are commonly made the subject of a **Mareva Injunction**, being land, cash, the contents of bank accounts and shares.

[7] There can be no dispute in the fact that the present application involves monies and assets which if notice is given can easily be transferred to other accounts or be dissipated. At para 32 of the founding affidavit Applicant has given out reasons for urgency and as was said on similar facts in the case of **Molapo Qhobela and Another v BCP and Another**<sup>3</sup>, the reasons given in the founding affidavit proclaims extreme urgency of the matter and this point is thus found to be without substance.

[8] **Non Compliance with Rule 8 (4) of the High Court Rules**

The point here is that the Rule requires that an *ex parte* application be moved two days after filing with the Court. In *casu*, the papers were filed on the 18<sup>th</sup> December, 2012 and application moved on the 20<sup>th</sup> December, 2012. Looking at the dates given the court realizes that the period was still in order so this point is a non-starter and stands to be dismissed.

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<sup>2</sup> [1980] 1 ALL ER 213

<sup>3</sup> Molapo Qhobela and Another v BCP and Another

[9] **Non-Joinder**

The Respondents are saying that the non-joinder of the person alleged to have been defrauded renders the application defective. That Nien Hsing alleged to have been defrauded had not been joined. That the supporting affidavits filed in reply denied them the opportunity to answer them, **Amalgamated Engineering Union v Minister of Labour**<sup>4</sup>.

[10] In response to that point the Applicant showed that non joinder is merely dilatory in nature and that the Applicant is suing in its own name to pursue its rights for having re-imbursed Nien Hsing. Also that if Nien Hsing were to be joined it would not be proper as Nien is a victim here. He can therefore not be joined as either applicant or Respondent, and the Court would not agree with him more.

[11] **Misjoinder**

Respondents are saying that the Applicant has joined 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents by mistake as they are simply shareholders and director being sued for acts by the company. That though there are allegations of fraud none of the 1<sup>st</sup> to 6<sup>th</sup> Respondents has been remanded for such.

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<sup>4</sup> 1949 (3) S.A

[12] The response has been that even if this point could be found to be valid it can only result in the favourable award of costs at the instance of the misjoined party. But again Applicant argued that the involvement of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents has been fully explained in the founding papers.

[13] I have read the founding affidavit and indeed there are allegations of the Respondents involvement, see paragraphs 28 to 31.

[14] Applicant further argued that the 2<sup>nd</sup> Respondent is not only a shareholder but also a director. He relied on the cases of **Solomon v Solomon & Co**<sup>5</sup> and **Re Darby, Ex Parte Brougham**<sup>6</sup> to expound on the principle of corporate veil which he said may be pierced in certain circumstances. That being where criminality is alleged as *in casu*. So that since a company is a fictitious person can only act through natural persons as directors, shareholders, officers, agents or employees of a Company. This point also is without merit and must be dismissed.

[15] **Jurisdiction**

The Respondent here argued that this matter being for interdict falls squarely within the Magistrate's jurisdiction, since it is only

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<sup>5</sup> [1897] AC 22

<sup>6</sup> [1911] 1 KB 95

for interdict, but not for the recovery of any monies. He referred to **Rule 18 of Subordinate Court Rules**<sup>7</sup>. But in response, Applicant's counsel submitted that though this is an interdict, it is not just a simple interdict but subject to limitations imposed by the **Subordinate Court Order**. That the amounts involved are way beyond the monetary ceiling of the **Subordinate Court**. **Section 18 (1) of the Subordinate Courts Order** dealing with Arrests and Interdicts start by saying, "*subject to the limits prescribed by this order .....*" sections 16 and 17 of the order deal with jurisdictions in respect of persons and causes of action respectively so that it could not be correct to say that Subordinate Court entertains all interdicts including those above Subordinate Court's jurisdiction.

[16] **Perpetual Interdict**

It has been the Respondents' case that Applicant has sought an interdict against the whole world in as much as families, spouses and children of the 1<sup>st</sup> to 6<sup>th</sup> Respondent are interdicted yet they are not parties to these proceedings. They also consider this as also an interdict against people in business with 1<sup>st</sup> to 6<sup>th</sup> Respondent and entities in which the 1<sup>st</sup> to 6<sup>th</sup> Respondent have signing powers.

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<sup>7</sup> Order No.9 of 1988

[17] But the Applicant has shown that this is an extraordinary type of interdict and Applicant has shown that he intends to bring an Application for the recovery of the monies complained about. This can never be termed a perpetual interdict as Applicant has shown he intends to bring an action.

[18] **Locus Standi in Judicio**

Respondents are saying Applicant has no *locus standi* to sue on behalf of the party whose funds are alleged to have been withdrawn and that there is no proof that Applicant did in fact pay Nien Hsing. But the Applicant has shown that it is the Bank suing and not on behalf of Nien Hsing. The Bank reimbursed Nien Hsing and it is the Bank which has suffered the loss. This point is without merit and must fail since the Bank is the one suing.

[19] Respondents have not been successful in all the points *in limine* raised which are dismissed with costs. Parties to come for a date of arguing the merits of this application.

**A. M. HLAJOANE**  
**JUDGE**

**For Applicant:        Mr Mpaka**

**For Respondents:    Mr Molapo**



