

**IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)**

HELD AT MASERU

CCA/0068/22

In the matter between –

PLATINUM CREDIT LIMITED

APPLICANT

and

FIRST NATIONAL BANK OF LESOTHO LTD

1ST RESPONDENT

PLAT CORP HOLDINGS LIMITED

2ND RESPONDENT

THE COMMISSIONER-

CENTRAL BANK OF LESOTHO

3RD RESPONDENT

Neutral Citation: Platinum Credit Limited v. First National Bank of Lesotho LTD and 2 others No.2 [2022] LSHC 180 Comm. (28th September 2022)

CORAM: M. S. KOPO, J

HEARD: 01ST SEPTEMBER 2022

DELIVERED: 28th SEPTEMBER 2022

SUMMARY

Cost de bonispropiis – need for.

ANNOTATION

Books

Herbstein & Van Winsen. 2009. *The Civil Practice of the High Courts of South Africa.*

Bishop J M, Brickhill J R, Farlam P B J, Van Loggerenberg D E, .1994. *Erasmus Superior Courts Practice. Main Volume.* Juta and Co. Ltd

Cases

Lesotho

Abel Moupo Mathaba and others v Enoch Matlaselo Lehema 1993-1994 LLR and LB 402

Lesotho Brake and Clutch v Sachs SA (Pty) Ltd (CIV/APN/228/00) [2003] LSHC 134 (04 November 2003)

South Africa

Vermaak's Executor v Vermaak's Heirs 1909 T.S 679

Statutes

High Court Rules No. 9 of 1980

RULING (COSTS)

[A] INTRODUCTION

[1] On the 02nd day of August 2021, I passed and dismissed the Application moved by the Applicant in this matter on an urgent basis for lack of urgency. Due to the disturbing nature of how the facts of this Application unfolded, I did not right away give a ruling on the scale of costs (even though I had dismissed the application with costs) but directed counsel to appear on a different day and show why I cannot award costs *debonispropriis*.

[2] On the 01st day of September 2022, both counsel appeared before me and argued the issue of costs. This ruling is therefore on the costs following the Ruling of the 05th day of August 2022.

[B] ANALYSIS OF THE SUBMISSION OF COUSEL AND THE FINDINGS

[3] Advocate Roux argued that the court should show its displeasure with the Applicant by awarding costs *de bonispropriis*. He supported his argument with the judgments of this court in **Abel Moupo Mathaba and others v Enoch Matlaselo Lehema**¹ where in the court showed that punitive costs can be awarded in situations where there is no *bona fides* in the conduct of a litigant in prosecuting the matter or there is an objectionable behaviour.

[4] Advocate Roux argued further that the directors of the company and the board members should be the ones who should be clapped with punitive

¹1993-1994 LLR and LB 402

costs as opposed to the company. This is because the 2nd Respondent herein has an interest in the company and will be worse off if the company is the one to pay the costs. He supported his point further by citing **Lesotho Brake and Clutch v Sachs SA (Pty) Ltd**² where in the court showed that litigants occupying a fiduciary capacity who are showed to have been mala fide, negligent or unreasonable could be chastised with punitive costs.

[5] Advocate Tšenase tried in earnest to persuade the court that there are no grounds upon which the court can award punitive costs. He argued that since one of the arguments was that the Respondents and the Court were put under tremendous pressure due to the hastiness in which this Application was instituted, it was not that bulky and therefore there was no abuse of court process. Moreover, he opined that since the court is the one that has the discretion on directing the proceedings, the court gave its direction.

[6] On the argument that the Board of Directors of Applicant should be caused to pay the costs, he countered that the said directors were not part of the litigation and therefore they should not be made to pay. Moreover, he argues that they were not acting in their personal capacity but in their official capacity.

[7] I am more and more inclined to find this as a case befitting punitive costs. I will however agree that as the members of the board were not parties to this litigation, I cannot impose costs on them. However, Advocate Tšenase was in a position to advice his clients better. I had already found that there were pending cases in which the Applicant had an opportunity to assist with the compliance of the order of the court but decided to adopt an

²(C of A) (CIV) NO. 15/99) (NULL) [2000] LSHC 122 (13 April 200

evasive approach. Moreover, the relieves sought in other matters were not very far removed from the one that Applicant has moved in this one. This shows an attempt to try at all costs to complicate the dispute to the extent that it borders on dishonesty if it is not. It was up to Advocate Tšenase, as an officer of this court, to advise his client well and not to perpetrate the questionable behaviour of his client.

[8] The integrity of the profession and the administration of justice is at stake here. This court should act as a buffer and the last line of defence to protect the dignity of the courts. Legal practitioners are the first line of defence. If not for anything, may this judgment be a warning that practitioners should remember that the level of professionalism required of them is of the highest standard. Let practitioners remember their calling as gatekeepers of justice.

[9] While I believe that this is a case fitting for costs being paid out of the pocket of the legal practitioner, I cannot agree that even cost of senior counsel should be included. This is a learning curve for Advocate Tšenase. Moreover, I do not believe this was a case in which the 2nd Respondent could not do without the services of a senior counsel.

[C] CONCLUSION AND ORDER

[10] Having heard counsel for both parties, I have concluded that this is a case fitting for punitive costs. I cannot award punitive costs to the directors due to the fact that they were not parties to the dispute. Be that as it may, Counsel for the Applicant should have known better to mount a multiplicity of matters that are so closely linked as to run the risk of frustrating justice. For this reason, therefore, the following order is made:

Costs *debonispropriis* are ordered but at a normal scale.

Moneuoa Kopo J.
Judge of High Court

For Applicant: **Adv. Tšenase**

For 1st Respondent: **Adv. Mjezu**

For 2nd Respondent: **Adv. J. Roux SC**