

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 520/87

In the matter of:

KALU NNANNA NDUKWE EDU

vs

TAVERN HOTEL (PROPRIETARY) LIMITED

CORAM: DUNN A.J.

FDR THE APPLICANT: MR. SIMELANE

FOR THE RESPONDENT: MR. SHILUBANE

JUDGEMENT (17.7.87)

DUNN. A.J.

In this matter the applicant obtained under a certificate of urgency, an order in the following terms:-

That a rule nisi do issue calling upon the respondent to show cause on the 12th June 1987 why:-

- (a) the respondent should not be directed to restore possession of the applicant's personal effects, samples of handicrafts and private documents held by the respondent.
- (b) the respondent should not pay the costs of this application.

The applicant sets out in his founding affidavit that he booked into the respondent hotel on the 1st March 1987 and that as at the 3rd of June 1987 he was indebted to the respondent in respect of hotel bills in the sum of E2.531,34.

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He states that he made arrangements with the respondent's Managing Director to settle his account by the end of June 1987. He sets out at paragraph 6 that when he returned to his room on the 30th May he found that he had been locked out and was informed that he would only gain access to the room upon payment of the outstanding account. He states that his personal effects, handicrafts and private documents for his business operations in Swaziland were locked in the room by the respondent.

On the 19th June which was the extended return day of the rule the respondent had filed an answering affidavit in which it was denied that any agreement had been reached that the applicant should settle his account at the end of June. The respondent set out that the applicant's goods are "being held as a lien for the amount due to the respondent".

When the matter was argued the only issue which arose for decision was whether the respondent was required to perfect its lien by way of a court order for the attachment of the applicant's goods pending settlement of the outstanding account. In the submissions made on behalf of the applicant the innkeeper's lien was placed on the same footing as the Landlords hypothec and it was argued that as with a Landlord the respondent was required, in order to render its lien legally effective, to obtain a Court order.

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It is settled that an inn or hotel keeper has a lien over the goods of a boarder, brought by him into the inn or hotel, for board and lodging supplied to him,, This is a debtor and creditor lien. See FORD v. REED BROS. 1922 TPD 266; MARAIS v. ANDREWS 1914 TPD 290;

The lien is over the goods of the boarder and does not operate on the goods of third parties. See GENERAL GARAGE v PLOUGH HOTEL 1961 (3) S.A. 449. The respondent had in the circumstances, a clear right to retain the property of the applicant until the respondent's claim for the outstanding balance had been satisfied.

Mr. Simelane for the applicant did not refer the court to any authority for the submission that for the lien to be legally effective the respondent required a judicial order. I have been unable to find any such authority. The Innkeeper's lien arises by operation of law. It differs from a tacit hypothec in that the contractual relationship between the parties is not one of lessor and lessee. In the words of Caney J. in the GENERAL GARAGE case supra at 452E "it is not proper to assimilate the innkeeper's lien to the Landlord's hypothec; there is no warrant for applying the principles of the latter to the former. They are two entirely different concepts."

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I accordingly find that there was no duty on the respondent to first obtain a court order before exercising its right to retain the applicant's property.
The rule nisi is discharged with costs.

B. DUNN

ACTING JUDGE