

IN THE HIGH COURT OF SWAZILAND

Held at Mbabane

Case No.2811/97

In the matter between:-

STANDARD BANK [SWAZILAND] LIMITED Applicant

formerly STANBIC BANK [SWAZILAND] LIMITED

and

SEAN JOSEPH MAHER 1st Respondent

CATICA BADRUDINE CHUNG [NEE AMBASSE] 2nd Respondent

CORAM: - MAPHALALA A J

For the Applicant - MR T. S MASUKU

For the 1st Respondent - MR P R DUNSEITH

For the 2nd Respondent - NO APPEARANCE

RULING

Before Court is an Urgent Application brought with a Certificate of Urgency for an Order in the following terms

1. Dispensing with the usual forms and procedures relating to the institution of proceedings and allowing this matter to be heard as a matter of urgency

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2. That a rule nisi be issued calling on the Respondent to show cause at a time and date to be determined by the Court why an Order in the following terms should not be made final:

2.1 that the Applicant be and is hereby authorised to freeze all transactions including deposits, withdrawals and transfer of funds into the following accounts 0140092989301 and 0140047925301 held at the Applicant Mbabane Branch, pending further investigations by the Applicant and institution of civil proceedings against the Respondent.

3. That the rule nisi referred to in paragraph 2 operate with immediate effect pending the outcome of these proceedings.
4. That the Applicant be given leave to serve the Order upon the 2nd Applicant by substituted service by publishing same in a newspaper circulated in the Kingdom of Swaziland and a newspaper circulated in the Peoples Republic of Mozambique.
5. That the First Respondent be ordered to pay the costs of these proceedings.

6. That the Court grant such further and/or alternative relief as it may deem fit

The Application is fully supported by Affidavits When the matter was called Mr Dunseith for the First Respondent submitted to Court that he was taken by surprise by Mr Masuku's Application for the Rule as the parties were engaged in negotiations to try and settle the matter amicably. He submitted that in view of this he was unable to prepare Opposing Affidavits in accordance with the Rules of Court.

However, Mr Dunseith made a number of submissions from the Bar. I sympathised with Mr Dunseith in that he had to submit facts from the Bar in opposition of this Application.

His first point was that the Applicant was not approaching the Court with clean hand in that Applicant has already frozen the accounts in question. I agree with Mr. Dunseith in this regard that it appears the Applicant has taken the law into its own hands and now seeks the Court to act as a rubber stamp.

The Applicant was supposed to first obtain a Court Order to freeze these accounts. However, in view of Applicant's disclosure, in its Affidavit I am going to entertain the Application.

Mr. Dunseith further argued that the Application was not supported by Bank accounts to show that

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these amounts alleged by the Applicant are indeed in those accounts. He further submitted that he would not resist the Rule provided it does not have immediate effect in respect of the First Respondent. The First Respondents and his family are now financially destitute that they cannot have money from the First Respondent's account. He submitted further that the amount reflected in the account of the 1st Respondent's represents his salary and it cannot be said to be part of the loot [so to speak]. The Applicant is seeking for an attachment pending a civil suit to be pursued against the First Respondent. That this is an extra-ordinary remedy that the Applicant is seeking.

Mr Masuku on the other hand submitted that the Applicant has proved its case and thus entitled to the Rule at this stage. He filed a Supplementary Affidavit with the Bank account to show the amount in these respective accounts. He further submitted that the Applicant is entitled to have these amounts frozen pending Police investigations.

These are the issues before me. It appears to me that the Application before Court is to secure moneys which are alleged to have been misappropriated from the bank by the 1st Respondent and deposited in the account of the 2nd Respondent who is 1st Respondent's mother-in-law To me this is the right the Applicant seeks to protect. The amount involved is over E300,000.00. However, the two accounts which were supplied to the Court by the Applicant do not show these vast amounts. The bank balance of the 1st Respondent shows that he has a credit balance of E2,002.07 and it is reflected that this amount is 1st Respondent's salary, for the reason that this is 1st Respondent's salary and it is nowhere connected to the misappropriated funds I am unable to Rule that it be frozen as applied for by the Applicant. From the evidence before me, it is clear that the money which is alleged to have been misappropriated by the 1st Respondent is not in his account. I would not like to interfere with his salary.

I rule therefore that the rule issues in respect of the 2nd Respondent.

S. B. MAPHALALA

ACTING JUDGE

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