

SWAZILAND DEVELOPMENT & SAVINGS BANK

vs

MTHEMBISA INTERNATIONAL ENTERPRISES LIMITED

Case No. 2509/95

Coram

S.W. Sapire

Judgement

(11/07/97)

The plaintiff has sued the defendant for repayment of monies alleged and advanced and the amount of the claim is in excess of E1.5m. The defendant has filed a plea and also a counter-claim also in an amount exceeding E1 million . The amount of the counter-claim is in fact E1.8m. The basis of the counter claim is that the plaintiff was the defendant's banker that there was a contract between the plaintiff and the defendant in terms of which the confidentiality of the transactions between the plaintiff

a/ Masitsela

and the defendant was guaranteed. It is alleged that in terms of this contract the plaintiff will not disclose matters relating to the management of the defendant's account.

The plaintiff in reconvention as the defendant alleges in this counter claim that on or about 20th June, 1995 in the Times of Swaziland, being a national newspaper distributed to the public throughout of Swaziland, an article was published concerning the defendant's banking account and indebtedness to the plaintiff. A description of the article follows.

There is no allegation in the counterclaim that the information was in fact leaked by the plaintiff to the Times of Swaziland, although the limes of Swaziland claims so. There is no allegation however, for the plaintiff to meet that such leak was at the instance and did take place as a result of information given by the plaintiff in convention to the Times of Swaziland. On this ground alone the exception must succeed.

But the exception went further and, alleged that even if the material contained in the article had been leaked there is no way of identifying the defendant, that is the plaintiff in reconvention with the statements in the newspaper. With this contention I must agree. It does not appear to me that there are any allegations from which the account numbers quoted, or the descriptions of the various debtors as princes or businessmen, can be linked with the identity of the Defendant

a/Masitsela

On this count too the exception is good.

I therefore uphold the exception with costs. The plaintiff in reconvention is given 14 days within which to amend its counterclaim if it so sees fit.

S.W. SAPIRE

ACTING CHIEF JUSTICE