

IN THE HIGH COURT OF SWAZILAND

LINDIWE DLAMINI Applicant

and

STANDARD BANK OF SWAZILAND LIMITED 1st Respondent

THE COMMISSIONER OF POLICE 2nd Respondent

THE ATTORNEY-GENERAL 3rd Respondent

CASE NO. 1783/97

Coram - SB. Maphalala A.J.

For Applicant - Mr. S.V. Mdladla

For 1st Respondent - Mr T. S. Masuku

For 2nd and 3rd Respondent - Mr N. S. Dlamini

Judgement

18th July, 1997

This is an urgent Application brought with a Certificate of Urgency seeking for an Order in the following terms:-

1. Dispensing with the usual terms and procedures relating to the institution of procedures and allowing this matter to be heard as a matter of urgency.
2. Directing that the money in the amount of E22,900.00 paid to the First Respondent by the Applicant on the 6th of June. 1997 be returned to Applicant

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3. That Respondents pay costs of this Application on an Attorney and client scale.
4. Further and/or alternative relief.

The Application is opposed by the First Respondent who is represented by Mr Masuku and the Second and Third Respondents represented by Mr Dlamini. The parties filed Affidavits in opposition thereof

The Applicant in her papers alleges as follows:-

That on the 6th June, 1997 she proceeded to the First Respondent's premises with an envelope to buy American Dollars and paid the amount of E22,900.00 to Girlie Mordant an employee of the First Respondent who also happens to be her half sister. It was not the first time she had bought the Dollars through her. She had done so on several occasions.

After handing her the money, she then left and went back to her home at Selection Park. At about 7.00pm of the same day police arrived and she was arrested together with her half sister. When she enquired from the police why she was being arrested, she was told that the arrest was in connection

with money which had been stolen from the First Respondent. She explained to them that she had no idea that money had been stolen at the Bank and further told them that she knew nothing about the stolen money. She told them that she had been given the E22,900.00 by her boyfriend Obi. Her boyfriend was subsequently called to the Police Station and he confirmed her story. He further produced proof by showing his bank statements and she was later released. She then went home.

She deposed further that she was never given back her money and the Dollars were also never given back to her. She made numerous visits to the First Respondent in an endeavour to get her money back but she was never attended to by the First Respondent.

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She then decided to take the matter to her Attorney as she needed the money urgently as her business was suffering heavy financial damage by the day as she has not been able to trade since her money was with the First Respondent. She stated further that Respondent's failure to return the money had damaging financial implications to her business.

The First Respondent filed an Answering Affidavit made by Errol Reginald Seager who is the Manager for the First Respondent's Management service, at Mbabane. The gist of the First Respondent's defence to the Application is that the Applicant did not properly deposit the money with the First Respondent as there is no documentation whatsoever reflecting that she ever entered into any transactions for the exchange of money with the First Respondent, In the event her account is found to be true, the procedure followed by the Applicant and the said Girlie Mordant, was irregular and constitutes a breach of the exchange control ruling. The Court was referred to a copy of such ruling which was marked "ERS2".

Furthermore the First Respondent contended that Girlie Mordant breached the First Respondent's Regulations by assisting another person to obtain Foreign Currency contrary to the First Respondent's staff privileges and facilities of standing instructions annexed and marked as "ERS6".

The First Respondent further deposed that on the 5th June, 1997 it was discovered that a sum of E44,208.21 went missing from the 1st Respondent's premises and internal investigations revealed that about nine [9] staff members may have been involved in the disappearance of the money, including Girlie Mordant.

On the 6th June. 1997 Girlie Mordant was found in possession of the money in question in these proceedings. Girlie was asked by a certain Mervyn Padayache, two Police Officers from the Fraud Squad, Assistant Superintendent Bhembe and Sergeant David

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Magagula and the Deponent how she had obtained the money in question. She stated that the money was given to her by her sister who had received it from her mother in Nhlngano the previous day and it was for the purchase of \$5,000 for her father who is in Mozambique. At no stage did Girlie ever tell them that the money belonged to her sister. He then suspected that this money may be part of the money which had been stolen from the first Respondent for the following reasons:-

- [a] Her inconsistent statements regarding the ownership of the money and it's intended use;
- [b] The denomination of the notes in her possession were in a disorderly fashion, inconsistent with normal banking practise for encashment of such large amounts.

The Deponent further filed the Supporting Affidavits of Mervyn Padayachie and Sergeant David Magagula. He was further advised that Police Officers went to Nhlngano to interview Girlie's mother,

who denied any knowledge of the money. The money was subsequently taken by the Police for further investigations which are still underway.

The Second and the Third Respondent also filed Answering Affidavit of 1644 Detective Sergeant David Magagula and that of Mervyn Padayachie who is the Administrative Manager of the First Respondent. The former confirmed what the First Respondent has told the Court in his Affidavit that he is the Investigating Officer in this matter. He interviewed Girlie Mordant about the money in her possession. She informed him that she had received it from her mother who was in Nhlanguano. Upon further questioning she changed her statement and claimed that she received it from the Applicant who had in turn received it from their mother as they were sisters with the Applicant. The Officer then proceeded to Nhlanguano where the Applicant's mother denied ever giving the Applicant an amount of E22,900.00.

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He then confronted Girlie Mordant whom she found with the Applicant. Applicant who upon being questioned by the Officer claimed that she had received the money from her boyfriend by the name of Obi. Later on the said Obi arrived at the Police Station and produced a cheque book which he claimed had been utilised in withdrawing the said money for the Applicant. The Officer stated that investigations are still being conducted on the allegations by the said Obi.

The Officer further deposed that on the 16th June, 1997 he seized an amount of E22,900.00 from the First Respondent in compliance with Section 47 of the Criminal Procedure and Evidence Act of 1938 [as amended] on suspicion that it was stolen. Still in compliance with the cited legislation, an Application was made to the Magistrate's Court for the detention of the said money pending finalisation of investigations. The Application for a detention Order was granted by the Magistrate sitting in Mbabane.

The Affidavit of Mervyn Padayachie confirms that of the Police Officer.

These are the facts before me. The matter came for argument before me on the 26th June, 1997. I have listened to the arguments by all counsel in the matter very carefully. I am inclined to refuse the Application made before Court. The Applicant has failed to file a Replying Affidavit in accordance with the general principles in pleadings. There are many issues the Applicant was placed to strict proof of.

Applicant failed to reply to these issues which are material to the determination of this matter. It is my considered view that reasonable grounds existed on the part of the 2nd Respondent to detain the money from Girlie Mordant for further investigations. These can be re capsuled as follows:-

1. The Applicant, when she left the money at the bank with Girlie Mordant in exchange for American Dollars no formal transaction took place in accordance with Foreign Exchange Regulations. More so, the amount involved is quite substantial and this act alone may result in both Applicant and Girlie being

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charged in contravention of Foreign Exchange Regulations;

2. The Applicant has told the Court in her papers that she was a business woman. Surely, a businesswoman dealing with that kind of money on a regular basis should insist that she be given some form of documentation by the Bank for purposes of her own records;
3. Girlie Mordant gave the First Respondent and the Police inconsistent statements regarding the ownership of the money and its intended use;
4. The denominations of the notes in her possession were in a disorderly fashion, inconsistent with normal banking practice for encashment of such large sums of money.

In view of the foregoing, I rule that the Police are entitled to proceed with their investigations in accordance with the order for detention they obtained from the Magistrate Court dated the 20th June, 1997.

I dismiss this Application with costs.

S.B. MAPHALALA

ACTING JUDGE