

IN THE HIGH COURT OF SWAZILAND

In the matter

Budget Spares Centre (Pty) Ltd

V

Standard Bank Swaziland Ltd

Civ. Case No. 199/99

Coram

S.W. Sapire, CJ

For Applicant

Mr.

D A Kuny instructed

by Millin and Currie

For Respondent Mr. P Shilubani

Judgment

(02/06/99)

This is an application for a stay of execution pending an appeal. The appeal has been properly noted and I have read the judgment of Maphalala, J against which the appeal has been noted.

For the respondent is argued that contrary to the assertions of the applicant the applicant has little prospect of success on appeal.

Without wishing to, in any way, to comment on the judgment more than it is necessary, I am of the view that there is at least some prospect of success. There is sufficient prospect, in my view, to guard against the danger of allowing the respondent to execute and obtain payment of the judgment. For the applicant it is pointed out that the prospect of recovering the amount paid should the judgment be reversed is, to say the least, doubtful.

There is a further aspect of this matter, which only came to light in the course of argument before me. The relief claimed in the prayer to the notice of motion was an order "directing the Respondent to pay the applicant forthwith the sum of E788 522.00 currently held by it at its Manzini Branch". On the evidence the bank held no such sum. There was an alternative claim for an order "directing the respondent to forthwith to deliver the original alleged unpaid Cheque, No. 022677, made out in an amount of R788 552,00 to the Applicant". Implicit in the relief claimed in this manner, is the assertion that the cheque, if as dishonoured as claimed by the bank should be returned and that by returning the cheque the bank would be quit of any obligation to its customer in respect thereof. This in the first place excludes any possibility of the bank having acted anyway other than as agent for collection.

The matter became even more curious when in the course of argument, to advance a point being made by him produced the very cheque in question. No explanation as to how the respondent came into possession thereof was given. It as not suggested that the Respondent came into possession only after the institution of proceedings and after the granting of judgment. It would seem that the relief claimed in the alternative was superfluous. If the Respondent already had the cheque it was not entitled to judgment for the payment.

In these circumstances it is fair that the execution on the judgment be stayed pending the outcome of the appeal.

S.W. SAPIRE

CHIEF JUSTICE

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