

IN THE HIGH COURT OF ESWATINI
RULING ON INTERIM RELIEF

HELD AT MBABANE

CASE No. 2121/23

In Matter between :

LINDO DIAMOND

1ST APPLICANT

DIAMOND INVESTMENTS (PTY)

LTD

2ND APPLICANT

AND

FIRST NATIONAL BANK

1ST RESPONDENT

HERTIZAL DIAMOND

2ND RESPONDENT

LUCKY DIAMOND

3RD RESPONDENT

SIBONGISENI XABA

4TH RESPONDENT

GLORY KHIPHI HLOPHE

5TH RESPONDENT

PHILA MASEKO

6TH RESPONDENT

PHILANI MASEKO

7TH RESPONDENT

Neutral Citation : Lindo Diamond & Another vs First National Bank and Six Others (2121/2023)[2023] SZHC 263 (21st September 2023)

CORAM : J.S Magagula J
DATE HEARD : 19th September 2023
DELIVERED : 21st September 2023

[1] On the 12th September 2023, the applicants approached this court on a urgent basis seeking substantive relief as follows;

“ 1....

2....

3. Pending a full and detailed account of the funds deposited into the Nhlangano branch bank account number 63065183659 held with the 1st Respondent to the applicants by the 2nd and 7th Respondents, suspending forthwith any payments from the said bank account.

4....

5. A full transparent and detailed account of the payments or deposits, into the Nhlangano branch account number 630651836659 held with the 1st Respondent including the provision of bank statements to the applicants be undertaken immediately.

6. The full and detailed account of the deposits into the Nhlanguano Branch account number 63065183659 held with the 1st Respondent having been undertaken as contemplated by prayers 2 and 4 above the 2nd -7th Respondent be directed to repay to the 2nd applicant all funds arising or derived from the 2nd applicants business.

7. directing the 2ND , 3RD, 4TH, 5TH , 6TH and 7th Respondents to withdraw all instruments instructing the 2nd applicant's tenants and customers to pay dues to the 2nd applicant anywhere else other than the 2nd applicants bank accounts.

- [2] On the 12th September 2023 I granted prayer 3 of the notice of Motion. The order effectively froze account No. 63065183659 pending the production of details of the account. The matter was to return on the 15th September 2023 by which date the Respondents were supposed to have filed their responses to the application.
- [3] When the parties appeared before court on the 15th September 2023, the matter was postponed to the 19th September 2023 for arguments on the interim relief granted by the court on the 12th September 2023. The focus was on whether the account remains frozen pending a debatement of same or the interim order freezing the account is discharged.

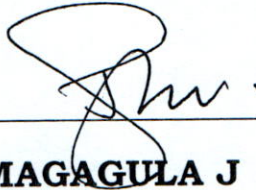
- [4] On the 19th September 2023, the Respondent raised certain points in *limine* and contended that the interim order should be discharged. Amongst the points raised was a contention that the applicants, having approached the court on an ex-parte basis failed to disclose relevant and crucial information to the court. It was further argued that the applicants deliberately did this with intent to mislead the court since they were privy to such information.
- [5] The Respondents pointed out to the court that there were actually no funds belonging to the 2nd applicant that were deposited into account No. 63065183659 and that this account is actually an account for the Rudolph Diamond Family Trust. To this extent a Title Deed indicating that one of the properties from which rentals were directed to be deposited into the Trust Account was actually transferred from the company to the Trust, was produced.
- [6] I enquired if there were no properties belonging to the 2nd applicant from which rentals were deposited into the family trust account and the court was informed that there were none. The applicants also failed to point out any properties belonging to the 2nd applicant or the 1st applicant for that matter, from which rentals were deposited into family the Trust account. The court was informed that there were no such. This means that there was not even the slightest reason for the application for freezing of the Trust Account.

[7] It is also apparent that the neither of the applicants have any interest in the Rudolph Diamond Family Trust and its bank account. For the foregoing reasons the following order is made in relation to the interim relief;

7.1 Prayer 3 of the Notice of Motion is hereby dismissed and the interim order granted by this court on the 12th September 2023 is hereby discharged.

7.2 Prayers 5,6 and 7 are also hereby dismissed since they relate to the account of the family Trust Fund.

7.3 Costs relating to the interim relief are awarded to the Respondents and such costs are to be taxed at the attorney and own client scale since in my judgment the proceedings in this regard were an absolute abuse of court process.



J.S MAGAGULA J

JUDGE OF THE HIGH COURT