

SOUTH AFRICA / JUDGMENT

Firststrand Bank Limited v Moremedi (666/2023) [2024] ZANCHC 118 (13 December 2024) [2024] ZANCHC 118

COURT

Northern Cape High Court, Kimberley

BEFORE

MC Mamosebo

CASE / FILE NUMBER

666/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTHERN CAPE
DIVISION, KIMBERLEY

Case No:

666/2023

In the matter between:

FIRSTRAND
BANK LIMITED
Applicant
and
LEBOGANG
DONALD MOREMEDI
Respondent

Heard on:

22 /11/2024

Delivered on:

13/12/2024

Summary:

Opposed judgment application sounding in money. Bank alleges unjustified enrichment: *condictio sine causa*. General enrichment elements to assess the claim: (i) whether the respondent had been enriched by the payment of R935 949.83; (ii) whether the applicant had been impoverished by the payment thereof; (iii) whether the respondent's enrichment was at the expense of the applicant; and (iv) whether the enrichment was unjustified.

ORDER

In the result the

following order is made:

1.
The respondent is ordered to pay the applicant the amount of R935,949.83 (less the amount repaid by the respondent to the applicant).
2.
The respondent is ordered to pay the applicant interest on the aforesaid amount
– having regard to the date of each repaid amount – at the maximum legally prescribed rate in terms of the Prescribed Rate of Interest Act, 55 of 1975 per annum a tempore morae to date of final payment, both dates inclusive.
3.
The respondent is to pay the applicant's costs of the application on a party and party scale, such costs to be on Scale C in terms of Rule 67A read with Rule 69 of the Rules of this Court.

JUDGMENT

MAMOSEBO ADJP

- [1] The relief that FirstRand Bank Limited is seeking in this application is a judgment sounding in money in the amount of R935 949.83 minus any amounts paid by the respondent pursuant to the launching of this application together with mora interest and costs of the application. The respondent is Dr Lebogang Donald Moremedi, Head of Ministry of the Northern Cape Department of Education.
- [2] The issue that stands for determination is whether the respondent has a sustainable defence to the bank's unjustified enrichment claim.
- [3] The facts are common cause or not seriously disputed. On 14 August 2020, the bank's representative, one Mr Ewald Venter, a Private Client Banker, telephonically contacted the respondent, on a recorded call, to advise him about a more beneficial investment product in the form of a Money Maximiser which would accumulate more interest than the Money-On-Call account. The respondent was the Treasurer of the Trust, responsible for the accounting and/or financial affairs of the Trust, including managing its bank account. The respondent was a signatory and joint administrator on the Trust's account profile with the bank. He was also a client of the same bank holding various accounts in his personal capacity. By virtue of being a joint administrator on the Trust's Account, the Trust's Money-On-Call account was linked to the respondent's personal profile as a Joint Cheque Holder.
- [4] The respondent authorised the said Venter to proceed with the investment product. Venter explained the money trail as follows; (i) transfer the funds held in the Money-On-Call account to the respondent's cheque account; (ii) close the Money-On-Call account; (iii) open the Money Maximiser account; and (iv) transfer the funds from the respondent's cheque

account to the Money Maximiser account. A balance of R962 449.83 was transferred into the respondent's personal cheque account and later an amount of R962 149.00 from the respondent's personal cheque account into the new Money Maximiser account. The bank contends that when Venter effected the transfer of the R962 449.83 from the Trust's account to the respondent's Money Maximiser account it was made in error as the funds were neither due nor owing to the respondent.

- [5] The respondent used and disbursed of the funds held in the Money Maximiser account over a period of time. By 30 January 2023 the balance in the Money Maximiser account was R5 911.52. The bank maintains that the respondent was neither in law nor in fact entitled to withdraw, use and disburse the said funds.
- [6] Subsequent to these disbursements the bank convened several meetings. The first was between its representative, Mr Willem Nel (Divisional Manager: FNB Private Clients, Bloemfontein) and the respondent in order to resolve the erroneous transfer of funds issue. The respondent admitted receiving the money and confessed to having used the funds mainly for the renovation of his home. He however contended that the impression he gained was that the money was made available to him by the bank as a revolving credit or loan facility. The meeting was followed by a Teams meeting where the bank was represented by Messrs David Maphakisa and Arlen Naidoo while the respondent was accompanied by his wife and financial advisor. The respondent reiterated his indebtedness and offered to repay the amount in instalments of R6 000 per month, which offer was rejected by the bank.
- [7] On 18 November 2022, the respondent's attorneys, Magoma Attorneys, addressed a two-page letter to the bank, the essence of which was to confirm the foregoing situation. On 11 January 2023 the bank concluded a settlement and cession agreement with the Trust. The Trust was represented by the respondent in his capacity as the Treasurer of the Trust and Mr David Grant Rolse, the Secretary of the Trust. The bank offered to pay, and the Trust accepted an amount of R987 769.76 in full and final settlement of any claims, past, present and future that the Trust may have against the bank emanating from the events giving rise to this agreement. The Trust ceded and assigned to the bank its rights to claim any money from any party who

may be implicated in or may have benefitted from the activities that gave rise to the agreement.

- [8] The respondent approached the SA Consumer Complaints which, in turn addressed a letter to the bank's Mr David Maphakisa dated 23 January 2023 inviting the parties to mediation. The bank elected to launch this application as opposed to the mediation process.
- [9] To assess a claim of enrichment the following general enrichment elements must be present:
- (i) whether the respondent had been enriched by the payment of R935 949.83;
 - (ii) whether the applicant had been impoverished by the payment thereof;

- (iii) whether the respondent's enrichment was at the expense of the applicant; and
- (iv) whether the enrichment was unjustified.

[10] It was contended by Mr Amm SC, for the applicant, that despite the respondent having made 16 admissions of liability to the applicant it is incomprehensible why he would not only oppose the application but also question the applicant's locus standi. The evidence establishes the applicant having concluded a settlement and cession agreement with the Trust where the respondent was present as the Treasurer of the Trust. The issue of locus standi was not even pleaded but found its way into the heads of argument. The respondent does not deny the existence of a settlement and cession agreement. That is the basis for the bank to proceed on *condictio causa*.

[11] The respondent does not deny receiving the amount of R935 949.83 in his personal bank account. In his answering affidavit he says:

'5 I thought the bank had made available to me a sort of revolving credit facility following a discussion I had with one of their representatives.

6. I utilized the money over the period from August 2020 to 2022.

7. I have accepted that I will have to repay the bank the money as I knew it was not a gift.'

[12] Navsa JA et Heher AJA explained the following in *Kudu Granite Operations (Pty) Ltd v Caterna Ltd*[1]:

'A presumption of enrichment arises when money is paid or goods are delivered. A defendant then bears the onus to prove that he has not been enriched: *De Vos* (supra 2nd ed at 183), quoted with approval in *African Diamond Exporters (Pty) Ltd v Barclays Bank International Ltd* 1978 (3) SA 699 (A) at 713G - H.'

In this case the respondent tried to discharge the onus by relying on the fact that he thought the money was paid into his account as a revolving credit facility. However, he had a telephonic conversation with Venter before the payment was made. With his level of doctoral qualifications, he is clearly not an *ignoramus*.

[13] Mr Babuseng argued, on behalf of the respondent, that the bank was not impoverished by the payment and asked the court to exercise its inherent discretion to deny the application, a new argument not in the papers. The real question is whether the bank incurred liability to the Trust arising out of the money that was transferred. If it did, then its patrimony was reduced by the amount of the liability. To argue otherwise would be to ignore the evidence.

[14] Streicher JA made this example to illustrate the point in *Nissan South Africa (Pty) Ltd v Marnitz NO and Others (Stand 186 Aeroport (Pty) Ltd Intervening)*[2]:

[24] ...Payment is a bilateral juristic act requiring the meeting of two minds (Burg Trailers SA (Pty) Ltd and Another v Absa Bank Ltd and Others 2004 (1) SA 284 (SCA) at 289B). Where A hands over money to B, mistakenly believing that the money is due to B, B, if he is aware of the mistake, is not entitled to appropriate the money. Ownership of the money does not pass from A to B. Should B, in these circumstances, appropriate the money, such appropriation would constitute theft (R v Oelsen 1950 (2) PH H198; and S v Graham 1975 (3) SA 569 (A) at 573E - H). In S v Graham, it was held that, if A, mistakenly thinking that an amount is due to B, gives B a cheque in payment of that amount and B, knowing that the amount is not due, deposits the cheque, B commits theft of money although he has not appropriated money in the corporeal sense. It is B's claim to be entitled to be credited with the amount of the cheque that constitutes the theft. This Court was aware that its decision may not be strictly according to Roman-Dutch law but stated that the Roman-Dutch law was a living system adaptable to modern conditions. As a result of the fact that ownership in specific coins no longer exists where resort is made to the modern system of banking and paying by cheque or kindred process, this Court came to regard money as being stolen even where it is not corporeal cash but is represented by a credit entry in books of account.

[25] The position can be no different where A, instead of paying by cheque, deposits the amount into the bank account of B. Just as B is not entitled to claim entitlement to be credited with the proceeds of a cheque mistakenly handed to him, he is not entitled to claim entitlement to a credit because of an amount mistakenly transferred to his bank account. Should he appropriate the amount so transferred, ie should he withdraw the amount so credited, not to repay it to the transferor but to use it for his own purposes, well knowing that it is not due to him, he is equally guilty of theft.'

[15] From the foregoing there can be no doubt that enrichment took place at the expense of the applicant. The respondent received and used the money that was deposited into his bank account well knowing that it was not due to him. I find no justification for his use of the transferred amount. I am satisfied that the applicant is entitled to the repayment of its moneys derived from the *condictio sine causa* and that there is no reason why it should not succeed in its claim.

[16] The parties are agreed that some form of payment was made by the respondent and can be ascertainable through bank records and deducted from the order that this Court will make.

[17] On the question of costs there is no reason why costs should not follow the result.

[18] In the result the following order is made:

MC MAMOSEBO

ACTING DEPUTY JUDGE PRESIDENT

NORTHERN CAPE DIVISION

For the applicant

Adv. GW Amm SC

Instructed by:

Glover Kannieppan Inc

c/o Engelsman Magabane Inc

For the respondent: Adv. B Babuseng

Instructed by:

Lulama Lobi Inc

[1] Kudu Granite Operations (Pty) Ltd v Caterna Ltd 2003 (5) SA 193 (SCA) para 21

[2] Nissan South Africa (Pty) Ltd v Marnitz NO and Others (Stand 186 Aeroport (Pty) Ltd Intervening) 2005 (1) SA 441 (SCA) para 25

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Prepared on 9 October 2026 · Esheria