

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 3515/2001

In the matter between:

FREE STATE PROVINCIAL
GOVERNMENT

Plaintiff

and

SAMUEL DICHABA

Defendant

CORAM: **MALHERBE JP**

HEARD ON: **8 & 9 JUNE 2004**

DELIVERED ON: **8 JULY 2004**

Defendant is employed by plaintiff in the Department of Social Welfare.

At all times relevant to this action he was stationed at Phuthaditjaba in

Qwa Qwa. It is common cause that cash in the amount of R278 000,00

and 4 laptops to the value of R60 000,00 were stolen from the

Department's Social Security office at Phuthaditjaba on 14 October 1998.

It is plaintiff's case that defendant is liable to it for this loss. Its cause of

action is set out as follows in paragraph 9 of the Particulars of Claim:

“ 9.

The defendant wilfully or negligently caused the aforesaid loss or damage to the plaintiff, being the owner of this aforesaid cash and laptops, because:

9.1 As Head of Social Security in QwaQwa he was responsible for the safekeeping of all equipment in the relevant office;

9.2 He was the only person present in the office on 14 October 1998 who had a key to the office;

9.3 He failed to adhere to the request of a Junior Officer to lock in the laptops and to secure the laptops;

9.4 He failed to carry out the instruction given by his Director not to keep money overnight in the said offices under any circumstances;

9.5 He failed to instruct his subordinates not to bring money to the office;

9.6 He failed to take any or sufficient preventative steps to secure the money or to satisfy himself in regard to the amount of the money.”

Defendant pleaded a bare denial to these allegations.

The Department of Social Welfare deals with large sums of money that have to be paid out every month to pensioners and other recipients of welfare grants and allowances. Social Security Circular No. 1 of 1997 is the procedure manual for officials involved in the payment of social pensions and allowances. (It is to be found at pp.1 – 11 of the bundle Exhibit “A”). On the day in question a pay team from the Phuthaditjaba office, headed by Mr Ntsamai, paid out pensions at Bolata, a village some 5 to 7 kilometres from the office. As a result of some problem in the electronic or computer system, payouts could not be completed on that

day. All officials concerned, including defendant, were aware of this beforehand. Mr Ntsamai stopped payouts approximately 3:00 p.m., and rushed to the bank in order to bank the remaining cash before the bank closed at 3:30 p.m. When he arrived at the bank, it had already closed. He then went to the office where, according to him, defendant was in charge, and arrived there approximately 4:00 p.m. He describes what happened there as follows:

“--- Toe ons nou by die kantoor aangekom het, het ek opgemerk dat mnr. Dichaba se voertuig buite geparkeer staan en toe het ek na sy kantoor toe gegaan. Ek het na hom toe gegaan en gesê soos ons weet wat die prosedure bepaal dat indien ons met die geld terugkom, moet hy die geld kom tel. Toe sê hy vir my nee, hy is nie meer die hoof van die kantoor nie en hy vra dat ek en ‘n betaalmeester die geld gaan tel. Ek het toe gegaan om saam met die betaalmeester die geld te tel.

Wie was die betaalmeester? --- Dit was mnr. Leshoro Mokgere.

Spel vir ons die naam en die van asseblief? --- L-E-S-H-O-R-O M-O-K-G-E-R-E. Verder het mnr. Dichaba vir my gesê gehad dat wanneer ons klaar die geld getel het, moet ek hom kom sê hoeveel die geld bedra. Ek het die geld getel. Na ek dit getel het, het ek teruggekeer na hom toe. Ek het op so ‘n stukkie papier die bedrag opgeskryf gehad en ek het hierdie stukkie papier in my hand gehad. Toe sê hy hy gaan ons een van die klui se sleutels gee.

Hy sê hy sal vir julle 'n sleutel van die kluis gee. --- Ek het hom nou die strokie gegee waarop die bedrag geskryf is en toe vra ek nou vir die sleutel van die kluis. Hy het uitgestap na sy voertuig toe, toe gee hy vir my die sleutel van die kluis. Ons het toe die geld in die kluis ingeneem, ek en die betaalmeester en 'n ander assistent van ons wat ons gehelp het daardie dag. Ons het die kluis toegesluit en die sleutel daarvan het ons aan die betaalmeester oorhandig.

Net 'n oomblikkie. Hierdie mnr. Mokgere? --- Ja.”

Defendant describes the same events as follows in his evidence:

“MR SIMELANE: On 14 October 1998. money was brought back from Bulate pay-point to the office, is that the position? --- Correct.

Was that money brought to you? --- No, sir.

What happened? --- Mr Ntsamai came to ask for the key.

COURT : He came to you and asked for the key to ...? --- For the key to the safe.

MR SIMELANE : And then? --- I asked him for what purpose should I give the key to him; he explained that he returned with the money and then I gave him the key.

Do you know what he did with the key? --- No, I know nothing.

COURT : You apparently did not care either? --- No, sir, but had he asked for assistance, I would have assisted but he apparently was able to go on on his own.

You were asked what happened to the key, you said you did not know.

I then said you apparently did not care either. Did he return the key to you? ---

No, sir.

Did you ask him to return it to you? --- My understanding was that he has the key and

he has the money with him and therefore he carries the responsibility.”

“MR SIMELANE : Why was this key in your possession to start with? ---
The strongroom was previously used to put in money but at the time it was
used for stationery, for keeping stationery.

Was there no other place where this money could be stored? --- There
are three strongrooms, the first one did not have a key, it was broken into. The
second strongroom’s key someone was out of town with the key so there could
have been no access to it and the third one was this strongroom to which I had
the key.

COURT : So are you saying that the strongroom to which you had the key
was the only strongroom in that building on that day where money could be
safely stored? --- Yes, sir.

MR SIMELANE : You say now in your evidence you were not asked to help,
Ntsamai did not ask you to help with the money? --- Yes, sir.

Had he asked you to help, what would you have done? --- I would have
helped by counting the money to ascertain how much it amounts to and then
put it in the strongroom, sir. About 3 metres away from my office I met a
security guard and told him what the situation was in the building so that he
should be more awake towards his work.”

Regarding the 4 laptops, it is common cause that Mrs Van der Nest
requested defendant on the day in question to lock them up in a certain
office and that he did not do so. It is also common cause that these
laptops were stolen from the office building during the same night but

that office in which the laptops were supposed to be locked up, was not burgled.

Social Security Circular 1 of 1997 contains comprehensive instructions to officials who are responsible for the payment of social pensions and allowances. It was issued by a certain Mr Roberts in his capacity as Director: Social Security. Paragraph 13 deals with the procedure to be followed after completion of payments and sub-paragraphs 1 and 2 thereof provide as follows:

“13. PROCEDURE AFTER COMPLETION OF PAYMENTS

13.1 The balance of the cash withdrawal for pension moneys must be counted and deposited at the bank nearest to the paypoint. If after banking hours, the balance as above must be taken to the Regional/sub-office and there given to the office head, Social Security, who must check it and issue a receipt to the paymaster. The money must be placed in safekeeping until it can be deposited on the next day.

13.2 A receipt (Z 371) in respect of the balance of the cash withdrawal deposited must be issued. A paymaster may not issue and sign a receipt in respect of himself.”

It is common cause that there was a meeting in Kroonstad during 1997 where this same Mr Roberts and other senior officials of the Department, including defendant, were present. According to plaintiff's witness, Mr

Vlok, the following took place there:

“--- As gevolg van die groot rooftog waarna so pas verwys is, het ons ‘n bestuursvergadering gehad te Kroonstad waar die verweerder ook teenwoordig was namens die spesifieke kantoor, Phuthaditjaba kantoor. Ons direkteur op daardie stadium, mnr. Gerald Roberts nog steeds het toe ons vir tee gebreek het, het hy gevra dat mnr. Dichaba, myself and mnr. André Theron agterbly in die lokaal. Ons het die deur toegemaak en mnr. Roberts het vir mnr. Theron gevra om notas te maak op die swartbord, daar was ‘n swartbord in hierdie lokaal. Mnr. Roberts het toe vir mnr. Dichaba gesê dat as gevolg van hierdie roof wat pas plaasgevind, moet hy stappe neem of het ons voorstelle gemaak wat nou moet gebeur indien daar met pensioenbetalings. Die eerste ding wat mnr. Roberts vir hom gesê het wat André of mnr. Theron op die bord geskryf het, was dat geen kontant moet meer oornag by die kantoor in die kluis nie. Die tweede ding wat hy vir hom gesê het om dit haalbaar te maak, moet betalings nie plaasvind na drie-uur die middag nie; betalings moet gestaak word sodat die balans van die geld teruggebank kan word. En dit is basies die opdrag wat mnr. Roberts vir mnr. Dichaba gegee het die dag.”

During cross-examination he says the following:

“ In my mind the instruction issued by Mr Roberts seems to be contrary to the instructions that is written down here, they do not go hand in hand. If money had not to be brought back to the office then it means the defendant could not have accepted the money. --- Om te verduidelik dat die

omsendskrywe waarna die verweerder se verteenwoordiger verwys, is 'n omsendskrywe wat die betaling van pensioene reguleer en dit het gesê dat geld moet deur die kantoorhoof ontvang word, teken 'n kwitansie en die betaalmeester sê dit moet veilig bewaar word. Na die uitrekening van daardie omsendbrief met, as gevolg van die eerste rooftog in Qwa Qwa, wou die hoof van die Departement of mnr. Roberts spesifiek keer dat so 'n geval weer moet gebeur. Dit is hoekom hy spesifiek daardie instruksie gegee het wat gesê het geld mag nie na drie-uur of mag nie by die kantoor oornag nie.

If it did happen that the pay team comes back with the money from the pay-point as it was in this case, what should the defendant have done with the money? --- U moet onthou dat die omsendskrywe, 1/79 is nie teruggetrek deur mnr. Roberts nie, dit was nog steeds van krag. 'n Omsendbrief raak net nietig wanneer hy teruggetrek word en vervang word deur 'n ander instruksie. Daardie omsendskrywe was nog steeds van krag ten spyte van die feit dat hy vir hom as 'n veiligheidsmaatreël 'n opdrag gegee het om nie geld te bank nie, ag, in die kluis te bêre nie, staan hierdie omsendskrywe nog steeds van krag. Hy is nêrens ingetrek nie, so hy was nog steeds in werking

HOF : So wat u sê, toe hierdie geld nou terugkom van die betaalpunt op die betrokke dag, toe was mnr. Ditchaba, die verweerder, veronderstel om daardie omsendbrief stiptelik na te kom? --- Positief, want hy was nog steeds van krag, hy was nie teruggetrek of gewysig nie.

MR SIMELANE : Yes, I understand that. But my point is in his mind there was now instructions that were contrary to each other. The circular says one thing and Mr Roberts specifically orders something else, in his mind therefore there must have been that confusion what he must do with the money. --- Ja, ek kan nie getuig oor wat in sy confusion aangegaan het of wat in sy, what his state of mind was nie, I cannot say that. My answer remains the same dat die omsendbrief was nie ingetrek nie en

daardie was 'n addisionele opdrag om geld te beskerm.

Finally on this point, what I am trying to drive at is that if he kept one instruction he could not keep the other. He had, that could not go both ways.

--- Ek stem nie saam daarmee nie.

COURT : Are you suggesting Mr Simelane, that the instruction that was given at Kroonstad on the evidence, do not keep money in the office overnight, that was the instruction?

MR SIMELANE : That is correct M'lord.

COURT : Are you saying that that is the reason why your client did not want anything to do with the money that arrived after hours?

MR SIMELANE : Definitely, M'lord, this is what I am saying. He did not take it because there was a specific instruction that he must never have anything to do with the money that comes back after hours. And at the same time not being told if it did happen what he must do."

This was also defendant's evidence as quoted above. Regarding Mr Roberts' instruction at the meeting in Kroonstad, he testified as follows:

"--- We understood that Mr Roberts does not give us any option; under no circumstances should the money come back to the office. That is what we understood him to be saying."

" Mr Dichaba, I just get the impression that you are trying to evade your responsibility in that particular office. --- No, I do not avoid responsibility.

And the avoidance in particular in regard to the money that is involved in payments to pensioners. --- I do not avoid responsibility, sir, because I have already explained that instruction was to the effect that under no circumstances

should the money be brought back to the office.”

Defendant’s defence is really very simple, viz. that he was no longer the head of the office and, therefore, not responsible for money that was brought back to the office in contravention of Mr Roberts’ clear instruction.

There can be no doubt that Mr Vlok’s evidence is correct. Defendant’s “understanding” of the instructions given at Kroonstad is untenable. He was a senior official at the time. In fact, from his own evidence it appears that the person who had to replace him as head of the office had not yet assumed duty. It is no wonder that all the witnesses for plaintiff regarded him as head of the office at the time of the burglary.

Mr Vlok made notes of his interview with defendant the day after the burglary. (These notes are to be found at pp. 64 & 65 of Exhibit “A”). I have no doubt that they correctly reflect what defendant told Mr Vlok on that occasion. It really coincides with defendant’s own evidence viz. that he wanted nothing to do with the money and was not willing to take responsibility for it. I also have no doubt whatsoever that he told Mr Vlok that he forgot to lock up the laptops as requested by Mrs Van der Nest and that his elaborate explanation in Court of his understanding of

the request in this regard, is a clumsy attempt to explain his lack of interest in duties and responsibilities.

It appears from the evidence of both Mr Vlok and Mr Ntsamai that it would have been possible to obtain assistance from the South African Police to post guards at the office where the money and laptops were kept or even to keep it overnight at the Police Station. It would also have been possible to arrange for extra security guards at the office from government sources. These steps seem eminently practical and reasonable and should, in my judgment, have been taken by the reasonable senior official in defendant's shoes on the afternoon in question. His failure so to act was negligent.

I am satisfied that had these steps been taken, the housebreaking would probably not have occurred. I find that the necessary causal link between defendant's negligence and plaintiff's loss has been established.

It is common cause that the statutory prerequisites to hold an official personally liable for loss have been complied with. (See the list of "Further Agreements between the Parties" that was handed in at the end of plaintiff's case).

In the premises judgement is granted in favour of plaintiff as follows:

1. Payment of the amount of R338 000,00.
2. Payment of interest on the said amount at the rate of 15,5% per annum *a tempore morae* to date of payment.
3. Costs of suit.

J.P. MALHERBE JP

On behalf of Plaintiff:

Adv. J.Y. Claasen
Instructed by
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Bloemfontein

On behalf of Defendant:

Adv. A.J. Simelane
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