

SOUTH AFRICA / JUDGMENT

Dinath and Another v Iginla and Another (079671/2023) [2024] ZAGPPHC 1225 (22 November 2024) [2024] ZAGPPHC 1225

COURT

North Gauteng High Court, Pretoria

BEFORE

Nharmuravate

CASE / FILE NUMBER

079671/2023

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 079671/2023

In the application between:

IMRAN DINATH N. O NOMVUYO YVONNE

First Applicant

SERITI NO:

Second Applicant

and

JOSHUA LASISI IGINLA

First Respondent

ZIMASA STELLA IGINLA

Second Respondent

judgement

NHARMURAVATE AJ

Introduction

- [1] This is an opposed application brought by the Applicants in their capacity as joint liquidators of the Joshua Iginla Ministries NPC (JIM NPC) who are seeking to set aside the payments amounting to R3 986 869.25 which were used to purchase a farm in the First Respondents name as a disposition without value as contemplated in terms of section 26 of the Insolvency Act 24 of 1936. Alternatively, a set aside of these payments is sought in terms of section 31 of the Insolvency Act as they amount to collusive transactions.
- [2] The application is opposed by both Respondents Mr Joshua Iginla and Mrs Zimasa Iginla who are a married couple whose regime is not known of. They are citizens of Nigeria, and both hold South African passports. Their opposition is based on the allegation that these monies were donations which can be used by them as church leaders as they so wish.

Background Facts

- [3] JIM NPO was finally liquidated in terms of the court order on the 16th of May 2023, and it had a history of receiving various sums of money from an entity known as the Supreme National Stock holdings Pvt (SNS) Ltd which was also liquidated finally by the court order issued by the KwaZulu Natal division in Pietermaritzburg High Court under the case 164/2020P on the 24th of July 2020. SNS defrauded unsuspecting members of the public approximately R650 million by conducting a Ponzi scheme as declared by the KwaZulu Natal high court in 2023.
- [4] Due to the Pietermaritzburg's high court findings a provisional winding, up order of JIM NPC was brought by the liquidators of SNS on the basis that it was unable to pay its debt commercially, it was insolvent. This was due to the reason that it had to repay the R8, 2 million which was received from SNS as per the court order due to it being a voidable disposition.
- [5] After the Applicant's appointment as joint liquidators they then found that Jim NPC was not retaining any monies received from SNS the various funds were allegedly splurged by the entity on all kinds of people, entities and items. These funds were simply dissipated in total as per the records, some of the funds were also utilized by the First Respondent to purchase the immovable property situated at portion 85 Nooitgedacht Farm no 534 as the said monies were gifted to him by JIM NPC.
- [6] The Applicants referred to the bank statement of JIM NPC in relation to a bank account held with Standard Bank which indeed proves that the monies were transferred to the First Respondent Attorney Richard F Reed who thereafter used it to purchase the farm. The bank statements attached show various amounts which were transferred to Richard F Reed attorneys who also confirmed under oath that the monies which were transferred to his trust account were to purchase the said property.

- [7] The amounts were transferred as follows that is the amount of R2 000 000.00 paid on the 18th of May 2019, R1,000,000 paid on the 18th of May 2019, the, R 700,000 paid on the 22nd of May 2019; an amount of R 46,000 paid on 3rd of June 2019 lastly an amount of R204 869 which was transferred on the 7th of June 2019. These amount total to R 3 986 869.25. The Applicants allege that these amounts constituted a disposition without value alternatively a collusive disposition and must be set aside.
- [8] The Respondents in opposition alleged that the provisional liquidation of JIM NPC was placed under dispute, and it was referred to the constitutional court under case number CT 262023 to seek the liquidation of JIM NPC to be declared unconstitutional and invalid (during the hearing of this matter there was already a decision from the constitutional court which refused to entertain the said application).
- [9] The Respondents denied that SNS donated monies to JIM NPC reason being that the entity is incapable of religious affiliation and worship and therefore could not have donated monies to the church of Joshua Iginla Ministries. The Respondents did not dispute that the money was transferred or donated by Mr. Sibiya the director of SNS at the time as a religious donation. The main opposition is that the monies were donated by Mr. Sibiya as a member of the church in exercise of his fundamental right of freedom of worship.
- [10] The Respondents further alleged that the bank statements information which was used by the Applicants in support of their application amounted to privileged information and usage thereof was unlawful as it was obtained unlawfully by the Applicants in violation of the Respondents' legal privilege. The Respondents deny giving the Applicants the bank statements they only recall giving these to Mr. Selepe (their former Attorney) seeking legal advice, they mysteriously landed in the hands of the Applicants.
- [11] The Respondents main argument is that the money was donated to the church, and it belonged to the church and as such can be used by the church leadership as it deems fit in accordance with its various charities. They argue that donations to a church for instance cannot be declared a disposition for no value because a believer does not donate to the church in the hope of getting some tangible value in return. This money was meant as a gift which is made in obedience to scripture and an offering to God through his representatives which are the Respondents. They argued that the Insolvency Act was aimed at business settings and does not find application in a religious context.
- [12] The Respondents also alleged that the Applicants have used the Companies Act to create a debt that did not exist prior to the liquidation and used it to create a debt to have the church liquidated because it could not pay its debts.

ANALYSIS OF THE MATTER

Locus Standi

[13] The argument raised by the Respondents is that the Applicants do not have locus standi to bring this application. The clarity on the reasons why this argument is raised is not clear on the papers filed. Confusingly,

reliance was placed on a pending constitutional court appeal which has been dismissed. This issue was not dealt with on the supplementary nor even dealt with in detail in the answering filed[1]. A party must make out its case on the papers filed to permit the other party to answer appropriately to the allegations. Where allegations are raised in the heads of argument such allegations cannot be considered by this court as that will amount to gross prejudice.

[14] The Respondents were given an opportunity to supplement their papers on a previous occasion when the matter was postponed on the 12 of June 2024. However this issue was not addressed appropriately as a point of law if at all by the Respondents.

[15] In my view, the Applicants do have locus standi to bring such an application as they are liquidators in the matter which have been appointed lawfully so. One of their duties is to investigate and make recoveries on behalf of the creditors and this also includes embarking on such applications[2] in execution of their duties.

[16] I therefore find no basis on this point raised.

Confidentiality of Bank statement

[17] The second argument raised by the Respondents is that the Applicants are relying on unlawfully obtained evidence which are bank statements. The issue of the bank statements is also not dealt with appropriately on the Respondents answering papers. There is no explanation proffered to this court why bank statements of JIM NPC are privilege regard being had to the previous decisions which have been made by various courts concerning this matter.

[18] The Respondents do not deny the payments made by SNS which amount to approximately 8.2 million. The payment of these amounts by SNS to JIM NPC have already been declared as an impeachable disposition. One of the duties of the Applicants is to investigate and to protect the interest of the creditors. The Applicants argued that it was upon their investigation and exercise of their duties that they came across these bank statements which are crucial in the matter simply because it involves monies which were

unlawfully obtained from public members. In my view, the interest of justice outweighs the interest of the Respondents these amounts which were subsequently transferred to purchase the farm for the First Respondents were from an unlawful Pondzi scheme which has left several creditors out of pocket. Accordingly, JIM NPC owes SNS liquidators R8,2 million, which the Applicants are trying to recover so that it can be paid over to SNS liquidators.

[19] Further, the Respondents have not taken this court into confidence and explained why these bank statements are confidential and should not be used by the Applicants. These are bank statements in relation to an entity which has been finally liquidated in terms of a court

order. Commercial confidentiality is not recognized as an automatic right[3]. Confidentiality cannot be a theoretical exercise without precise detail and motivation from the Respondents as the alleging party. These bank statements belong to JIM NPC a non-profit making entity it is not clear what information contained in them is of commercial value which requires protection[4]. Entities alternatively companies bank statements do not enjoy any confidentiality privilege unless it is appropriately addressed in paper more so when it is under liquidation.

[20] In my view in a democratic society transparency is key within an organization especially in an entity such as JIM NPC which operates as a church. Further, there were no other documents or financials available for JIM NPC except for these relevant bank statements which were obtained through the Applicants investigation. In law liquidators have a right to financial information of the company such as financial statements, financial books, bank statements or any other relevant financial information which they can request from a director or an accountant or lawyer of that specific entity.

[21] Therefore, this court is not convinced that these bank statements enjoy privilege of confidentiality regard being had to the Applicants position and the lack of averments supporting this argument.

Non -compliance with rule 16A

[22] The Respondents main argument is that the monies were deposited into JIM NPC account as donations which formed part of Mr. Sibiya contribution towards the church. The First Respondent as a leader of the church or the Respondents as the leaders of the church are permitted to use that money anyway, they deem fit this amounts to freedom of religion as when donations are made to churches no value is expected by the person donating. They argue that this amounts to freedom of religion(fellowship).

[23] The Respondents are raising the above submission as a constitutional point. This constitutional point is not appropriately raised regard being had to rule 16A. The parties with interest were not invited as they should in compliance with the rules. This, I must add has been raised in various judgement concerning this matter the Respondents had ample time to properly deal with raising a constitutional point which they have not done.

[24] In *Shaik v Minister of Justice and Constitutional Development*[5] the Constitutional Court stated that the purpose of rule 16A(1) is as follows: ‘The purpose of the Rule is to bring to the attention of persons (who may be affected by or have a legitimate interest in the case) the particularity of the constitutional challenge, in order that they may take steps to protect their interests. The Respondents have been given several opportunities to raise this constitutional point appropriately, but they have not done so.

[25] Therefore, the constitutional point raised at this juncture cannot be dealt with as there is no compliance with the rules as provided.

Is section 26 Applicable

[26] Section 26 of the insolvency Act reads as follows that:

"(1) Every disposition of property not made for value may be set aside by the court if such disposition was made by an insolvent –

(a) more than 2 years before sequestration of his estate, and it is proved that, immediately after the disposition was made, the liabilities of the insolvent exceeded his assets:

(b) Within two years of the sequestration of his estate, and the person claiming under or benefited by the disposition is unable to prove that, immediately after the disposition was made, the assets of the insolvent exceeded his liabilities: Provided that if it is proved that the liabilities of the insolvent at any time after making the disposition exceeded his assets by less than the value of the property disposed of, it may be set aside only to extent of such excess.

[27] The first analysis are the findings of the Pietermaritzburg high court regarding the final liquidation of SNS. The court found that the business conducted by SNS holdings prior to its winding up was an illegal and unlawful scheme. It further found that SNS at all material times prior to its winding up conducted an illegal and unlawful business. Therefore, the action of SNS transferring the said monies amounting to R8,2 million from February 2019 to JIM NPC were unlawful.

[28] The court went further to declare that at all material times prior to SNS's winding-up, the company was factually and commercially insolvent. Therefore, the monies transferred to the Joshua Iginla Ministries amounted to an illegal transaction which meant that this money was due and repayable to the liquidators of SNS. Therefore, an insolvent entity could not have made a lawful donation to JIM NPC. The monies were transferred to JIM NPC around 2019 whereas SNS was placed under final liquidation on the 24th of July 2020 which in terms of the Insolvency Act amounted to a disposition without value.

[29] The Respondents did not deny that these monies which were transferred by SNS to JIM NPC were subsequently used to purchase the farm in the First Respondents name. The argument raised by the Respondents in this regard is that the monies were a donation to the church by one Mr Sibiya and can be used by the Respondents as leaders of the church in any manner they so wish. However, the Pietermaritzburg High court has made an order that the activities which were engaged in by SNS at the time were unlawful and illegal and that even prior their winding up the company was insolvent. This decision still stands as it has not been appealed additionally, the Constitutional Court has refused to entertain such an application brought by the Respondents.

[30] The transfer of R 3 986 869.25 for the purchase of the farm amounted to a disposition without value bearing in mind that at the time JIM NPC was indebted to the liquidators of SNS in the amount of R8,2 million as the Pietermaritzburg high court order had a retrospective effect as rightfully argued by the Applicants. This meant that as of the 25th of February 2019 being the date the first transfer was made to JIM NPC, JIM NPC was indebted

to SNS liquidators. It is common cause that JIM NPC was not able to repay the liquidators of SNS the said amount.

- [31] The Respondents do not deny that a farm was bought in the First Respondents name and there is no explanation provided why this farm was bought with the funds which were meant for the JIM NPC or how the purchase of same benefitted JIM NPC. The argument that the Respondents are church leaders who can use the said money as the donator expects no value does not hold any merit. In this instance the donator was JIM NPC buying the property for the benefit of the Respondents which is the entity which received monies which were unlawfully obtained regard being had to the Pietermaritzburg order.
- [32] In *Umbongitwini Land and Investment Co (Pty) Ltd (in Liquidation) v Barclays National Bank*[6], the test for whether a disposition was made for value is whether there was a genuine commercial transaction with the expectation of some advantage at the time the transaction was entered into, which is equal to or more than the risk incurred by the party providing the security.
- [33] I am therefore satisfied that the transfer of R 3 986 869.25 to Richard F Reed Attorneys account to purchase the farm amounted to a disposition without value. All payments in respect of the property in question were made more than two years before the winding up of the entity JIM NPC. JIM NPC was provisionally liquidated in March 2023 and finally liquidated on the 16th of May 2023 whereas disposition took place around May 2019. The Respondent have not been able to prove that when these funds in

question were transferred from JIM NPC's account to purchase the farm in question that the assets exceeded its liabilities. The Respondents just have a blanket bare denial without substantiating or demonstrating otherwise by way of documentary evidence in form of audited or financial statements of JIM NPC.

- [34] The payments made by JIM NPC, the insolvent company to purchase the farm in the First Respondent name were not made for value as there is no explanation which has been professed by the Respondents why the farm was brought or what value was received by JIM NPC. The Respondents further argue that at no point was it ever proven that the liabilities of JIM NPC exceeded the assets when

it was declared insolvent. However, in my view such argument is late as JIM NPC has been finally liquidated in terms of a court order which was not opposed by the Respondents. In fact, this application gave the Respondents an opportunity to make such a demonstration

which they failed to do. I add that reference was made to charities without them being named or any other proof attached in this regard.

- [35] In their answer the Respondents have not dealt with the issues raised by the Applicants in terms of section 26 read together with section 31 of the Insolvency Act. When the high court in KwaZulu-Natal Pietermaritzburg confirmed that SNS was engaged in an unlawful Ponzi scheme as rightfully argued by the Applicant that decision meant that all payments made by

SNS to JIM NPO retrospectively became due and payable. That is due and payable on the date it was made by SNS that is from the 25th of February 2019 up to and including 31 May 2019 being the date of the first and last date of transfer made to JIM NPC the liquidated

entity which the Applicants represent. Accordingly, when these transactions were made, JIM NPC was indebted to SNS liquidators for R8,2 million.

- [36] The Respondents were not able to prove by any documentary evidence that when the money was transferred to purchase the farm JIM NPC was solvent or immediately thereafter JIM NPC was solvent. As per the investigation of the Applicants JIM NPC had no proven movables or immovables or any accounting statement which proved that JIM NPC was insolvent when the transactions were made. Section 26 of the Insolvency Act prevents giving away of assets without receiving value in return when they become insolvent immediately after. The purpose of this section is to protect the interests of creditors.
- [37] Tritely the word “disposition not made for value” means a disposition for which no benefit or value is or has been received or promise as a quid pro quo[7]. It is my view that section 26(1) is indeed applicable here in. The argument raised by the Respondents that the Applicants created a debt which was not there upon JIM NPC’s liquidation is incorrect. The findings as made by the Pietermaritzburg High Court confirmed that JIM NPC had an obligation to repay the R8,2 million on the dates when these payments were received. This amount remains outstanding.
- [38] In the matter of Fourie NO and Others v Edeling NO and Others in para [18] it was held as follows:
- [18] A disposition, it has been decided on more than one occasion, is not made for value if the payment is illegal. Estate Jager v Whittaker and Another 1944 AD 246 dealt with the payment of usurious interest. ‘No obligation of any sort,’ said Watermeyer CJ at 251-52, ‘to pay a higher rate of interest than that permitted by the Act can arise from a promise to pay a higher rate, and it therefore follows that such a promise is a mere nullity, and any payment of such a higher rate in pursuance of such promise is in effect a donation, or disposition not made for value, and is consequently liable to be set aside under sec 26 of the Insolvency Act. In Rousseau en Andere v Malan en ‘n Ander SA 451 (C) at 459I-J this dictum was applied to illegal commission payments from a scheme found to have been a lottery. In Visser en ‘n ander v Rousseau en andere NNO 1990 (1) SA 139 (A) where the operators of a pyramid scheme paid participants for a useless product such payments were (at 154I-156F) found to be dispositions without value[8].
- [39] This disposition was made using illegal payments received from SNS. Subsequent to that a farm is bought without adding any value to JIM NPC which is not denied by the Respondents.

CONCLUSION

[40] In my view, the transfer of R2 000 000.00 on the 2nd of May 2019, the R 1 000 000 on the 18th of May 2019, the R700 000 on the 22nd of May 2019, the R46 000.00 and R240 869.25 on the 7th of June 2019 which were transferred for the purposes of purchasing the farm amounted to a disposition without value which falls with section 26(1)(a) of the Insolvency Act. These transactions are impeachable as envisaged in the insolvency Act.

[41] The Respondents could not demonstrate the value received by JIM NPC in exchange of the purchase therefore these amounts stand to be set aside with costs as the Respondents did not succeed in opposing the matter. Tritely, the costs follow the results.

[42] I therefore make the following order:

1. The payments made by the liquidated entity Joshua Iginla Ministries NPC for the benefit of the First Respondent alternatively the Respondent amounting to R 3 986 869.S5 in purchasing the farm situated at Nooitgedacht no 534 portion 85, are set side in terms of section 26(1) of the Insolvency Act of 1936;
2. The First Respondent alternatively the Respondents are ordered to pay the sum of R 3 986 869.25 (three million nine eighty-six thousand eight hundred and sixty-nine rand and twenty-five cents) to the Applicants with interest at 7.25 per annum until date of final payment.
3. The First Respondent alternatively the Respondents are to pay the costs of this application on a party and party scale.

NHARMURAVATE, AJ

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

For the Applicant: Adv CVGO Sevenster

Instructed by: Vezi & De Beers Incorporated

For the Respondents: Adv E Sepheka

Instructed by: Mahlakoane Attorneys

Date of Hearing: 10 September 2024

Date of

Judgment:

22 November 2024

[1] Betlane v Shelly Court CC 2011(1) SA 388 (CC)

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- [2] Section 391 to 417 of the Companies Act 61 of 1973
- [3] Crown Cork & Seal Co. Inc and Another V Rheem SA (Pty) Ltd and Another 1980(3) SA 1093
- [4] Unilever PLC & another v Polagric (Pty) Ltd 2001 (2) SA 329 (C)
- [5] Treatment Campaign and Others 2002 (5) SA 713 (CC) (2002) (10) BCLR 1023;
[2002] ZACC13) para 5).'
- [6] 1987
- (4) SA 894 (AD)
- [7] Estate Wege v Strauss (1032 AD 76)
- [8] [2005] 4 ALL SA 393 (SCA)(1 April 2004)
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