

SOUTH AFRICA / JUDGMENT

Le Roux and Others v Honourable Magistrate and Others (16013/05) [2006] ZAGPHC 63 (22 June 2006)

[2006] ZAGPHC 63**COURT**

High Courts - Gauteng

BEFORE

Boruchowitz

CASE / FILE NUMBER

16013/05

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IN THE HIGH COURT OF SOUTH AFRICA (WITWATERSRAND LOCAL DIVISION) CASE NO: 16013/05 In the matter between: ALLAN LE ROUX First Applicant GERHARDUS VERMAAK Second Applicant PIETER JAN BENNETT VAN DER GRIJP Third Applicant CASPIAN FINANCIAL SERVICES (PTY) LTD Fourth Applicant and THE HONOURABLE MAGISTRATE, MR VIANA First Respondent JOHN LOUIS CARTER FOURIE NO Second Respondent JOSHUA MUTHANYI N.O. Third Respondent MARIA ELIZABETH APPEL N.O. Fourth Respondent ELIZABETH MARGARET EDWARDS N.O. Fifth Respondent J U D G M E N T BORUCHOWITZ, J: [1] This is an application for the review and setting aside of a search warrant issued by a magistrate in terms of section 69(3) of the Insolvency Act 24 of 1936. [2] The second, third, fourth and fifth respondents are the joint liquidators of two companies, Herlan Edmunds Engineering (Pty) Ltd (HEE) and Herlan Edmunds Investment Holdings Ltd (HEI), which were placed under final winding-up orders on 15 June 2004. The first to third applicants are either directors or former directors of the liquidated companies or are involved in some unspecified manner in the conduct of their business operations. The fourth applicant is a financial services company which is allegedly responsible for the administration of all companies within the Herlan Edmunds group of companies that includes HEE and HEI. The remaining respondent is an additional magistrate of Johannesburg who authorised the issue of the warrant. [3] The liquidators have experienced difficulties in recovering the books of prime entry of HEE and HEI. During August 2004 the second respondent sought and obtained, what is commonly referred to as an Anton Piller order which permitted the Sheriff to enter upon the premises of the fourth respondent to search for the accounting documentation and records of HEE and HEI. Prior to the execution of the order, the applicants approached the court for a stay thereof. An agreement was then reached that a copy of the fourth respondent's computer hard drive (which it is common cause contains, among other things, certain accounting records of HEE and HEI) would be retained in safekeeping by an independent attorney pending the outcome of the Anton Piller proceedings. The agreement was silent as to what would happen to the hard drive upon finalisation of the Anton Piller proceedings. [4] For

reasons that are not germane hereto, the Anton Piller order lapsed and an attempt by the liquidators to revive same was unsuccessful. Having failed in their initial quest to obtain access to the accounting records on the fourth applicant's computer the liquidators sought to achieve that objective by other means. They addressed a demand to applicants' attorneys requiring that an undertaking be given that the hard drive – which was then still in the possession of the independent attorney – not be destroyed. The applicants refused to give this or any other undertaking and insisted that the hard drive be returned to the fourth applicant.[5] The liquidators then brought an application in terms of section 69(3) of the Insolvency Act for an order that all books, documents and movables belonging to HEE and HEI contained on the computer hard drive in the possession of the independent attorney be attached, removed and handed over by the Sheriff to the applicants. An order was also sought that the hard drive be handed over to the Sheriff. Based on the applicants' refusal to give the undertaking, the liquidators asserted that there was a reasonable suspicion that the information on the hard drive would be concealed or unlawfully withheld from them. The applicants were given notice of these section 69(3) proceedings and elected to file opposing affidavits. The matter was argued by counsel for the respective parties over some two days whereafter the first respondent issued a warrant in the following terms: 'On the grounds of a statement made under oath there exists reasonable grounds for suspecting that at or about the premises of the fifth respondent [i.e., the independent attorney], situated at 45 Oxford Road, Forest Town, Johannesburg, there is a copy of the computer hard drive file folders containing the following books and documents ("the property") which belong to the business of Herland Edmunds Engineering (Pty) Ltd (in liquidation) and Herlan Investments Holdings Ltd (in liquidation) ... You are hereby authorised instructed to enter and search the abovementioned premises and take the property into your possession and then to hand the abovementioned property over to the liquidators of Herland Edmunds Engineering (Pty) Ltd (in liquidation) and Herlan Investments Holdings Ltd (in liquidation) or their duly authorised agents.' [6] The application to review the first respondent's decision is voluminous. Despite the abundance of paper filed on their behalf nowhere do the applicants disclose or identify with any precision, the legal basis of the cause of action relied on. The need to do so is emphasised in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* [2004] ZACC 15; 2004 (4) SA 490 (CC) para [27]. It only became apparent when reading the applicants' heads of argument that the review was founded on the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). [7] Principally, three grounds of review are contended for: (1) That the authorisation of the warrant was not competent or authorised by the empowering provision (section 6(2)(f)(i) of PAJA). It was submitted that section 69 of the Insolvency Act does not contemplate the seizure of property, the ownership of which rests in a party other than the insolvent, for the purpose of determining whether there is some or other recordal of data which relates to the insolvent's affairs. The computer hard drive belongs to the fourth respondent and the data electronically recorded thereon and copies made would also belong to it. The books and documents pertaining to the affairs of HEE and/or HEI which are electronically recorded on the hard drive therefore cannot be regarded as 'property' as contemplated in section 69 of the Insolvency Act. (2)

IN THE HIGH COURT OF

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(

WITWATERSRAND

LOCAL DIVISION)

CASE NO: 16013/05

In the matter between: ALLAN LE ROUX First Applicant GERHARDUS VERMAAK Second Applicant PIETER JAN BENNETT VAN DER GRIJP Third Applicant CASPIAN FINANCIAL SERVICES (PTY) LTD Fourth Applicant and THE HONOURABLE MAGISTRATE, MR VIANA First Respondent JOHN LOUIS CARTER FOURIE NO Second Respondent JOSHUA MUTHANYI N.O. Third Respondent MARIA ELIZABETH APPEL N.O. Fourth Respondent ELIZABETH MARGARET EDWARDS N.O. Fifth Respondent

ALLAN LE ROUX

GERHARDUS VERMAAK

PIETER JAN BENNETT VAN DER GRIJP

CASPIAN FINANCIAL SERVICES (PTY) LTD

THE HONOURABLE MAGISTRATE, MR VIANA

JOHN LOUIS CARTER FOURIE NO

JOSHUA MUTHANYI N.O.

MARIA ELIZABETH APPEL N.O.

ELIZABETH MARGARET EDWARDS N.O.

J U D G M E N T

BORUCHOWITZ, J:[1] This is an application for the review and setting aside of a search warrant issued by a magistrate in terms of section 69(3) of the Insolvency Act 24 of 1936.[2] The second, third, fourth and fifth respondents are the joint liquidators of two companies, Herlan Edmunds Engineering (Pty) Ltd (HEE) and Herlan Edmunds Investment Holdings Ltd (HEI), which were placed under final winding-up orders on 15 June 2004. The first to third applicants are either directors or former directors of the liquidated companies or are involved in some unspecified manner in the conduct of their business operations. The fourth applicant is a financial services company which is allegedly responsible for the administration of all companies within the Herlan Edmunds group of companies that includes HEE and HEI. The remaining respondent is an additional magistrate of Johannesburg who authorised the issue of the warrant.[3] The liquidators have experienced difficulties in recovering the books of prime entry of HEE and HEI. During August 2004 the second respondent sought and obtained, what is commonly referred to as an Anton Piller order which permitted the Sheriff to enter upon the premises of the fourth

respondent to search for the accounting documentation and records of HEE and HEI. Prior to the execution of the order, the applicants approached the court for a stay thereof. An agreement was then reached that a copy of the fourth respondent's computer hard drive (which it is common cause contains, among other things, certain accounting records of HEE and HEI) would be retained in safekeeping by an independent attorney pending the outcome of the Anton Piller proceedings. The agreement was silent as to what would happen to the hard drive upon finalisation of the Anton Piller proceedings.

BORUCHOWITZ, J

:

section 69(3)

Insolvency Act 24 of 1936

- [4] For reasons that are not germane hereto, the Anton Piller order lapsed and an attempt by the liquidators to revive same was unsuccessful. Having failed in their initial quest to obtain access to the accounting records on the fourth applicant's computer the liquidators sought to achieve that objective by other means. They addressed a demand to applicants' attorneys requiring that an undertaking be given that the hard drive – which was then still in the possession of the independent attorney – not be destroyed. The applicants refused to give this or any other undertaking and insisted that the hard drive be returned to the fourth applicant.
- [5] The liquidators then brought an application in terms of section 69(3) of the Insolvency Act for an order that all books, documents and movables belonging to HEE and HEI contained on the computer hard drive in the possession of the independent attorney be attached, removed and handed over by the Sheriff to the applicants. An order was also sought that the hard drive be handed over to the Sheriff. Based on the applicants' refusal to give the undertaking, the liquidators asserted that there was a reasonable suspicion that the information on the hard drive would be concealed or unlawfully withheld from them. The applicants were given notice of these section 69(3) proceedings and elected to file opposing affidavits. The matter was argued by counsel for the respective parties over some two days whereafter the first respondent issued a warrant in the following terms:

Insolvency Act for

'On the grounds of a statement made under oath there exists reasonable grounds for suspecting that at or about the premises of the fifth respondent [i.e., the independent attorney], situated at 45 Oxford Road, Forest Town, Johannesburg, there is a copy of the computer hard drive file folders containing the following books and documents ('the property') which belong to the business of Herland Edmunds Engineering (Pty) Ltd (in liquidation) and Herlan Investments Holdings Ltd (in liquidation) ...

On the grounds of a statement made under oath there exists reasonable grounds for suspecting that at or about the premises of the fifth respondent [i.e., the independent attorney], situated at 45 Oxford Road, Forest Town, Johannesburg, there is a copy of the computer hard drive

file folders containing the following books and documents ('the property') which belong to the business of Herland Edmunds Engineering (Pty) Ltd (in liquidation) and Herlan Investments Holdings Ltd (in liquidation) ...

You are hereby authorised instructed to enter and search the abovementioned premises and take the property into your possession and then to hand the abovementioned property over to the liquidators of HerlanEdmunds Engineering (Pty) Ltd (in liquidation) and Herlan Investments Holdings Ltd (in liquidation) or their duly authorised agents.'

You are hereby authorised instructed to enter and search the abovementioned premises and take the property into your possession and then to hand the abovementioned property over to the liquidators of Herlan

Edmunds Engineering (Pty) Ltd (in liquidation) and Herlan Investments Holdings Ltd (in liquidation) or their duly authorised agents.

[6] The application to review the first respondent's decision is voluminous. Despite the abundance of paper filed on their behalf nowhere do the applicants disclose or identify with any precision, the legal basis of the cause of action relied on. The need to do so is emphasised in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others* [2004] ZACC 15; 2004 (4) SA 490(CC) para [27]. It only become apparent when reading the applicants' heads of argument that the review was founded on the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). [7] Principally, three grounds of review are contended for: (1)

The need to do so is emphasised in

Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others

[2004] ZACC 15; 2004 (4) SA 490(CC) para [27].

[2004] ZACC 15

2004 (4) SA 490

(1)

That the authorisation of the warrant was not competent or authorised by the empowering provision (section 6(2)(f)(i) of PAJA). It was submitted that section 69 of the Insolvency Act does not contemplate the seizure of property, the ownership of which rests in a party other than the insolvent, for the purpose of determining whether there is some or other recordal of data which relates to the insolvent's affairs. The computer hard drive belongs to the fourth respondent and the data electronically recorded thereon and copies made would also belong to it. The books and documents pertaining to the affairs of HEE and/or HEI which are electronically recorded on the

hard drive therefore cannot be regarded as 'property' as contemplated in section 69 of the Insolvency Act.

section 69

Insolvency Act does

property

Insolvency Act.

(2)

That the magistrate's decision to authorise the issue of the warrant was unreasonable to the extent contemplated in section 6(2)(h) of PAJA. The unreasonableness is said to arise from the fact that the hard drive contains information to which third parties including the liquidators have no entitlement. The proper way to have obtained access thereto would have been to subpoena an official of the fourth respondent to produce the information at a properly constituted meeting of creditors. There was also no evidence that the hard drive was being 'unlawfully withheld' from the liquidators.⁽³⁾

section 6(2)(h)

unlawfully withheld

(3)

That the terms of the warrant are vague. It is unclear therefrom whether what was intended is that a search be conducted of 'file folders' which might have contained books and documents of the insolvent companies or of the hard drive itself. It was submitted that the terms of the warrant do not make sense in the context of the case and are not causally connected to the merits. In this regard reliance is placed on the provisions of sections 6(2)(e)(i) and (vi) and 6(2)(f)(ii)(cc) of PAJA.

file

folders

sections 6(2)(e)(i)

6

[8] A vital question that arises is whether PAJA is the proper basis for the review of the magistrate's decision. PAJA is a codification of the grounds of judicial review of administrative action and specifically excludes from its ambit the judicial functions of a judicial officer of a court. Section 1 of PAJA, so far as is relevant, reads:

Section

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1

‘1 Definitions

‘

1 Definitions

In this Act, unless the context indicates otherwise –

“administrative action” means any decision taken, or any failure to take a decision, by –

“administrative action”

means any decision taken, or any failure to take a decision, by –

(a)

...

(b)

a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision,

which adversely affects the rights of any person and which has a direct, external legal effect, but does not include –

(aa)

(bb)

(ee)

the judicial functions of a judicial officer of a court referred to in section 166 of the Constitution or of a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996), and the judicial functions of a traditional leader under customary law or any other law;

(ff)

(gg)

(hh)

(ii)

“decision” means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to –

“decision”

means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to –

making, ... an order, award or determination;

giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

(c)

issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;

(d)

(e)

(f)

retaining, or refusing to deliver up, an article; or

doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly

;

,

3

(1) The grounds upon which the proceedings of an inferior court may be brought under review before a provincial division or before a local division having review jurisdiction, are –

(a) absence of jurisdiction on the part of a court;

(b) interest in the cause, bias, malice or the commission of an offence referred to in Part 124, or section 17, 20 or 21 (insofar as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the presiding judicial officer;

Prevention and Combating of Corrupt Activities Act, 2004

(c) gross irregularity in the proceedings; and

(d) the admission of inadmissible or

incompetent evidence or the rejection of admissible or competent evidence.

Insolvency Act. What

President of the Republic of South Africa and Others v South African Rugby Football Union and Others

2000 (1) SA 1(CC) para [141].

2000 (1) SA 1

'In section 33 the adjective 'administrative' not 'executive' is used to qualify 'action'. This suggests that the test for determining whether conduct constitutes 'administrative action' is not the question whether the action concerned is performed by a member of the executive arm of government. What matters is not so much the functionary as the function. The question is whether the task itself is administrative or not. It may well be, as contemplated in *Fedsure*, that some acts of a legislature may constitute 'administrative action'. Similarly, judicial officers may, from time to time, carry out administrative tasks. The focus of the enquiry is as to whether conduct is 'administrative action' is not on the arm of government to which the relevant actor belongs, but on the nature of the power he or she is exercising.'

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the arm of government to which the relevant actor belongs, but on the nature of the power he or she is exercising.

[11] What falls to be considered is the nature of the discretion being exercised, which primarily involves a consideration of the section read in its proper context. Section 69 of the Insolvency Act (which applies equally in the winding-up of a company) provides a mechanism to enable a trustee or liquidator to take charge of property of the estate. Section 69(1) obliges a trustee, as soon as possible after his appointment, to take into his possession or under his control all movable property, books and documents belonging to the insolvent estate. And section 69(2) provides that if the trustee has reason to believe that any such property, book or document belonging to the estate is being concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned in sub-section (3). [12] Section 69(3) reads:

Section 69

Insolvency Act (which

Section 69(1)

section 69(2)

Section 69(3)

‘(3) If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate’s jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.’

If it appears to a magistrate to whom such application is made, from a statement

made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate’s

jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

[13] The issue of a search warrant under section 69(3) is not a perfunctory matter. There must be authorisation by a judicial officer. The authorising magistrate is not merely required to ensure that the formalities for the issuing of the warrant have been complied with, but must be satisfied that there are reasonable grounds for suspecting that property, books or documents are being concealed or unlawfully withheld. This requires the magistrate to undertake an objective and independent evaluation of the evidence upon which the alleged

suspicion is based. In the present matter the first respondent had to evaluate the legal and factual arguments that emerged from the opposing affidavits and in so doing clearly performed a judicial function.[14] As is also demonstrated by the facts of the present case, the execution of a search warrant may affect the right to privacy of third parties. Such right is now enshrined in section 14 of the Constitution and includes (subject to reasonable limitation) the right not to be subject to search and seizure. It is implicit in section 69(3) that the magistrate must also apply his or her mind to the question whether there are sufficient grounds to justify any invasion of privacy. In *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smith NO and Others* [2000] ZACC 12; 2001 (1) SA 545(CC) paras [34] to [37], a case that concerned the validity of the search and seizure provisions under the National Prosecuting Authority Act 32 of 1998, the Constitutional Court emphasised the need for judicial officers to give consideration to the justification for any invasion of privacy. See also *Powell NO and Others v Van der Merwe NO and Others*. 2005 (5) SA 62(SCA) para [59]. [15] The minority judgment of Wessels JA in *Prinsloo and Another v Newman* 1975 (1) SA 481(A) at 505A-D is particularly apposite to the present enquiry. In that case the court was concerned with a search warrant issued under section 42 of the now repealed Criminal Procedure Act 46 of 1926. The wording of that section is substantially the same as section 69(3). Section 42 of the Criminal Procedure Act 56 of 1955 then provided: 'If it appears to a judge of a superior court, a magistrate or a justice on complaint made on oath that there are reasonable grounds for suspecting that there is upon any person or upon or at any premises or in any receptacle of whatever nature within his jurisdiction – (a) stolen property or anything in respect of which any offence has been, or is suspected on reasonable grounds to have been committed ...; or (b) anything in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission ... of any offence; or (c) anything in respect of which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence, he may issue a warrant directing any policeman named therein or all policemen to search such person, premises or receptacle and any person found in or upon such premises, and to seize any such thing if found, and to take it before a magistrate to be dealt with according to law.' Wessels JA observed:

Investigating Directorate: Serious Economic Offences and Others v

Hyundai Motor Distributors (Pty) Ltd

and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smith NO and Others

[2000] ZACC 12; 2001 (1) SA 545(CC) paras [34] to [37].

[2000] ZACC 12

2001 (1) SA 545

,

National Prosecuting Authority Act 32 of 1998

Powell NO and Others v Van der Merwe NO and Others.

2005 (5) SA 62(SCA) para [59].

2005 (5) SA 62

Prinsloo and Another v Newman

1975 (1) SA 481(A) at 505A-D.

1975 (1) SA 481

section 42

Section 42 of the Criminal Procedure Act 56 of 1955 then provided:

If it appears to a judge of a superior court, a magistrate or a justice on complaint made on oath that there are reasonable grounds for suspecting that there is upon any person or upon or at any premises or in any receptacle of whatever nature within his jurisdiction –

stolen property or anything in respect of which any offence has been, or is suspected on reasonable grounds to have been committed ...; or

anything in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission ... of any offence; or

anything in respect of which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

he may issue a warrant directing any policeman named therein or all policemen to search such person, premises or receptacle and any person found in or upon such premises, and to seize any such thing if found, and to take it before a magistrate to be dealt with according to law.

‘In terms of s. 42 the person who is empowered to issue a search warrant considers the “complaint made on oath” before him, and it is his function to determine whether the information placed before him discloses “reasonable grounds for suspecting that there is upon any person or upon or at any premises ...”. ... In determining whether reasonable grounds for suspicion exist, the person considering whether the issue of a search warrant is justified, exercises a discretion of a judicial nature which is not justiciable in a court of law, save in very exceptional circumstances. See Divisional Commission of SA Police, Witwatersrand Area, and Others v SA Associated Newspapers Ltd and Another, 1966 (2) SA 503(AD) per Beyers, A.C.J. at p. 511H-512A.’

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, and Others v SA Associated Newspapers Ltd and Another, 1966 (2) SA 503(AD) per Beyers, A.C.J. at p. 511H-512A.

1966 (2) SA 503

[16] It is to be noted that the applicants do not contend for, or seek to make out a case, on the grounds that the decision of the magistrate constituted an infringement of a fundamental right entrenched in the Constitution. Were such a case relied on the grounds of review would have been wider than those enumerated in section 24(1) of the Supreme Court Act. *Magano v District Magistrate, Johannesburg*, 1994 (4) SA 172(W) at 177A. as the applicants would then have been entitled to “appropriate relief” as envisaged in section 38 of the Constitution. As to the meaning of appropriate relief see *Fose v Minister of Safety and Security* [1997] ZACC 6; 1997 (3) SA 786(CC) para 19; *Hoffmann v South African Airways* 2001 (1) SA 1(CC) para [42]. There are bald and unsubstantiated allegations made by the applicants to the effect that the hard drive contains documentation and information which is privileged and to which the liquidators are not entitled, but these meagre allegations are hardly sufficient to properly raise a ground of review based on constitutional grounds. *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839(T) at 848I-849B. The reliance on the provisions of PAJA, which is a codification of the grounds of judicial review of administrative action is, as I have already indicated, misplaced.

Magano v District Magistrate, Johannesburg,

1994 (4) SA 172(W) at 177A.

1994 (4) SA 172

appropriate relief

As to the meaning of appropriate relief see

Fose v Minister of Safety and Security

[1997] ZACC 6;1997 (3) SA 786(CC) para 19;

[1997] ZACC 6

1997 (3) SA 786

Hoffmann v South African Airways

2001 (1) SA 1(CC) para [42].

2001 (1) SA 1

Prokureursorde van Transvaal v Kleynhans

1995 (1) SA 839(T) at 848I-849B.

1995 (1) SA 839

[17] My conclusion is therefore that in authorising a search warrant in terms of section 69(3) of the Insolvency Act a magistrate does not act administratively but exercises a judicial function or discretion. As the applicants do not contend for the infringement of a fundamental constitutional right the decision of the magistrate is only justiciable on the limited grounds enumerated in section 24(1) of the Supreme Court Act. The applicants' failure to rely on the provisions of that section or to bring themselves within the parameters thereof renders the application fatally defective.[18] This conclusion renders it unnecessary to decide any of the further issues raised by the applicants.

Insolvency Act a

[19] The application is accordingly dismissed with costs including the costs consequent upon the employment of two counsel.

P BORUCHOWITZ JUDGE OF THE HIGH COURT COUNSEL FOR FIRST TO FOURTH APPLICANTS
A J HORWITZ SC AND J L KAPLAN INSTRUCTED BY

HOFMEYR HERBSTEIN AND GIHWALA INC COUNSEL FOR SECOND TO FIFTH RESPONDENTS
J J BRETT SC AND N P G REDMAN INSTRUCTED BY DOGULIN SHAPIRO AND DA SILVA INC
DATE OF HEARING 22 FEBRUARY 2006 DATE OF JUDGMENT 22 JUNE 2006

P BORUCHOWITZ JUDGE OF THE HIGH COURT

COUNSEL FOR

FIRST TO

FOURTH APPLICANTS

A J HORWITZ SC AND

J L KAPLAN

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DATE OF HEARING

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