

SOUTH AFRICA / JUDGMENT

Mama Money (Pty) Ltd v Siphumelele Logistics (Pty) Ltd (Ex Tempore) (2498/2024) [2024] ZAECQBHC 67 (18 September 2024) [2024] ZAECQBHC 67

COURT
Eastern Cape High Court, Gqeberha

BEFORE
B.B. Brody

CASE / FILE NUMBER
2498/2024

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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)

Not Reportable

CASE NO: 2498/2024

Matters heard on: 18 September 2024

Ex Tempore Judgment on: 18 September 2024

In the matter between:

MAMA MONEY (PTY) LTD

Applicant

And

SIPHUMELELE LOGISTICS (PTY) LTD

Respondent

EX TEMPORE JUDGMENT

BRODY AJ

- [1] This matter is an application for the provisional liquidation of the respondent and was brought in the normal course on the 3rd of July 2024. In the application there are serious allegations made against directors of the respondent and which amount to theft and fraud.

- [2] The matter previously came before this court after the respondent had served and filed a notice of opposition and immediately prior to the previous date of the application the attorney of record for the respondent, Mr Thobile Ngengwana of Magugu Attorneys, had withdrawn.
- [3] The method of the withdrawal was not in terms of the rules of court and my brother Zono, ordered that the matter be postponed until the 17th of September 2024 and ordered that a full explanation be given by Mr Ngengwana as to why he withdrew at such a late stage and why a costs order de bonis propriis should not be given against him for failing to give a full explanation for his withdrawal.
- [4] I was advised by Mr Ramsay, acting on behalf of the applicant in argument that the set down in this matter was served upon the directors of the respondent on the 4th of September 2024. That was the set down of the matter for hearing on the 17th of September 2024.
- [5] When this matter was called a director of the company appeared in court and requested this court for an opportunity to appoint legal representatives for the respondent. After an exchange between the director and this court it was then queried whether the director had the necessary legal right to appear in court and advance any case on behalf of the respondent, in terms of our law.
- [6] The director is not a legal practitioner and as Mr Ramsay argued it is only in very exceptional circumstances that a director may appear in court and advance any case on behalf of a company.
- [7] In the interests of justice and having regard to the request made by the director I ordered that the matter be postponed for a day to afford the respondent an opportunity to appoint an attorney, or counsel.
- [8] Predictably when the matter was called an application for postponement was brought on behalf of the respondent and the respondent has appointed Mr Ntanzi of Ntanzi Attorneys in Gqeberha. I afforded the respondent an opportunity to file answering papers and this was duly done.
- [9] I have heard argument by Mr Ntanzi on behalf of the respondent and Mr Ramsay on behalf of the applicant.
- [10] I am satisfied that, although liquidation proceedings are generally urgent proceedings, that in regard to this liquidation there is no apparent urgency save for the alleged criminal conduct on the part of the director and the possible change in directorships of the respondent company.
- [11] I emphasise that the original notice of motion made provision for opposition within ten court days and then answering affidavits within fifteen court days, and had the answering affidavits been served and filed, this matter would be awaiting a hearing date on the opposed roll.

[12] Having considered all the arguments in the matter on behalf of the applicant and the respondent and given the very serious allegations made against the directors of the company, I believe it is in the interests of justice that an opposing affidavit to the provisional order be received by this court in due course. The purpose for that will be to deal with the application for the liquidation and also to deal with certain of the many very serious allegations made against the directors. If found true, the allegations will result in the directors facing a criminal sanction and very possibly an imprisonment in the Cape Town courts.

[13] I accordingly make the following order:

13.1 This matter is postponed as a final postponement to the 1st of October 2024.

13.2 The respondent is to file a comprehensive opposing affidavit by no later than the 24th of September 2024.

13.3 The applicant is to reply by noon on the 27th of September 2024.

13.4 The respondent is to pay the wasted costs of the postponement on scale B as contemplated by rule 69(7).

13.5 Mr Thobile Ngwengana of Magugu Attorneys is to pay the wasted costs occasioned by the postponement on the 3rd of September 2024 and on scale B as contemplated by rule 69(7) *de bonis propriis*.

B.B. BRODY

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicant

: Adv. Ramsay

Instructed by

: Springer-Nel Attorneys

c/o Goldberg & De Villiers Inc.

13 Bird Street

GQEBERHA

(Ref.: A Nel/mp/W08683)

Attorneys for the Respondent : Mr. Ntanzi

Instructed by

: Ntanzi Attorneys Inc.

522 Govan Mbeki Avenue

North End

(Ref.: Siphumelele/024/Civil/MN-24)

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