

SOUTH AFRICA / JUDGMENT

Metro Chicken (Pty) Ltd and Others v Master of the High Court of South Africa, Durban and Others (D14387/2023) [2025] ZAKZDHC 51 (12 August 2025)

[2025] ZAKZDHC 51

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Mossop

CASE / FILE NUMBER

D14387/2023

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FLYNOTES:

COMPANY – Winding up – Sale
of assets –
Alleged
procedural irregularities by liquidators – Locus standi –
Applicants relationship to insolvent entity
was unclear –
Claim to standing rested on vague assertions unsupported by
evidence – Lacked standing –
Failed to demonstrate
direct and substantial interest in insolvent entity's affairs –
Failed to prove any misconduct
by liquidators or procedural
irregularities in sale of assets – Unfounded allegations of
collusion and dishonesty –
Application dismissed –
Companies Act 61 of 1973, s 386(2A).
SAFLII Note: Certain
personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII
Policy
IN
THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL
LOCAL DIVISION, DURBAN
Case
no: D14387/2023

the matter between: In

METRO
CHICKEN (PTY)
LTD
FIRST APPLICANT
HULLEY AND RICE (PTY)
LTD
SECOND APPLICANT
ZAHIR
OMAR NOOR
MAHOMED
THIRD APPLICANT
STAR SUPER MEATS
CC
FOURTH APPLICANT
and
THE MASTER OF THE HIGH
COURT OF SOUTH
FIRST RESPONDENT
AFRICA,
DURBAN
KURT ROBERT KNOOP
N.O.
SECOND RESPONDENT
BRIAN
LULAMILE MBOLEKWA N.O.
THIRD RESPONDENT
STAR MEAT MARKET CC
(IN LIQUIDATION)
FOURTH RESPONDENT
(REGISTRATION
NUMBER: 1996/008340/23)
K2021150772 (SOUTH
AFRICA) (PTY) LTD
FIFTH RESPONDENT
DELI
CO (PTY)
LTD
SIXTH RESPONDENT
SIR
FRUIT (PTY)
LTD
SEVENTH RESPONDENT
ARTISTIC
VISUAL (PTY)
LTD
EIGHTH RESPONDENT
USB
PACKAGING (PTY)
LTD

NINTH RESPONDENT
COASTAL
ACCOUNTING (PTY) LTD
TENTH RESPONDENT
ETHEKWINI
MUNICIPALITY
ELEVENTH RESPONDENT
EMAM
BUX (PTY)
LTD
TWELFTH RESPONDENT
LOWLANDS
MEATS (PTY) LTD
THIRTEENTH RESPONDENT
MD
BEEF (PTY)
LTD
FOURTEENTH RESPONDENT
EXIM
(PTY)
LTD
FIFTEENTH RESPONDENT
KLK
LAMB (PTY)
LTD
SIXTEENTH RESPONDENT
FREDDY
HIRSCH (PTY) LTD
SEVENTEENTH RESPONDENT
COLVER
(PTY)
LTD
EIGHTEENTH RESPONDENT
HOXIES
(PTY)
LTD
NINETEENTH RESPONDENT
ALBANY
(PTY)
LTD
TWENTIETH RESPONDENT
PAK
PLASTICS (PTY) LTD
TWENTY-FIRST RESPONDENT
AVOCET
SCALES (PTY) LTD
TWENTY-SECOND RESPONDENT
CROWN
NATIONAL (PTY) LTD
TWENTY-THIRD RESPONDENT
UNITED

BAG SALES (PTY) LTD
TWENTY-FOURTH RESPONDENT
LUPO
(PTY)
LTD
TWENTY-FIFTH RESPONDENT
BUTCHERY
EQUIPMENT AND ENGINEERING
(PTY)
LTD
TWENTY-SIXTH RESPONDENT
CANDY
TOYS (PTY) LTD
TWENTY-SEVENTH RESPONDENT
KLINT
SCALES (PTY) LTD
TWENTY-EIGHTH RESPONDENT
EVERGLOW
(PTY) LTD
TWENTY-NINTH RESPONDENT
GARLIC
MAN (PTY)
LTD
THIRTIETH RESPONDENT
FATHIMAS
FAVOURITE FOODS (PTY) LTD
THIRTY-FIRST RESPONDENT
OSMANS
SPICES (PTY) LTD
THIRTY-SECOND RESPONDENT
FRIDGE
TRANS (PTY) LTD
THIRTY-THIRD RESPONDENT
BID
AIR (PTY) LTD
THIRTY-FOURTH RESPONDENT
BBH
AGENCIES (PTY) LTD
THIRTY-FIFTH RESPONDENT
TRADEPORT
(PTY) LTD
THIRTY-SIXTH RESPONDENT
ABI
COKE (PTY) LTD
THIRTY-SEVENTH RESPONDENT
COOL
PERFECTION (PTY) LTD
THIRTY-EIGHTH RESPONDENT
HILTON
HONEY FARMS (PTY) LTD
THIRTY-NINTH RESPONDENT

TMK
FOODS (PTY)
LTD
FORTIETH RESPONDENT
SANA
(PTY)
LTD
FORTY-FIRST RESPONDENT
CORONA
FOODS (PTY) LTD
FORTY-SECOND RESPONDENT
MIDLANDS
EGGS (PTY) LTD
FORTY-THIRD RESPONDENT
MR
STATIONER (PTY) LTD
FORTY-FOURTH RESPONDENT
MINNIES
FOODS (PTY) LTD
FORTY-FIFTH RESPONDENT
PLP
LABELS
CC
FORTY-SIXTH RESPONDENT
IFG
HOLDINGS (PTY) LTD
FORTY-SEVENTH RESPONDENT
CIRO
(PTY)
LTD
FORTY-EIGHTH RESPONDENT
FOODROUTE
(PTY) LTD
FORTY-NINTH RESPONDENT
MARHABA
ENTERPRISES (PTY) LTD
FIFTIETH RESPONDENT
SHAN
SPICE (PTY)
LTD
FIFTY-FIRST RESPONDENT
MERLOG
FOODS (PTY) LTD
FIFTY-SECOND RESPONDENT
VENDIUM
(PTY) LTD
FIFTY-THIRD RESPONDENT
GRAINFED-VKB
GROUP (PTY) LTD
FIFTY-FOURTH RESPONDENT
RISING

SUN (PTY) LTD
FIFTY-FIFTH RESPONDENT
STAR
CITY INVESTMENTS (PTY) LTD
FIFTY-SIXTH RESPONDENT
SPARO
HOLDINGS CC
FIFTY-SEVENTH RESPONDENT

Coram: Mossop J

Heard: 6 August 2025

Delivered: 12 August 2025
ORDER
The following order is

granted:

1.
The applicants' application for condonation for the late delivery of their replying affidavit is refused with costs, which may be taxed on scale A.
2.
The main application is dismissed.
3.
The applicants shall pay the second, third and fifth respondents' costs in the main application on the attorney and client scale, jointly and severally, the one paying the others to be absolved.

JUDGMENT

MOSSOP J:

Introduction

- [1] The fourth respondent, Star Meat Market CC (the insolvent entity), was provisionally liquidated by an order of this court on 5 April 2023 and was finally liquidated on 15 June 2023. The second and third respondents are the insolvent entity's formally appointed liquidators (the liquidators).
- [2] In this judgment, I shall refer to the applicants collectively as 'the applicants' and by their respective names when referred to individually. However, given the number of respondents, and to avoid constant cross referencing to keep reminding oneself to which respondent reference is being made were they to be cited merely by number, I intend to refer to those respondents directly involved in this application by their respective names and not by their number as a respondent.

[3] It is principally against the liquidators and the Master of the High Court (the Master), that the applicants' complaints lie, notwithstanding the fact that a further 54 respondents are cited in the application. The fifth respondent is K2021150772 (South Africa) (Pty) Ltd (K2021150772)[1] and is the party that purchased certain movable assets (the assets) of the insolvent entity from the liquidators, consequent upon a decision of the liquidators to approach the Master to seek an extension of their powers in terms of s 386(2A) of the Companies Act 61 of 1973 (the Act) to permit them to sell those assets, about which decision much is said in this application.

[4] The applicants are dissatisfied with that decision, and other decisions taken by the liquidators, and seek the following relief in their notice of motion:

'1. That this application be heard as one of urgency and that the Applicants'

failure to comply with the time limits and rules of service of this Honourable Court be and is hereby condoned.

2. That a rule nisi do issue calling upon the First, Second, Third, Fourth and Fifth Respondents to show cause on the

day of

2024 at 09h30 or so soon thereafter as Counsel may be heard, why an order in the following terms should not be made final:

2.1 The first and second meeting of creditors held on 11 October 2023 and 29 November 2023 respectively are hereby declared invalid and set aside.

2.2 The Extension of Powers granted by the First Respondent in favour of the Second and Third Respondents on 6 July 2023 is hereby set aside.

2.3 The sale of the movable assets situated at 2[...] S[...] Road, Overport, Durban ("the assets") by the Second and Third Respondents to the Fifth Respondent is hereby set aside and cancelled.

2.4 The Fifth Respondent is interdicted from using, disposing of and/or selling the assets from the premises situated at 2[...] S[...] Road, Overport, Durban.

2.5 The Second and Third Respondents are hereby removed as the joint liquidators of the Fourth Respondent.

2.6 The Second and Third Respondents are directed to pay the costs of the application in their personal capacities on the attorney and client scale, jointly and severally, the one paying the other to be absolved.

3. The order in paragraph 2.4 shall operate as an interim order with immediate effect, pending the finalisation of this application.'

- [5] There are two applications before this court: an application for the relief just mentioned and an application for condonation for the late delivery of the applicants' replying affidavit. I shall refer to the application for substantive relief as 'the main application'. The main application has been opposed by the liquidators and K2021150772, and all of them have delivered answering affidavits. The Master has also delivered an affidavit in which is explained an error that the Master's representative made at some stage, about which more later, but otherwise the Master abides the decision of this court.

The condonation application

- [6] The main application first saw the light of day on 19 December 2023, when the applicants issued their urgent papers. It was set down for hearing on 3 January
2024. The application papers were served before the date of hearing and the liquidators and K2021150772 delivered their answering affidavits on 29 December 2023 and 2 January 2024, respectively, before the matter was argued.
- [7] Whatever urgency may have fuelled the launching of the application appears to have burnt itself out rather rapidly, for the applicants thereafter failed to deliver a reply to the two answering affidavits. After an interregnum of just over six months, a reply re-entered the atmosphere surrounding this matter on 14 June 2024 but was not accompanied by an application for condonation explaining this delay. Almost three months then went by before a condonation application for the late delivery of the replying affidavit then appeared out of the ether.
- [8] The application for condonation stressed that the applicants had received the answering affidavits during the 'Christmas Holidays'. They can have no complaint about this, for it is they who chose to bring their application at that time of the year. There was then, apparently, a dispute with their original counsel and the services of another counsel had to be secured, and 'further information was requested', presumably by the new counsel. Furthermore, it was asserted that the replying affidavit was delivered 'approximately five months late'. That is factually incorrect - it was delivered more than six months late.
- [9] That is the sum total of the explanation provided by the applicants for the late delivery of their replying affidavit. In *Van Wyk v Unitas Hospital and Another* (Open Democratic Advice Centre as Amicus Curiae),[2] the Constitutional Court observed that:

'This court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.' (Footnotes omitted.)

[10] In Independent Municipal & Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council and Others,[3] the court held that:

‘In explaining the reason for the delay it is necessary for the party seeking condonation to fully explain the reason for the delay in order for the court to be in a proper position to

assess whether or not the explanation is a good one. This in my view requires an explanation which covers the full length of the delay. The mere listing of significant events which took place during the period in question without an explanation for the time that lapsed between these events does not place a court in a position properly to assess the explanation for the delay. This amounts to nothing more than a recordal of the dates relevant to the processing of a dispute or application, as the case may be.’

[11] No explanation has been provided by the applicants that would cover the full length of the delay. Indeed, it may well be asked whether an explanation of any sort has been provided, for what has been said is vague in its content and has not been anchored to any dates.

[12] It appears to me that the application for condonation has been opposed by the liquidators on good grounds. It need hardly be said that the threadbare explanation provided is woeful and falls well short of what is required. In the view that I take of the matter, it is necessary for an applicant seeking condonation to be candid and frank and to fully explain its lethargy in advancing its own application. Details must be provided to permit the court to assess the merits of any impediment that prevented compliant conduct. This did not happen in this instance. It appears that the applicants simply assumed that the court would accept whatever explanation they provided, irrespective of what was said, or omitted, from that explanation.

[13] The condonation application is imprecise and superficial and must be refused, and the applicants must pay the liquidators’ costs on scale A.

The applicants’ case

[14] The founding affidavit in the main application is deposed to by Mr Imraan Jalal (Mr Jalal), who describes himself as being the sole director of the first applicant, Metro Chicken (Pty) Ltd (Metro Chicken). The applicants’ complaints, considered collectively, broadly have three principal component parts:

(a) The first is that the liquidators:

‘... made an application to the first respondent in terms of section 386(2A) of the Companies Act 61 of 1973, for an extension of powers for authorisation to proceed with the urgent sale of the movable assets of the fourth respondent and the fourth applicant, by private treaty at a price of R727,460.10.’

Factually, that narration is incorrect: permission was not sought to sell the assets for the amount mentioned in the extract, as shall become apparent shortly. However, looking beyond that, the applicants allege that all of this was done without notice to the creditors of the insolvent entity, which consent was allegedly required, and the liquidator's conduct was, therefore, unlawful;

(b) The second is that the Master approved the proposal to sell the assets as motivated for by the liquidators, but in doing so only granted the liquidators the:

‘... authority to deal with assets of the fourth respondent and not the assets of the fourth applicant, who was a part owner of the assets as per the purchase and sale agreement attached here to marked C2.’;

(c) The third is that the assets were sold by the liquidators at a value below their true market value and in the face of two handsome offers to purchase the business of the insolvent entity as a going concern. It is the applicants' case that the value of the assets of the insolvent entity was approximately R3 000 000 and that two offers had been received from interested purchasers to acquire the insolvent entity as a going concern for the amounts of R8 500 000 and R8 786 000. The liquidators were allegedly informed of these offers but, notwithstanding this, only informed the Master of the appraised value of the assets and not their true value and did not mention to the Master the two offers received. This, so it is alleged, was prejudicial to the creditors of the insolvent entity.

[15] Because of these alleged failings by the liquidators, the applicants submit that they must be removed from the positions that they presently hold and that they should personally pay the applicants' costs on the attorney and client scale, jointly and severally, the one paying the other to be absolved.

The liquidators' answer

[16] The position that the liquidators take is summed up by the following extract from their answering affidavit:

‘The application is therefore entirely without merit and the allegations in support of the application have been made in such a way as to actively mislead this Honourable Court and to distort the true facts and circumstances. This amounts to an abuse of process, also when taking into account the complete lack of urgency, alternatively rather transparent attempt to self-create urgency when regard is had to the true facts and circumstances.’

[17] As regards the first part of the applicants' complaint, the liquidators state that where they act in terms of s 386(2A) of the Act, they are not required to obtain the approval of the general body of creditors but, in accordance with the provisions of s 386(2B) of the Act, they are only required to obtain the consent of a creditor that holds a preferential right to any of the assets proposed to be sold. They assert that there was such a creditor in this instance, the insolvent entity's landlord, and they obtained its written consent before seeking the Master's approval for the sale of the assets. That request having been properly made, the Master approved the extension of their powers and the sale of the assets.

- [18] In formulating their request to the Master, the liquidators relied upon a valuation of the insolvent entity's assets compiled by a sworn valuator. The valuator found the assets to have a total market value of R411 173.10 and a forced sale value of R316 287. The valuator confirmed his valuation under oath. The liquidators obtained a private offer to purchase the assets for the sum of R400 000 and that prompted the request made to the Master for an extension of their powers.
- [19] Both a covering letter from the liquidators and an affidavit deposed to by each of the two liquidators recorded that permission was requested to sell the assets for R400 000. This is confirmed by the following extract from the affidavit of the second respondent, Mr Kurt Knoop (Mr Knoop), directed to the Master:
- 'In the circumstances it is in the interest of the Close Corporation and its creditors to accept the private treaty offer 400,000 (sic), which offer is approved by the landlord (secured creditor).'
- [20] In granting its approval to the liquidators' proposal, the Master's representative, Mr Emmanuel Makhanya (Mr Makhanya), for some reason best known to himself, inexplicably added together the market value of the assets (R411 173.10) and the forced sale value of the same assets (R316 287) and approved the sale at a value of R727 460.10. Upon receiving the Master's written approval, which recorded a directive that the assets be sold for R727 460.10, the liquidators immediately noticed the error and consequently contacted the Master, who swiftly conceded the error and approved the sale of the assets at a value of R400 000, including value added tax. Only then was the sale proceeded with by the liquidators. Those facts have been confirmed in an affidavit deposed to by Mr Makhanya.
- [21] Considering the second part of the applicants' complaint, the liquidators assert that the first mention of Star Super Meats CC (Star Super Meats), the fourth applicant, allegedly being a part owner of some of the assets of the insolvent entity arose long after the assets had already been sold. The sole member of the insolvent entity was personally interviewed by Mr Knoop before such sale occurred. Not only did the sole member fail to complete or submit a statement of affairs, as he was obliged to do, he also failed to provide Mr Knoop with information regarding the insolvent entity's creditors, despite being requested to provide it. The sole member attended the first meeting of creditors convened on 11 October 2023 and made no mention then of the alleged ownership of some of the insolvent entity's assets by Star Super Meats. He also attended the second meeting of creditors convened on 29 November 2023, and he again remained mute on this issue. The first time that the issue arose, to the knowledge of the liquidators, was on 12 December 2023, at a meeting with the applicants and the Master.
- [22] As regards the third part of the applicants' complaint, the liquidators state that the value of the assets was assessed by an expert, who confirmed his valuation under oath. The applicants'

allegation that there were two offers to purchase the insolvent entity for amounts in excess of R8 million each was rejected by the liquidators on the basis that they were not true offers to purchase. The offers had, in any event, only been drawn to their attention after the Master had extended their powers and approved the sale of the assets, and after the assets had already been sold.

Analysis

- [23] The second and fourth applicants, Hulley and Rice (Pty) Ltd (Hulley and Rice), and Star Super Meats, respectively, caused their representatives to put up confirmatory affidavits confirming the allegations made by Mr Jalal in the founding affidavit. Mr Jalal mentioned therein that the sole member of the insolvent entity was a Mr Riaz Jalal (Mr Riaz Jalal). He, however, never explained the relationship between himself and Mr Riaz Jalal. Neither did Mr Riaz Jalal explain his relationship to Mr Jalal in the confirmatory affidavit that he delivered. The liquidators, however, did: they are brothers.
- [24] It is somewhat mystifying why this intimate relationship was never disclosed and clarified. Mr Jalal must have appreciated that his surname is not a common one and that if a man was mentioned with the same surname in the application papers, it would only be natural to ponder on what the relationship might be between the two men with the same, uncommon, surname. The revelation of a fraternal relationship, however, puts the dispute in some perspective. It must therefore be appreciated that, at the very least, Mr Jalal is not at arm's length to Mr Riaz Jalal. Mr Khan SC, who appeared for all the applicants, conceded this to be so.
- [25] Having a brother must have its advantages. But one of those advantages is assuredly not to grant one brother automatic legal standing in a matter involving the other. For that legal standing to exist, there must be allegations that satisfy the court that the one brother has a direct and substantial interest in the legal proceedings involving the other brother. A consanguine relationship alone does not suffice.
- [26] The obvious question that arises in this matter, after a consideration of all the papers, is what interest does Metro Chicken have in the affairs of the insolvent entity? The same question may be validly posed in relation to the other applicants, for it is unclear what the relationship between any of them and the insolvent entity is, and what particular interest the former have in the affairs of the latter.
- [27] Locus standi refers to the right of a legal person or entity to bring, or defend, legal proceedings. The locus standi of the applicants to bring this application was not evident to me from the contents of the founding affidavit. I considered it to be an issue that should be addressed, and I accordingly invited the applicants and the respondents opposing the application to consider it and make submissions on the issue.

[28] This I was able to do for a court has the power to raise an issue mero motu where raising it is necessary to dispose of the matter, or it is in the interests of justice to do so.[4] Indeed, the court is required to raise an issue of its own accord where not to do so would result in a failure of justice caused by an incorrect application of the law. As was stated by the Constitutional Court in *CUSA v Tao Ying Metal Industries*: [5]

‘Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, mero motu, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality.’

[29] After being afforded some time, Mr Khan acknowledged that there was no express statement contained in the founding affidavit that would establish the applicant’s legal standing but suggested that it could be inferred that all four of them were creditors of the insolvent entity. Mr Flemming, who appears for the liquidators and the insolvent entity, submitted that there was no allegation that established judicial standing on behalf of the applicants. I do not believe that the inference contended for by Mr Khan can properly be drawn on the vague and flimsy allegations contained in the founding affidavit. The applicants must explain their legal interest in clear and unequivocal terms, and they have not done so.

[30] That then is the end of this matter, because legal standing is a requirement for instituting legal proceedings, irrespective of whether the claim is rooted in the Constitution, in statute or in the common law. The basis for the right to bring the application must be made clear in the founding affidavit.[6] The only tenuous link between the applicants and the insolvent entity appears to be that Mr Jalal and Mr Riaz Jalal are brothers.

[31] But accepting for a moment that I am incorrect and that Mr Jalal has established the applicants’ legal standing in the founding affidavit, the question remains: have the applicants made out a case for the relief claimed?

[32] Mr Khan argued that the liquidators’ failure to inform the applicants (as opposed to the creditors) of their intention to seek an extension of their powers to permit them to sell the assets allegedly belonging to Star Super Meats; their failure to find the assets to be valued at R3 million; their failure to investigate the two offers to purchase; and the fact that the Master authorised them to sell the assets at a value of R727 460.10, were justification for the conclusion that the liquidators had failed to act in the best interests of the general body of creditors and warranted their removal from office. The argument must be carefully

considered, for it potentially has serious consequences.

[33] As regards the first leg of Mr Khan’s argument, it is encapsulated in the following extract from the founding affidavit:

‘The first respondent was obliged to obtain the consent of all of the affected creditors for authorising an extension of powers to the second and third respondents to sell the assets as the landlord of the business premises of the fourth respondent had a claim of approximately R170,000 therefore the concurrent creditors also stood a chance to benefit from any surplus. Such consent was not obtained by the first respondent.’

[34] Is this contention correct? The wording of the Act must be considered. Sections 386(2A) and (2B) of the Act provide as follows:

‘(2A) At any time before a general meeting contemplated in subsection (1)(d) is convened for the first time the liquidator shall, if satisfied that any movable or immovable property of the company ought forthwith to be sold, recommend to the Master in writing accordingly, stating his reasons for such recommendation.

(2B) The Master may thereupon authorise the sale of such property or any portion thereof on such conditions and in such manner as he may determine: Provided that if such property or a portion thereof is subject to a preferential right, the Master shall not authorise the sale of such property or portion unless the person entitled to such preferential right has given his consent thereto in writing.’

[35] The applicants’ argument is that the consent of all creditors must first be sought and obtained before the Master may extend the powers of the liquidators. In my view, that is obviously not correct. Section 386(2A) makes it perfectly clear that such an application to the Master may be made before the summoning of a general meeting contemplated in terms of s 386(1)(d), which provides that:

‘(1) The liquidator in any winding-up shall have power –

...

(d) to summon any general meeting of the company or the creditors or contributories of the company for the purpose of obtaining its or their authority or sanction with respect to any matter or for such other purposes as he may consider necessary;’

[36] That was the case in this instance, for the first meeting of creditors was only convened, as previously stated, on 11 October 2023. One is left wondering how all the creditors’ approval could be obtained, as contended for by Mr Khan, when the liquidators could not possibly know who they were. The question could also be asked why that section in the Act did not mention that the consent of all creditors should first be sought if that was the intention of the legislator? I was referred to no authorities on this point in the applicants’ heads of argument nor could Mr Khan direct me to them when the matter was argued.

[37] On the wording of s 386(2A) and (2B) of the Act, the approach by the liquidators to the Master was entirely regular and in keeping with what the Act prescribed. The wording of the section places it beyond doubt that the Master is entitled to consider the merits of the request made to his or her office, without reference to any other person or entity. The complaint that:

‘... [T]he granting of the extension of powers by the first respondent was therefore procedurally incorrect and unlawful...’

is, accordingly, unsound and must be rejected.

[38] As regards the next leg of Mr Khan’s argument, namely the sale by the liquidators of certain assets allegedly owned by Star Super Meats, the most definitive statement about this issue in the founding affidavit was that the applicants alleged that Star Super Meats was a part owner of some of the assets in terms of a purchase and sale agreement attached to the founding affidavit marked as annexure ‘C2’. Annexure ‘C2’ is, indeed, attached to the founding affidavit but it is not a sale agreement. It is the letter written by the liquidators to the Master requesting an extension of their powers to include the sale of the assets. Attached to the letter is the

appraisal of the valuator. That is also not a sale agreement. There is, in fact, no sale agreement attached to the founding affidavit and therefore there is no clear description by Star Super Meats of what assets are alleged to be partly owned by it.

[39] The issue is further vaguely pressed in the following statement in the founding affidavit:

‘... further, the assets did partly belonged (sic) to the fourth applicant.’

[40] That is about as definite as the applicants get to describing which assets are owned by it. But it is by no means clear what Mr Jalal meant by this statement. Did he mean that all the assets were jointly owned, or did he mean that some, but not all, of the assets were owned outright by Star Super Meats? Whatever he meant, how did he know this to be the case given that he disclosed no

relationship with Star Super Meats?

[41] These allegations are to be judged against the backdrop of certain events which are illuminating. On 26 May 2023, the liquidators met with Mr Riaz Jalal, which meeting was minuted by the liquidators. Mr Riaz Jalal only stated to them that Star Super Meats bought stock from the insolvent entity at discounted prices and sold it on for a profit for its own benefit. At that meeting, Mr Riaz Jalal completed and signed a questionnaire in which he acknowledged that what was contained therein was correct. There was no mention at all in the questionnaire of Star Super Meats owning any of the insolvent entity’s assets.

- [42] Prior to this meeting, Star Super Meats had also stated that it did not own any assets, a version that is entirely at odds with what is now asserted on its behalf by Mr Jalal. Mr Khan was asked to assist the court by identifying which assets were owned by Star Super Meats, and when, and for how much, Star Super Meats had acquired those assets and where this is so stated. Unsurprisingly, he was not able to do so.
- [43] The weight of this argument would depend on Star Super Meats being able to establish its rights of ownership to the assets in question. It was wholly unable to do so. Indeed, it did not even succeed in identifying which of the assets it laid claim to.
- [44] The third leg of Mr Khan's argument was that the value of the assets was, in fact, approximately R3 million and not the value assessed and determined by the valuator. The version of the true value of the assets was advanced by Mr Jalal in the founding affidavit. This raises another question: How did he know what the true value of the assets was? The source of this knowledge is described in the following extract from the founding affidavit:
- 'The applicants have been informed by the sole member of the fourth respondent, Riaz Jalal ("Riaz") that the value of the assets is approximately R3 000 000. The second respondent was informed of the value ...'
- [45] From this, it becomes apparent that Mr Jalal has no direct personal knowledge of the value of the assets, nor does he claim to have any skill in assessing their value. He says that this is the value because his brother, Mr Riaz Jalal, says that this is their value. How does Mr Riaz Jalal know that to be the case? That is never explained.
- [46] The applicants have not put up a valuator's report, unlike the liquidators. The vagueness of the applicants' proposition is made even starker by the lack of precision of the alleged value of the assets: no definite value is provided, but merely an estimation that their value is 'approximately' R3 million. In contradiction to the alleged value of the assets, a letter from Hulley and Rice, the second applicant, is attached to the founding affidavit in which it states that it would be prepared to purchase the assets for R2 million. On these various explanations it would be extremely unwise to conclude that the true value of the assets is R3 million. Or even R2 million. By contrast, the valuation of a sworn valuator, confirmed under oath, is eminently more persuasive.
- [47] The offers to purchase the insolvent entity as a going concern formed the focus of the next leg of Mr Khan's argument. There are two documents attached to the founding affidavit which, according to the applicants, are two separate offers to purchase the business of the insolvent entity and its assets. Each of them has conditions attached, which include, in the one instance, a right to inspect the assets and, in the other, that further discussions would have to be held with Mr Riaz Jalal.
- [48] The first offer, dated 25 July 2023, which appears to be from an entity known as 'Bothas Hill Butchery', states that it:

‘... would like to make an offer of R8.5 million for Star Meats assets and the retail trading business situated at 2[...] M[...] K[...] Road in Overport Durban. Before we finalise any agreement and final offer, I would like to go to Star Meats at 2[...] M[...] K[...] Road in Overport Durban to view the equipment and refrigeration; to satisfy myself that the offer is fair.’

The document ends with the statement the offer is ‘subject to further due diligence’.

[49] The second offer, dated the next day, 26 July 2023, is from an entity called ‘B Organic (Pty) Ltd’. It states that the offeror has had:

‘... consultation with the previous proprietor and thus make an offer of R8 786 000 (Eight Million Seven Hundred and Eighty-Six Thousand Rands) for the enterprise subject to:

1. Viewing the business
2. Discussing continuance of the current lease
3. Further discussion with Mr Riaz Jalal as he was the operator prior to the business being closed.’

[50] Having considered the offers, I am of the view that they are not outright offers to purchase. At best for the applicants, they are merely an expression of interest, made subject to further conditions. Neither document is expressed in a form that would permit the liquidators to forthwith accept them, thereby leading to the conclusion of a binding agreement. Mr Khan conceded this to be the case.

[51] All of this is, in any event, academic, for the liquidators’ state that they were never sent these documents by Mr Riaz Jalal. The first mention that they received of an offer to purchase the insolvent entity was on 10 July 2023, when Mr Riaz Jalal sent them an email referring to a meeting that he had with Mr Heerman, of an entity known as ‘Shesha Butchery’. Mr Heerman also appears to be involved with the previously mentioned Bothas Hill Butchery. The assets had, however, already been sold by the liquidators on 6 July 2023.

[52] The final leg of Mr Khan’s argument was that the assets were approved for sale by the Master at a value of R727 460.10 and were not sold by the liquidators at that value. There is no merit whatsoever in this point. The Master’s representative clearly made an error and has explained that error under oath. There is, therefore, no reason for this court to reject that explanation.

[53] The applicants’ heads of argument correctly stated that in certain circumstances this court may remove a liquidator from his or her office. Those grounds are set out in s 379 of the Act. [7] Having considered that section, in my view, none of those grounds mentioned therein find application in this matter. The liquidators appear to have performed their duties conscientiously

and in accordance with the strict prescripts of the law. They formally sought the extension of their powers when they believed that they had to and sought an independent valuation of the assets before doing so. They fully apprised the Master of the basis for their request, and they then acted in accordance with the authority that they were lawfully given.

[54] The argument that the liquidators have acted contrary to their powers and duties has been alleged but not established. Allegations, by their very nature, are easily made but may not be easily proved. Thus, while the applicants seek an order declaring invalid and setting aside the first and second meetings of creditors held on 11 October 2023 and 29 November 2023, respectively, no factual or legal basis for the granting of that relief has been advanced. Likewise, there is no factual or legal basis to grant the relief sought by the applicants that the extension of powers granted by the Master to the liquidators on 6 July 2023 be set aside. It follows that there is no legal basis to set aside the sale of the assets by the liquidators. Finally, the concatenation of these facts means that there can be no factual or legal basis to remove the liquidators from the positions that they currently occupy.

Conclusion

[55] Mr Jalal states in the founding affidavit that:

‘... [I]t appears that there has been some collusion between the second respondent and the Appraiser.’

There is no evidence whatsoever of this and Mr Jalal makes no attempt at all to provide any evidence of his allegation. What is stated in the extract above is simply a gratuitous slur.

[56] I am, however, in agreement with Mr Jalal that there has been collusion in this matter. That collusion has not, however, been between the second respondent and the appraiser. It has been between the Jalal brothers. There is no merit in the application, and it accordingly falls to be dismissed.

Costs

[57] Costs ordinarily follow the result. That will occur in this instance. The diaphanous nature of the application permits this court to look beyond the case constructed by the applicants and to discern the machinations of the Jalal brothers at work. The vague contention that Star Super Meats allegedly owned some of the assets sold by the liquidators, without ever specifying what those assets were, simply reinforces the notion that the application, to the applicants’ knowledge, lacked any substance.

[58] There was never any merit in the application and the applicants have, as just mentioned, utilised court proceedings to gratuitously insult one of the liquidators with suggestions of his alleged dishonesty and unprofessional conduct. There is simply no scope for such allegations. As a sign of this court’s disapproval of the way the matter has been approached by the applicants, the costs to be awarded shall be ordered on a punitive scale.

[59] Gratuitous insults alleging collusion and improper conduct are not tolerated by this court. Liquidators perform a valuable role in the liquidation of juristic entities and their reputation for honesty, upon which they rely, is not to be impugned without reason. While our society is, regrettably, infested with corruption, false and unnecessary allegations that a litigant is guilty of corrupt practices will attract the opprobrium of this court. Those that elect to make such allegations without proof of what they allege must expect to pay costs on a higher scale when they are unable to establish what they allege.

Order

[60] I accordingly grant the following order:

MOSSOP J

APPEARANCES

Counsel for the applicants: Mr M S Khan SC Instructed by: Ureesh Dorasamy and Associates 33 O'Flaherty Road Clare Estate Durban Counsel for the second, third and fourth respondents: Mr A G Flemming Instructed by: Schoerie and Sewgoolam Inc Pietermaritzburg Locally represented by: Asif Latib Attorneys 319 Lillian Ngoyi Road Durban

- [1] While the fifth respondent delivered an answering affidavit, it did not appear when the matter was argued.
- [2] Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae) [2007] ZACC 24; 2008 (2) SA 472 (CC) para 20.
- [3] Independent Municipal & Allied Trade Union on behalf of Zungu v SA Local Government Bargaining Council and Others (2010) 31 ILJ 1413 (LC) para 13.
- [4] Booï v Amathole District Municipality and Others 2022
- (3) BCLR 265 (CC) at [35]; AmaBhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services 2021
- (3) SA 246 (CC) at [58]; Director of Public Prosecutions, Transvaal v Minister of Justice and Constitutional Development 2009
- (4) SA 222 (CC) at 40 - 41.
- [5] CUSA v Tao Ying Metal Industries [2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC); [2009] 1 BLLR 1 (CC); (2008) 29 ILJ 2461 (CC) para 67.
- [6] Director of Hospital Services v Mistry 1979
- (1) SA 626 (A) at 635H-636B.
- [7] Section 379 reads as follows: '(1) The Master may remove a liquidator from his office on the ground- (a) that he was not qualified for nomination or appointment as liquidator or that his nomination or appointment was for any other reason illegal or that he has become

disqualified from being nominated or appointed as a liquidator or has been authorised, specially or under a general power of attorney, to vote for or on behalf of a creditor, member or contributory at a meeting of creditors, members or contributories of the company of which he is the liquidator and has acted or purported to act under such special authority or general power of attorney; or (b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act; or (c) that his estate has become insolvent or that he has become mentally or physically incapable of performing satisfactorily his duties as liquidator; or (d) that the majority (reckoned in number and in value) of creditors entitled to vote at a meeting of creditors or, in the case of a members' voluntary winding-up, a majority of the members of the company, or, in the case of a winding-up of a company limited by guarantee, the majority of the contributories, has requested him in writing to do so; or (e) that in his opinion the liquidator is no longer suitable to be the liquidator of the company concerned. (2) The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.'

[7] Section 379 reads as follows:

'(1) The Master may remove a liquidator from his office on the ground-

- (a) that he was not qualified for nomination or appointment as liquidator or that his nomination or appointment was for any other reason illegal or that he has become disqualified from being nominated or appointed as a liquidator or has been authorised, specially or under a general power of attorney, to vote for or on behalf of a creditor, member or contributory at a meeting of creditors, members or contributories of the company of which he is the liquidator and has acted or purported to act under such special authority or general power of attorney; or
- (b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act; or
- (c) that his estate has become insolvent or that he has become mentally or physically incapable of performing satisfactorily his duties as liquidator; or
- (d) that the majority (reckoned in number and in value) of creditors entitled to vote at a meeting of creditors or, in the case of a members' voluntary winding-up, a majority of the members of the company, or, in the case of a winding-up of a company limited by guarantee, the majority of the contributories, has requested him in writing to do so; or
- (e) that in his opinion the liquidator is no longer suitable to be the liquidator of the company concerned.

- (2) The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.’
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