

SOUTH AFRICA / JUDGMENT

Prudential Authority v Maimela (31932/2020) [2022] ZAGPJHC 359 (26 May 2022) [2022] ZAGPJHC 359

COURT

South Gauteng High Court, Johannesburg

BEFORE

Twala M L

CASE / FILE NUMBER

31932/2020

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 31932/2020

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED.

26

MAY 2022

In

the matter between: THE
PRUDENTIAL AUTHORITY APPLICANT
And
KARABO
TSHEPO MAIMELA RESPONDENT
(Identity
number: [...])

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to

Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be the 26 May 2022

TWALA J

[1] In this application, the applicant sought an order against the respondent in the following terms:

1.1 That the estate of Karabo Tshepo Maimela (Identity number: 850819 5917 085) be placed under provisional sequestration;

1.2 That a Rule Nisi be issued calling upon any interested party to appear before the above Honourable Court on a date to be determined by the above Honourable Court to show cause why:

1.2.1 a final sequestration order should not be granted; and

1.2.2 the costs of this application should not be costs in the sequestration of the Respondent's estate.

1.3 Directing that the order be served on:

1.3.1 The respondent at 63 Capricorn Drive, Lone Hill, Gauteng, or in such manner as the Court may direct;

1.3.2 On the employees of the Respondent, if any;

1.3.3 On any registered trade unions which represent any employees of the Respondent, if any; and

1.3.4 The South African Revenue Services at 49 Newquay Road, Alberton, Johannesburg.

1.4 Ordering that the costs of this application be costs in the administration of the Respondent's insolvent estate.

- [2] After hearing argument, I granted an order and undertook to furnish my reasons therefore at a later stage. The reasons appear hereunder.
- [3] The applicant is the Prudential Authority established and duly registered and incorporated in terms section 32 of the Financial Sector Regulation Act of South Africa, Act 9 of 2017 and having its principal place of business at 370 Church Street, Pretoria.
- [4] The respondent is Karabo Tshepo Maimane, an adult businessman who resides at 63 Capricorn Drive, Lone Hill, Gauteng.
- [5] It is common cause that on the 18th of March 2011 the Deputy Registrar of the applicant instituted an investigation and appointed investigators to conduct an inspection into the business of the TV1 Scheme in South Africa and several other individuals in terms of s11 and s12 of the South African Reserve Bank Act, 90 of 1989. The investigation was two-fold: to inspect the conduct of the TV1 Scheme and the several other individuals and to determine whether the respondent carried on the business of a bank or mutual bank. The TV1 Scheme was obtaining money by conducting the business of a bank or mutual bank without being registered as such and without being authorised to conduct the business of a bank.
- [6] The investigators established that there were 5742 members/distributors of the TV1 scheme in South Africa across the nine Provinces with the majority being in KZN. On the 2nd of December 2014 the Registrar appointed an administrator to manage and control repayment of all moneys obtained by the respondent in the alleged contravention of the Bank's Act. It is further common cause that the respondent received moneys from several members and participants of the TV1 scheme in his two bank accounts with Standard Bank which moneys are no longer in the respondent's bank accounts. One of the bank accounts showed sixty-five transactions, sixty of which are inflows totalling five outflows and the other account showed 2849 inflow transactions as against 2693 outflow transactions with amounts totalling over R1 million.
- [7] The administrator was also required to conduct further investigation to establish and ascertain the true amount allegedly unlawfully obtained by the respondent, the identities of the persons from whom these amounts were obtained, where any such money or assets into which such money was converted, is kept or can be located, to take all reasonable steps necessary to expedite and ensure repayment of the money. The administrator was further expected to report any suspected commission of an offence by any person to the prosecuting authority. In its investigation the administrator could not identify the depositors of the moneys into the account of the respondent but established that the respondent unlawfully obtained a sum of R195 400

in its bank accounts.

[8] On the 2nd of December 2016 the Registrar issued a directive to the respondent demanding payment of the sum of R195 4000 which the respondent ignored and or refused to pay. On the 18th of August 2018 the attorneys for the applicant addressed a letter to the attorneys of the respondent demanding payment of the sum of R415 668.21 which included the interest and costs incurred during the inspection. The respondent's attorneys replied

thereto on the 23rd of October 2018 and admitted that the respondent is not disputing this amount but stated that the respondent merely possessed the accounts with the TV1 scheme but did not participate in its business.

[9] Instead of responding positively to the notice demanding repayment of the amount of R415 668.21, the respondent instituted action in the Gauteng Division of the High Court, Pretoria wherein he cited the applicant as the second respondent, seeking a declaratory that only moneys that were paid into his account by members of the TV1 scheme which were not paid over to the participants and remained under his control and for his benefit constitute moneys that stands to be repaid. Due to the failure of the respondent to comply with the directive of the Registrar to repay the amount stated in the notice, the applicant invoked the provisions of s83(3) of the Bank Act, 94 of 1990 and s8 of the Insolvency Act, 24 of 1936 and launched these sequestration proceedings.

[10] It is now opportune to restate the relevant provisions of the Bank Act which provide the following:

"Bank Act, 94 of 1990

83(1)

(3) any person who refuses or fails to comply with a direction under subsection (1) –

(a) shall be guilty of an offence; and

(b) shall for the purposes of any law relating to the winding-up of juristic persons or to the sequestration of insolvent estates, be deemed not to be able to pay the debts owed by such person or to have committed an act of insolvency, as the case may be, and the Registrar shall, notwithstanding anything to the contrary contained in any law, be competent to apply for the winding-up of such juristic person or for the sequestration of the estate of such a person, as the case may be, to any court having jurisdiction."

[11] The respondent's case is that he never participated in the business of the TV1 scheme and that all the moneys which were deposited into his bank accounts by members and participants of the TV1 Scheme were channelled into his account for his support by his parents. Furthermore, so the argument went, the applicant has failed to identify and produce the details of the persons who deposited money in his account to enable the Registrar to determine the true amount obtained unlawfully by the respondent.

- [12] I do not agree with the respondent's contentions. The respondent does not deny that certain and several investors of the TV1 scheme deposited moneys into his bank accounts. He states that those moneys were paid in multiples of R2 700 on instruction of his parents and were channelled through his bank accounts for the purposes of supporting him. The respondent has allowed his bank account to be used to receive and transact moneys as a bank in the furtherance of the business of the TV1 scheme in contravention of the South African Reserve Bank Act. Furthermore, the respondent admitted the amount as claimed by the Registrar to have been deposited in its accounts by the investors of the TV1 scheme in the letter from its attorneys dated the 23rd of October 2018. Nothing turns on the fact that the applicant has to date not been able to establish the identities of the persons who deposited money in the respondent's bank accounts.
- [13] Furthermore, the respondent has committed an act of insolvency as provided for in the Insolvency Act for it admitted in its answering affidavit that the sum of R195 400 paid in its account could easily be repaid over a period of eighteen (18) months. However, to date hereof the respondent has failed to make payment of the said amount and such an amount is no longer in his bank accounts. Given that the respondent has been afforded an opportunity to place before this court his financial circumstances, his income resources and the properties he owns but failed to do so, and the fact that the moneys claimed by the applicant are no longer in his bank accounts, the ineluctable conclusion is that the respondent is unable to pay its debts. Therefore, the applicant is entitled to the order prayed for in the notice of motion.
- [14] In the circumstances, I made the following order:
1. The estate of the respondent is place under provisional sequestration in the hands of the Master;
 2. A Rule Nisi is issued calling upon all persons with a legitimate to advance reasons, if any, on the 19th of July 2022 why the order in 1 above should not be final;
 3. The applicant is order: –
 - 3.1 To serve a copy of this order to the respondent;
 - 3.2 To serve a copy of this order on the employees of the respondent, if any, and any trade union that may represent them;
 - 3.3 To furnish a copy of this order to the Master of the High Court and the South African Revenue Services;
 4. That the costs of this application be costs in the administration of the insolvent estate of the respondent.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing: 16th May 2022

Date of Judgment: 26th May 2022

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