

SOUTH AFRICA / JUDGMENT

Shivanand v Krugkor Franchise (PTY) Ltd and Others (13634/2019) [2022] ZAGPJHC 893 (27 October 2022) [2022] ZAGPJHC 893

COURT

South Gauteng High Court, Johannesburg

BEFORE

S Yacoob

CASE / FILE NUMBER

13634/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 13634/2019

REPORTABLE: NO

OF

INTEREST TO OTHER JUDGES: NO

NOT

REVISED.

27

October 2022

In

the matter between:

KAMALJID
PREM SHIVANAND
First Applicant
SHIVCOM
CC
Second Applicant
(REGISTRATION
NO: 2007/108318/23)
and
KRUGKOR
FRANCHISE (PTY)
LTD
First Respondent
DEON
MARIUS BOTHA
Second Respondent
SUNE
SMITH
Third Respondent
PRIME
UNIVERSAL FOODS
Fourth Respondent
CUBISOL
INVESTMENTS 3 (PTY)
LIMITED
Fifth Respondent
SOUTH
AFRICAN REVENUE
SERVICES
Sixth Respondent
THE
MASTER OF THE HIGH COURT,
Seventh Respondent
JOHANNESBURG
THE
COMPANY AND INTELLECTUAL PROPERTY
Eighth
Respondent
COMMISSION

JUDGMENT

ON LEAVE TO APPEAL

YACOOB J:

1. The applicants purportedly bring an application for leave to appeal against my judgment handed down on 15 July 2022, dismissing with costs and application to rescind an order placing the second applicant (“Shivcom”) in liquidation.

2. As I pointed out in the main judgment, Shivcom was not properly before me because it was in liquidation, and the first applicant (“Shivanand”) did not have the power to bring an application on its behalf. Only the liquidators had that power. This applies equally, if not more so, to the application for leave. Shivcom was not before me in the main application and therefore has no standing to apply for leave, even if the liquidators suddenly made an appearance.
3. However, as before, Shivkumar is entitled to bring this application. Also as before, only the first respondent (“Krugkor”) participates in these proceedings.
4. It is common cause that Shivcom has not traded since 2018. There is no allegation in the papers that Shivcom is not insolvent.
5. Taking into account that an appeal lies against an order rather than against the reasons for the order, I enquired from the parties what would be served by setting aside an order liquidating a company which appears by common cause to be insolvent. At least on the face of it, this application falls within the purview of section 16(2) of the Superior Courts Act, 10 of 2013, which provides that an appeal may be dismissed on the ground that the decision will have no practical effect, unless exceptional

circumstances exist. Section 17(1)(b) requires that the decision sought on appeal must not fall under section 16(2), for an application for leave to be successful.

6. Mr Kaplan for the applicant submitted that the effect of the decision sought on appeal would be that Shivcom then would be able to pursue its claim against Krugkor, the avoidance of which Shivkumar contends is the reason Krugkor sought to liquidate Shivcom.
7. I am not satisfied that that saves the application. The claim against Krugkor can and should still be pursued by the liquidator. Without more, such as any allegation that Shivcom has some kind of goodwill that may be lost, or some other kind of prejudice, it makes no practical difference whether the claim is pursued by the liquidator or the company. Nor can I see any exceptional circumstances that would require the matter to be dealt with by an appeal court.
8. The applicant identified sixteen grounds of appeal. I have read and considered all of them. Of them, the only one which I consider may have had some merit was the twelfth ground, that the court failed to consider that Krugkor’s answering affidavit disclosed that Krugkor did not actually have the claim on which the liquidation application was premised.
9. In view of my conclusion that this application falls under section 16(2) of the Superior Courts Act, I do not have to determine whether there is a likelihood that another court would find in Shivkumar’s favour.
10. For these reasons, I make the following order:

“The application is dismissed, the first applicant to pay the costs.”

S. YACOOB

JUDGE OF THE HIGH COURT

Appearances

Counsel for the applicants:

J L Kaplan

Instructed by:

Ian Levitt Attorneys

Counsel for Respondent:

E van As

Instructing Attorneys:

De Kock and Associates

Date of hearing:

27 October 2022

Date of judgment:

27 October 2022

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Prepared on 14 October 2026 · Esheria