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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 6676/2017

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

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SIGNATURE

In the matter between:

REGISTRAR OF BANKS

Applicant

and

SAMBO, SIKHETO SHADRACK

Respondent

(Identity Number: [...], born [...] February 1974, an adult male, married out of community of property to Mankoko Agnes Sambo with identity number [...], born [...] September 1973)

J U D G M E N T

MODIBA, J:

[1] This is an opposed application by the Registrar of Banks (*“the Registrar”*), for the provisional sequestration of the estate of Sikheto Shadrack

Sambo (Sambo) in terms of section 83(3)(b)¹ and section 84(1A)(c)² of the Banks Act 94 of 1990. Unless otherwise indicated, all references to statutory provisions are to this Act.

[2] Sambo filed opposing papers. However, his counsel failed to file heads of argument and a practice note as required by Chapter 9.8 of the Practice Directive. On 17 October 2017, I addressed a directive to his attorneys of record drawing their attention to this occurrence and affording them until 23 October 2017 to remedy it. They failed to comply with the directive. They briefed counsel to appear at the hearing to request that the matter be postponed. I refused to entertain this application for several reasons. No formal postponement application was filed. Sambo's counsel sought to move the application from the bar on unattested averments. He was not properly briefed in that he did not have papers filed in this matter. This led to him making submissions contrary to the state of affairs as reflected in the papers.

¹ 83. **Repayment of money unlawfully obtained**

(3) Any person who refuses or fails to comply with a direction under subsection (1)-
 (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 a juristic person or for the sequestration of the estate of such a person, as the case may be, to any court having jurisdiction

² 84. **Management and control of repayment of money unlawfully obtained**
 (1A)

(c) If the report referred to in paragraph (a) concludes that the person subject to the directive is insolvent, the Registrar may, notwithstanding anything contrary contained in any law relating to liquidation or insolvency apply to a competent court for the winding-up in terms of the Companies Act or the sequestration in terms of the Insolvency Act, 1936 (Act No. 24 of 1936), as the case may be, of the person subject to the directive, and the Registrar shall have the right to oppose any such application made by any other person.

The Registrar's attorneys received no prior communication from Sambo's attorneys regarding the proposed postponement.

[3] Given that Sambo's counsel was only briefed to ask for a postponement, after I refused to entertain that request, he withdrew from the matter. I proceeded to deal with the matter as an opposed application given that despite there being no appearance on his behalf, Sambo had filed opposing papers.

[4] The facts underpinning the application are largely common cause. Sambo participated both as a participant and solicitor of deposits from the public in the conduct of a scheme, known as the Travel Venture International Scheme (*"the scheme"*). The scheme was conducted internationally and in South Africa. In South Africa participants have invested approximately R1.6 billion in the scheme. As part of his role in the scheme, Sambo collected about R27, 755, 083 from investors. These monies were deposited into various bank accounts.

[5] The Registrar alleges that Sambo's participation in the scheme contravenes section 11³ read with section 17⁴ of the Act in that the scheme is

³ 11. **Registration a prerequisite for conducting business of bank**

(1) Subject to the provisions of section 18A, no person shall conduct the business of a bank unless such person is a public company and is registered as a bank in terms of this Act.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence.

⁴ 17. **Granting or refusal of application for registration**

(1) Subject to the provisions of subsection (2), the Registrar shall, after considering all information and documents furnished to him or her in terms of section 16 for the purposes of an application under that section, grant such application if he or she is satisfied-

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- (a) that the business the applicant proposes to conduct is that of a bank;
 - (b) that the applicant does not propose to adopt undesirable methods of conducting business; and
 - (c) that the memorandum of incorporation of the institution is consistent with this Act and is not undesirable for any reason.

(2) Notwithstanding the provisions of subsection (1), the Registrar may refuse an application for the registration of an institution as a bank if he or she is of the opinion-

- (a) that any of the requirements specified in section 13(2) is no longer complied with by or in respect of the institution concerned;
- (b) that the institution concerned, when registered as a bank, will probably not be able to comply with a provision of this Act, or is likely to pursue a practice contrary to a provision of this Act;
- (c) that an interest which any person has in the institution concerned is inconsistent with a provision of this Act;
- (d) that the interests of potential depositors with the institution concerned will be detrimentally affected by the manner in which the institution proposes to conduct its business, or for any other reason;
- (e) that the name of the institution concerned-
 - (i) is identical with a name under which an existing bank or a mutual bank has already been registered;
 - (ii) so closely resembles the name of an existing bank or mutual bank that the one is likely to be mistaken for the other;
 - (iii) is identical with, or closely resembles, the name under which any bank or any other institution which was registered under any law repealed by this Act, or any mutual bank, was previously registered and that reasonable ground for objection against the use of that name by the institution concerned exists; or
 - (iv) is likely to mislead the public; or
- (f) that the application does not comply with a requirement of this Act.

(3) When the Registrar in terms of this section grants or refuses an application for registration, he or she shall give written notice of that fact to the applicant concerned.

(4) If the Registrar in terms of this section grants an application for registration he or she shall, subject to the provisions of section 18, and on payment by the applicant of the prescribed registration fee, provisionally register the institution concerned as a bank and issue to the institution, on the prescribed form, a certificate of registration as a bank.

(5) An institution which is for the first time registered as a bank shall not commence doing the business of a bank until it has furnished proof to the Registrar that it complies with the provisions of section 70.

part of a deposit-taking pyramid scheme. On 14 October 2011, the Registrar issued a written direction in terms of section 83(1)⁵ calling on Sambo to repay all monies that he obtained as part of the scheme.

[6] The Registrar also relies on section 84(1A) (c). In terms of this section, where the repayment administrator forms the opinion that the person subject to a repayment direction is insolvent, the Registrar is empowered, notwithstanding anything contrary contained in any law relating to insolvency, to apply for the sequestration of that person's estate.

[7] Subsequent to the Registrar issuing the repayment direction, repayment administrators were appointed to manage and control the repayment of the money Sambo obtained as part of the scheme. During March 2014 the repayment administrators issued a report concluding that Sambo was insolvent. On 2 February 2016, the repayment administrators issued a follow up report confirming that Sambo was both factually and commercially insolvent due to a significant shortfall between his identified assets and liabilities.

(6) An institution which contravenes the provisions of subsection (5) shall be guilty of an offence.

⁵ 83. **Repayment of money unlawfully obtained**

(1) If as a result of an inspection conducted under section 12 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Registrar is satisfied that any person has obtained money by carrying on the business of a bank without being registered as a bank or without being authorized, in terms of the provisions of section 18A(1), to carry on the business of a bank, the Registrar may in writing direct that person to repay, subject to the provisions of section 84 and in accordance with such requirements and within such period as may be specified in the direction, all money so obtained by that person in so far as such money has not yet been repaid, including any interest or any other amounts owing by that person in respect of such money.

[8] Sambo does not dispute any of the above. He disputes his liability to repay the money. He contends that that scheme is not unlawful. Sambo's disputation of the unlawfulness of the scheme constitutes a bare denial. He has failed to substantiate it in his answering affidavit. There is no basis for this court to consider his contention that the scheme is not unlawful. I therefore find that the scheme is unlawful on the basis alleged by the Registrar. It follows that Sambo is liable to repay the money to investors in line with the Registrar's payment directive.

[9] Sambo's second ground of opposition is that he intends reviewing the Registrar's decision to issue the repayment direction. There are no prospects that the Registrar's decision to issue the repayment direction will be set aside on review. The Registrar's decision to issue the repayment direction was made in October 2011. Sambo unsuccessfully instituted an internal review to the board of review. The decision of the review board was communicated to Sambo's attorneys on 19 September 2012. The 180-day period in which he ought to bring a judicial review application in terms of section 7(1) of the Promotion of Administrative Justice Act 2000 ("PAJA") expired in March 2013. To date he has not instituted that application. He has not set out the basis on which the court would allow him in terms of section 9 of PAJA to bring the judicial review application five years after the internal review was finalised. He has also not set out the basis on which the repayment direction is liable to be set aside on review.

[10] None of the grounds of opposition advanced by Sambo are legally sustainable. They stand to be rejected.

[11] Sambo's refusal to repay the money as well the repayment administrators' opinion that he is insolvent locates him within the ambit of section 83(3)(b) and section 84(1A)(c) of the Act. Therefore the Registrar is entitled, notwithstanding anything to the contrary contained in any law, to bring this application.

[12] There is a huge disparity between Sambo's identified assets and the money he is found to have obtained as part of the scheme. A substantial portion of this money remains unaccounted for. People who invested this money are yet to be repaid as per the Registrar's repayment directive. His provisional sequestration will allow an investigation on the stream of this money with a view to satisfying investors' claims.

[13] In the premises, I am satisfied that the Registrar has made out a case for the provisional sequestration of Sambo's estate in terms of both sections 83(3) (b) and section 84(1A) (c) of the Banks Act.

[14] I therefore make the following order:

ORDER

1. The respondent's estate is placed under provisional sequestration in the hands of the Master of the High Court, Johannesburg;
2. A rule *nisi* is issued calling upon the respondent and all other interested persons to appear at 10 am on 4 December 2017 or soon thereafter as the matter may be heard to show cause why:
 - 2.1 an order should not be granted finally sequestrating the estate of the respondent in the hands of the Master of the High Court, Johannesburg;
 - 2.2 the costs of the application should not be costs in the sequestration.
3. The respondent is directed to keep the investigation report and the solvency report annexed to the applicant's founding affidavit as "FA7" and "FA8" confidential and not to disclose it to any person other than his professional legal advisors for the purposes of this application.

MS. L. T. MODIBA
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARENCES:**Applicant's Counsel:** B.M Gilbert with Ms Phalane**Instructed by:** Baker Mckenzie**Respondent's Counsel:** E. Sithole (only for the postponement application)**Instructed by:** T. Ngcobo Attorneys**Date heard:** 30 October 2017**Date delivered:** 13 November 2017