



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ NO.

(3) REVISED.

2010-02-24 DATE

[Signature] SIGNATURE

24/02/2010
CASE NO: 55000/2009

Ex Parte Application of

MANIE THEUNIS DE BRUYN

Applicant

J U D G M E N T

MAKGOKA, J:

[1] This is an application for voluntary surrender. The applicant's assets exceed his liabilities. That on its own however, is not a basis to refuse this application. See *Ex Parte Harmse* 2005 (1) SA 323 (N).

[2] The applicant alleges that he was employed as a financial consultant by Absa Bank. The reason for bringing this application is set out in the applicant's affidavit as follows.

"1. Ek was werksaam as 'n finansiële konsultant by Absa Bank. Gedurende Junie 2007 tot Augustus 2008 was ek spesifiek betrokke by die onderhandeling met Absa Bank en die Zenith Bank in die vestiging van 'n infrastruktuur in 'n bankstelsel vir Zenith Bank in Nigerie.

2. Dit het ook ingesluit en structuring van 'n pensioen fonds. Ek was verder betrokke by die onderhandeling en fasiliteerder van 'n kommersiële ontwikkeling in Nigerie.

3. Gemelde dienste deur my gelewer sou aanvanlike van voordurende aards wees, en was daar ook vooruitsigte om van my diens gebruik te maak in ander Afrika lande. As gevolg van die wereld ekonomiese insinking is my kontrak nie verleng nie, en is verede onderhandeling tydelik gestaak.

4. As gevolg van die beeindiging van my dienste kan ek nie meer my finansiële verpligtinge nakom nie en moes ek noodgedwonge geld leen net om my noodsaaklike lewenskoste te delg."

[3] The applicant is an owner of five immovable properties, with estimated total value of R19 720 000.00. His moveable assets are stated as a bakkie valued at R110 000.00 and furniture worth R15 000.00. His total assets are therefore stated as amounting to R19 845.000. 00.

[4] His liabilities amount to R18 330 416.92 thus leaving a surplus of R1 614. 583. 08, being the amount by which his assets exceed his liabilities.

[5] The applicant states that he has not been able to sell any of his immovable properties by way of private auction. He presently has an income of only R15 000.00.

[6] The applicant's debts in respect of credit cards, overdrawn accounts, loans and clothing accounts, amount to R1 458 344.19.

[7] The dividend which would supposedly accrue to creditors is 15 cents in a rand after an amount of R2 994 267. 52 shall have been paid to the curator, auction fees and other sequestration costs. An amount of R237 356.12 is left for the distribution among debtors, whose total amount is R1 572 040. 56. The reason I mention this calculation is the amounts payable to the curator (R674 242. 00) and the auctioneer (R1 348 848.00), respectively.

[8] If the creditors are left to share a paltry R237 356.12, and auctioneers and curators pocket a staggering R2 023 272.00 of the applicant's assets, I am constrained to ask: to whose benefit is the acceptance of the applicant's estate? Clearly on the figures outlined above, parties other than the creditors benefit and the creditors are left to scramble for the crumbs. On this basis alone, I am not satisfied that the acceptance of the applicant's estate would be to the advantage of his creditors. I would therefore not exercise my discretion in the applicant's favour.

[9] There are other reasons also why I should not do so. The applicant has not fully disclosed his financial affairs. From the evidence, one knows nothing about his financial activities, past or present, other than he was a financial consultant. He simply states that he earns R15 00.00 without stating the source thereof. He does not disclose whether any of his three immovable

properties are rented out (the other two being a vacant land and an uncompleted house, respectively).

[10] The applicant himself has stated that he has been unsuccessful to sell properties at an auction. In view of this, the claims by the sworn valuator that any of the properties can be sold for amounts averred in the valuation reports, should be viewed with a measure of scepticism.

[11] As I see it, the purpose of this application is geared at relieving the applicant of the amount over R1,5 million owed in respect of credit cards, overdrawn accounts, loans and clothing accounts. This is contrived and is a mechanism designed to abuse the process of this Court. The machinery of voluntary surrender was primarily designed for the benefit of creditors, and not for the relief of harassed debtors. See *Mayet v Pillay* 1955 (2) SA 309 (N) at 311D-E.

[12] On a consideration of the factors discussed above, I am of the view that the surrender of the applicant's estate, would not be to the advantage of his creditors, as a result of which I exercise my discretion against the applicant.

[13] The application for voluntary surrender is therefore refused.



T M MAKGOKA
JUDGE OF THE HIGH COURT

DATE HEARD : 3 DECEMBER 2009

JUDGMENT DELIVERED: 24 FEBUARY 2010

FOR THE APPLICANT : MR C.E BOTHA (ATTORNEY)

INSTRUCTED BY : *FRANCOIS JOUBERT,*
THE WILLOWS, PRETORIA