



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

14/9/2011
CASE NO: 10158/11

(1)	REPORTABLE: YES / (NO)
(2)	OF INTEREST TO OTHER JUDGES: YES / (NO)
(3)	REVISED.
	2011.09.14
	DATE
	
	SIGNATURE

In the matter between:

MARYNCO MOTORS BK

Applicant

REG NO: 2001/035771/23

J U D G M E N T

MAKGOKA, J:

[1] This is an application for liquidation of the applicant close corporation. On 16 February 2011 I dismissed the application and undertook to furnish the reasons therefor. Here are my reasons.

[2] The deponent to the affidavit supporting the application, is the sole member of the close corporation. The close corporation's principal business is the buying and selling of vehicles. It is alleged in the application that the liabilities of the close

corporation exceed its assets. The assets are stated to be in the amount of R445 000 while the liabilities are R1 645 543.68. This is all what is stated in the affidavit as the reasons for the application to liquidate the corporation.

[3] There are no facts averred from which it can be deduced how the liabilities came to exceed its assets. The two major liabilities of the corporation are an overdraft with Absa for an amount of R1 126 651.96 and a hire purchase agreement with ABSA for R481 690.

[4] In the absence of an explanation how the overdraft was utilized, I am unable to determine whether the affairs of the corporation have not been conducted fraudulently or recklessly. The deponent being the sole member of the corporation, has all the information within her knowledge, but elected not to disclose them to the Court, e.g. whether she stood surety for these liabilities and whether her personal estate been sequestrated, etc. Courts have a duty to see to it that its process is not abused.

[5] On the paucity of the information, I dismissed the application.


TM MAKGOKA
JUDGE OF THE HIGH COURT

DATE OF HEARING	: 16 FEBRUARY 2011
JUDGMENT DELIVERED	: 14 SEPTEMBER 2011
FOR THE APPLICANT	:
INSTRUCTED BY	: SERFONTEIN VILJOEN & SWART ATTORNEYS, PRETORIA