

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

Case Number: 2022-035973

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE: 2023-11-06

SIGNATURE

In the matter between:

THE MASTER OF THE HIGH COURT, PRETORIA

First Applicant

NGAKO SERUMOLA N.O.

Second Applicant

and

FIRSTRAND BANK LIMITED

Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 6 November 2023.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

[1] I have read the grounds of appeal, the heads of argument of all the parties and listened to argument.

[2] The applicants to this application seek leave on reasonable prospects of success and compelling reasons.

[3] The compelling issues raised are generic and not based on the facts or merits of this matter and thus do not comply with:

“Compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive.”¹

[4] As for the prospects of success, I am satisfied that no other court will find there are reasonable prospects of success. The case-law confirms that the Master does not have a general discretion. I did not accept any hearsay evidence in coming to my finding, only direct evidence. Even without the acceptance of the supplementary affidavit the findings will stay the same as the same evidence appears in the founding and replying affidavits. The respondents never denied that the applicant’s claim was filed at 08h55, with RA1 confirming same. There were no *bona fide* factual disputes put up by the Master requiring the principles of *Plascon-Evans* to be applied.

[5] A review in terms of section 151 of the Insolvency Act 24 of 1936 is applicable and not a review in terms of the Promotion of Administrative Justice Act 3 of 2000.

[6] *The Master of NCA Plant Hire CC v Blackfield Group Holdings (Pty) Limited* [2021] JOL 51810 (GJ) does not bind this Court and the facts differs and the question to be decided differs. The Court therein accepted that a settlement agreement was concluded between the parties and therefore the provisional order of sequestration was discharged.

[7] Costs of two counsel will be addressed by the taxing master and will only be granted if so employed.

¹ *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* 2020 (5) SA 35 (SCA) paragraph [2]

[8] I accordingly dismiss the application for leave to appeal. The first and second respondents to pay the costs jointly and severally.

S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 2022-035973

HEARD ON: 3 November 2023

FOR THE FIRST AND SECOND APPLICANTS: ADV. N. MATHLE-NDLAZI

INSTRUCTED BY: State Attorney, Pretoria

FOR THE RESPONDENT: ADV. J. VORSTER

INSTRUCTED BY: Werksmans Incorporated

DATE OF JUDGMENT: 6 November 2023