

REPUBLIC OF SOUTH AFRICA

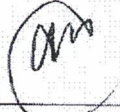


**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 14471/18

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

09 FEBRUARY 2021


C.J. COLLIS

In the matter between:

**UMBANE TECHNOLOGY CC
(REGISTRATION NUMBER: 2001/154052/23)**

APPLICANT

and

**THE MASTER OF THE HIGH COURT OF
SA PRETORIA DIVISION
(Reference: T717/16)**

FIRST RESPONDENT

**MOLAPO TECHNOLOGY (PTY) LTD
(IN LIQUIDATION)**

SECOND RESPONDENT

ZAHEER CASSIM N.O.

THIRD RESPONDENT

KGASHANE C. MONYELA N.O.

FOURTH RESPONDENT

ANKIA VAN JAARSVELD N.O.

FIFTH RESPONDENT

GAVIN BERNARD HART

SIXTH RESPONDENT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgement is further uploaded to the electronic file of this matter on Caselines by the Judge or his/her secretary. The date of this judgment is deemed to be 09 February 2021.

JUDGMENT

COLLIS J

INTRODUCTION

[1] This is a review application wherein the applicant seeks to review and set aside:

1.1 The decision of the first respondent to reject the claim of the applicant against the estate of the second respondent;

1.2 The decision of the first respondent to disallow the applicant the opportunity to present further evidence, as the applicant is entitled to do in terms of section 44(7) of the Insolvency Act, 1936, and to postpone the meeting of creditors for that purpose;

1.3 The decision refusing a postponement of the meeting for the purposes of 1.2 above.¹

[2] As per the Notice of Motion, the applicant seeks that the reviewed decision be substituted with the following:

2.1 That the claim of the applicant as submitted at the Special Meeting of Creditors in the estate of the second respondent on 8 February 2018, be admitted into proof against the estate of the second respondent in the amount of R 2 115 987.06, alternatively in the reduced amount of R 1 924 125.06;

2.2 In the alternative to the above, that a Special Meeting of Creditors be re-opened and that the decision of the first respondent be set aside and substituted with the following order: the Special Meeting of Creditors is postponed to allow the applicant to supplement its claim by oral evidence and documentary evidence in accordance with Section 44(7) of the Act;

2.3 That the first respondent be directed to reconvene the Special Meeting for the purposes of clause 2.2 above;

¹ Notice of Motion Index 001-2

2.4 That the sixth respondent be ordered to pay the costs of the application on an attorney and own client scale, alternatively that such costs be costs in the administration of the second respondent.

[3] The third, fourth and fifth respondents are cited herein in their official capacities as the duly appointed joint liquidators of the Molapo Technology (Pty) Ltd (In Liquidation).

[4] Only the sixth respondent opposes this application. The first respondent has filed a notice to abide by the decision of the court.²

JURISDICTION OF COURT TO REVIEW PROCEEDINGS

[5] In support of its basis for approaching this Court, the applicant places reliance on the provisions of section 151 of the Insolvency Act, Act 24 of 1936 read with section 339 of the Companies Act.

[6] In addition, the applicant also places reliance on the provisions of section 7 of the Promotion of Administrative Justice Act, 3 of 2000 (as amended).

² Notice to Abide Index 006-4

[7] In *Nel and Another NNO v The Master (Absa Bank Ltd and Others Intervening)*³ the court considered the provisions of section 151 of the Insolvency Act and held the following:

“[22] In terms of s 151 of the Insolvency Act read together with s 339 of the Companies Act

‘....**any person aggrieved by any decision**, ruling, order or taxation of the Master...may bring it under review by the Court....’

South African Courts have long accepted that the review envisaged by s 151 of the Insolvency Act is the “third type of review” identified more than a hundred years ago in *Johannesburg Consolidated Investment Company vs Johannesburg Town Council* **where Parliament confers a statutory power of review upon the Court.....”**

[8] In *Steelnet (Zimbabwe) Ltd v Master of the High Court, Johannesburg the court and Others* (2007/463) [2008] ZAGPHC 185 (24 June 2008) it was confirmed that a presiding officer’s adjudication of a claim, constituted an “administrative action” as envisaged by Act 3 of 2000 and as such reviewable.

³ 2005 (1) SA 276 (SCA)

BACKGROUND

[9] On 8 February 2018, a special meeting of creditors was convened in terms of the second respondent. At the said meeting the applicant was represented by his attorneys of record.

[10] It is to be noted that at this meeting the sixth respondent being a natural person, was not present. He was likewise represented by his attorney and counsel.

APPLICANTS CONTENTIONS

[11] As per the founding affidavit, the applicant sets out that at the meeting of creditors so convened, that since the inception of the meeting, the sixth respondent had taken the stance that the claim of the applicant will be objected to.⁴

[12] Furthermore, that the applicant's claim was never disputed prior to the liquidation of the second respondent or even during the first meeting of creditors.⁵

[13] That it was at this Special Meeting of Creditors, where the Master rejected the applicant's claim, after the sixth respondent had raised

⁴ Founding Affidavit Index 001-12 para 10

⁵ Founding Affidavit Index 001-20 para 27

technical objections against the claim of the applicant, which included the following:

13.1 The power of attorney was filed out of time and that the co-member of the applicant was unable to appoint a further person.⁶

13.2 That there were no invoices submitted for an amount of R 191 862.00 out of a total amount of R 2 115 987.08 against the second respondent for work in progress.⁷

13.3 As to the remainder of the claim, it was averred that the claim was lacking in particulars as there were no source documents attached.⁸

13.4 The agreement entered into between the applicant and the sixth respondent was only signed by the applicant and not the sixth respondent.⁹

[14] In support of its claim, the applicant had confirmed by means of a statement made under oath, which was not disputed by the sixth respondent. The statement contains a date of entry, a reference of purchase order and invoice reference.¹⁰

[15] The sixth respondent has also not disputed that invoices were issued for services/work rendered by it to the second respondent.

⁶ Founding Affidavit Index 001-13 para 12

⁷ Founding Affidavit Index 001-13 para 13.1

⁸ Founding Affidavit Index 001-14 para 13.3

⁹ Founding Affidavit Index 001-14 para 13.3

¹⁰ Founding Affidavit Index 001-14 para 14.1

SIXTH RESPONDENTS CONTENTIONS

[16] On behalf of the sixth respondent the following objections/defences were raised.

16.1 The sixth respondent is a proved creditor of the second respondent and as such it had the necessary *locus standi* to object to the attempts made by the applicant to prove the claim. In proving its claim before the Master, the applicant carried the *onus* to prove its claim and no *onus* rests on the sixth respondent.

16.2 The sixth respondent denied that it only raised defences of a 'technical nature' against the applicant's claim and that the real foundation for its opposition related to the merits proper of the matter, i.e. whether the applicant was really a creditor of the second respondent.¹¹

16.3 The sixth respondent explained that the applicant had failed to supplement its claim form by attaching to the claim form a proper motivation on affidavit in order to properly explain, motivate and prove the claim.¹²

16.4 The applicant further avers that in circumstances where a claim is rejected by the Master, the applicant would not be without remedy. The applicant would be at liberty to institute action proceedings

¹¹ Answering Affidavit Index 003-5 para 9

¹² Answering Affidavit Index 003-6 para 12

against the second respondent to establish its claim, instead of invoking the provisions of the Insolvency Act.¹³

16.5 In addition the sixth respondent places reliance on certain clauses contained in the governing agreement between the parties, which regulated the contractual agreement between them and which clauses, the sixth respondent avers, the applicant had failed to comply with.¹⁴

16.6 Furthermore, upon receipt of Bundle X the sixth respondent was unable to find any quotation as is required by the agreement and there was also no completion certificate.¹⁵ It is on this basis therefore that it contended that the Master was correct in rejecting the applicants' claim.

APPLICABLE LAW

[17] It is trite that a presiding officer must examine a claim, carefully but that such presiding officer is not required to adjudicate upon a claim, as if it were a court of law.¹⁶

[18] Such presiding officer should examine the proof of claim documents for the purpose of deciding whether they disclose *prima facie* the existence of an enforceable claim.¹⁷

¹³ Answering Affidavit Index 003-7 para 14. See also the decision *Chappell v The Master & Others* 1928 CPD 289

¹⁴ Answering Affidavit Index 003-8 to 10 para 18-23

¹⁵ Answering Affidavit Index 003-9 to 10 para 20 -23 and Index 003-13 to 14 para 34-35

¹⁶ *Cachalia v De Klerk NO and Benjamin NO* 1952 (4) SA 672 (T) 675

¹⁷ *Steelnet supra*

[19] A claimant further need not attach source documents for its claim, but is required to confirm such claim under oath in compliance in a form corresponding substantially with Form C or D of the First Schedule of the Insolvency Act.¹⁸

[20] The admission of a claim by the presiding officer, is only provisional, as under s 45(3) the trustee may dispute the claim notwithstanding its admission by the presiding officer. Furthermore, that a presiding officer does not adjudicate upon the claim as if he were a court of law, he is not required to examine a claim too critically or to require more, than prima facie proof.¹⁹

[21] Thus, unless the claim is on the face of it bad - for example, it may ex facie be prescribed - the presiding officer, in my opinion, should not reject it without hearing the creditors evidence 44(7).

[22] Apparent from the above, it is thus clear, that the test for a claim, to be admitted by a presiding officer, is not *onerous*. The Insolvency Act as well as the Companies Act, has provided sufficient safeguards where claims have to be investigated by the appointed liquidators in terms of section 45(3).

ANAYSIS

[23] At the said meeting the Master of the High Court initially indicated that the applicant had proven a claim against the second respondent, prima facie, at least to the extent of R 1 924 125.06. The Master later however in the same meeting had a change of heart and rejected the claim *in toto*.²⁰

¹⁸ Swart v Die Waarnemende Assistant-Meester van die Hooggeregshof Case No: 23459/95

¹⁹ Cachalia supra

²⁰ Founding Affidavit Index 001-10 para 5.1.

[24] This reversal of the decision of the Master was not denied by the sixth respondent, save to allege that the claim of the applicant is bogus and hatched between a husband and wife.

[25] Having regard to the authorities referred to above, it is clear, that the claim as submitted by the applicant was sufficient for its approval, and if the Master was not inclined to approve the entire claim, then he ought to adjourn the proceedings and afford the applicant an opportunity to present evidence either oral or through documents in support of its claim. This request was indeed made to the Master and simply rejected without being given any due consideration.

[26] In the present application, the Master was invited to present this Court with his report, which would ordinarily give the Court guidance as to what informed his reasoning and motivation.

[27] In his report so filed²¹ the Master merely stipulated that the supporting vouchers to the claim for approval were insufficient and that he is not aware of any facts which would be of relevance to this application.

[28] By merely stating that the supporting vouchers were insufficient (*thus drawing a conclusion*) and failing to explain the reasons that informed the conclusion so reached by him, this court is not placed in a position to determine whether his reasons were in fact cogent.

²¹ Master's Report Index 006-8

[29] The reasoning employed by the Master is paramount to this Court, as this Court has to review his decision and is not called upon to usurp his administrative function.

[30] *In casu*, as already mentioned, no additional explanation was furnished by the Master setting out to what extent the supporting vouchers presented by the applicant was unsatisfactory or what other documentation ought to have been provided by the applicant in order for him to properly assess its claim. In terms of the enabling legislation this obligation rested on the Master as the presiding officer of the creditors meeting.

[31] The applicant, as mentioned, alleges that initially the Master held the view that a claim amount of R 1 924 125.06 was proven against the second respondent, but during the same meeting he later held a different view.

[32] What informed this different view, this Court is none the wiser and in the absence thereof, is left to speculate as to what informed his reasoning.

[33] In the alternative to the relief sought in the Notice of Motion, the applicant seeks that the Special Meeting of Creditors be re-opened and that the decision of the Master be set aside and that the Special Meeting of Creditors be postponed to allow the Applicant an opportunity to supplement its claim in terms of section 44(7) of the Act. In the circumstances, I am of

the opinion that this will be the most appropriate order to give under the prevailing circumstances.

COSTS

[34] As to the appropriate costs order to be awarded, section 151*bis* of the Act, specifically provides that where a Court confirms a decision of a Master on review that such costs of an applicant shall not be paid out of the assets of the estate concerned unless the Court otherwise directs. In the present instance, the decision of the Master is hereby set aside and accordingly the appropriate order of the Court is to order the costs to be, costs in the administration of the estate of the second respondent.

ORDER

[35] Consequently, the following order is made:

35.1 The following decisions of the first respondent taken on 8 February 2018 at a meeting of creditors of second respondent held at the Master Pretoria are reviewed and set aside:

35.1.1 The decision of the first respondent to reject the claim of the applicant against the estate of the second respondent;

35.1.2 The decision of the first respondent to disallow the applicant the opportunity to present further evidence, as applicant is entitled to do in terms of Section 44(7) of the Insolvency Act. 1936 and to postpone the meeting of creditors for that purpose;

35.2 The decision refusing a postponement of the meeting for purposes of 35.1.2 above.

35.3 That the reviewed decisions be **substituted** with the following order:

35.3.1 The first respondent is directed to reconvene a Special Meeting of Creditors for the purpose of allowing the applicant an opportunity to present further evidence in accordance with Section 44(7) of the Insolvency Act, 1936.

35.3.2 Costs to be costs in the administration of the estate of the second respondent.



C.J. COLLIS
JUDGE OF THE HIGH COURT

Appearances

For the Applicant	: Adv. S. J. Van Rensburg SC
Attorney for the Applicant	: Tintingers Incorporated & Mathys Krog Attorneys
For the Sixth Respondent	: Adv. C. Richards
Attorney for the Sixth Respondent	: Leahy Attorneys INC.
Date of Hearing	: 24 August 2020
Date of Judgment	: 09 February 2021

Judgment transmitted electronically.