

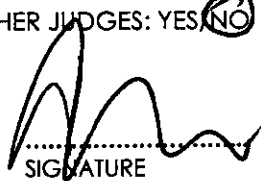
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA



Date of hearing: 21 February 2017

Case number: 81348/2014

(1)	REPORTABLE: YES ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES ☒ NO
(3)	REVISED. <u>21/2/2017</u> DATE
	 SIGNATURE

21/2/2017

In the matter between:

NEW AFRICAN ALLIANCE INVESTMENTS (PTY) LTD

Applicant

and

SHAIENDRA RAMESH MAHARAJ

Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

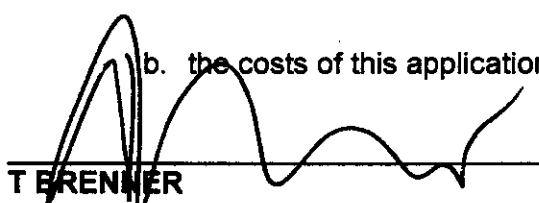
BRENNER AJ

1. This is an application for leave to appeal against the whole of my judgment delivered on 16 November 2016, and is brought by the above applicant. The applicant served a notice of application for leave to appeal on 7 December 2016 ("the notice").
2. Having duly considered the various grounds adumbrated in the applicant's notice, I respectfully disagree. Altogether eleven grounds are advanced to support the applicant's contention that I erred in granting a final winding up order. I will traverse same in succinct terms.
3. The events culminating in the preservation application were germane to the liquidation application and I accordingly found myself constrained to consider same. No prejudice was suffered by the applicant since it had the opportunity to address these allegations, and it did so. There was no application to strike out. In arriving at my finding, the evidence to which I attached the greatest weight was either objectively proven or was admitted fact. There was no material or genuine dispute of fact regarding the deadlock and the ensuing litany of litigation between the parties which, to the date of my judgment, had endured since circa October 2008. The prognosis was clear that pending litigation on disputes contributing to the deadlock would potentially continue and indefinitely so absent a liquidation order.
4. The respondent denied that Narsi and Reuben had treated him fairly. He averred that their conduct vis a vis certain transactions was irregular and unlawful. He provided enough substantiation to warrant an investigation into same by an independent arbiter, in the form of a duly appointed liquidator. It is the liquidator's powers of investigation and enquiry which will assist in establishing the sustainability of the disputes between the shareholders and the nature and extent of their loan claims against the company. Such powers are a core duty of a liquidator, who is obliged at law to act independently and impartially.
5. It was not an established fact that the respondent was a minority shareholder. He held the belief that he owned 50% of the shares.

6. I was cognisant of the fact that there was no evidence of any events of significance between November 2014 and October 2016. I was entitled to infer from the enrolment of the application for argument that the deadlock between the respondent and Reuben and Narsi continued to prevail, and remained irresoluble. There was no evidence to the contrary. The simplest and most constructive expedient was to liquidate the applicant. The collection of assets and payment of legitimately proved claims and the distribution of monies to the beneficiaries entitled thereto will probably occur far sooner than if the ongoing litigation were to be permitted to run its course. The liquidator may also elect to persist with litigation which carries prospects of success in his view.
7. I refer further to the reasoning which is fully advanced in my comprehensive judgment handed down on 16 November 2016. In the premises, I am of the view that the applicant does not enjoy a reasonable prospect of success on appeal, and that there is no other compelling reason why an appeal against my judgment should be heard. In my view, leave to appeal should accordingly be refused, with costs following the result.
8. The following order is granted:

a. the applicant's application for leave to appeal against the judgment delivered on 16 November 2016 is dismissed;

b. the costs of this application are costs in the winding up of the applicant.



T BRENNER
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
21 February 2017
Appearances

Counsel for the Applicant

Adv Singh assisted by Adv Singh

Instructed by:

Attorneys Naidoo Maharaj Inc

Counsel for the Respondent:

Adv JH Sullivan

Instructed by:

Attorneys Garlicke and Bousfield