



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU NATAL DIVISION, PIETERMARITZBURG**

Case No: 2914/2015

In the matter between:

JOHANNES GEORGE KRUGER

APPLICANT

And

MUSI JEFFREY DHLAMINI

1st RESPONDENT

THABSILE BUSISIWE DHLAMINI

2nd RESPONDENT

REGISTRAR OF DEEDS, PIETERMARITZBURG

3rd RESPONDENT

ORDER

- (a) The rule *nisi* issued on 13 March 2015 is confirmed.
- (b) The 1st and 2nd respondents are ordered to pay the applicant's costs, such costs to include the costs of two counsel.

JUDGMENT

SEEGOBIN J:

INTRODUCTION

[1] This is the extended return day of a *rule nisi* granted *ex parte* by my brother Mnguni J on 13 March 2015. The first and second respondents ('the respondents') have since opposed the confirmation of the rule. At the opposed hearing on 23 May 2016 the applicant was represented by *Mr Theron SC* and *Mr Combrink* and the respondents were represented by *Mr Zondi* and *Mr Dlamini*.

BACKGROUND FACTS

[2] The applicant is the appointed repayment administrator in terms of the provisions of s84(1) read with the provisions of s83(1) of the Banks Act 90 of 1990 ('the Banks Act').

[3] On 18 March 2011 the applicant was appointed as an inspector in terms of the provisions of s11(1) read with the provisions of s12(1) of the South African Reserve Bank Act 90 of 1989 of, *inter alia* TV1 Express and/or any related person or entity. The applicant was required to establish whether or not TV1 Express and any related person or entity conducted the business of a bank or mutual bank in contravention of the Banks Act and/or the provisions of the Mutual Banks Act 80 of 1998. TV1 Express is known to be an international

scheme operating under numerous aliases including, but not limited to, Travel Ventures International and TV1 (TV1).

[4] The investigations conducted by the applicant in his capacity as an inspector revealed that TV1 was being marketed and/or endorsed and/or participated in by a number of persons and entities ('distributors or participants'), and these included the respondents herein. In effect, the TV1 scheme has been found to be a pyramid scheme which is conducted in complete contravention and violation of the provisions of the Banks Act.

[5] In their opposing papers the respondents have admitted their participation in the TV1 scheme as distributors. They also admit that it is a pyramid scheme. They aver, however, that they too, like many other people, also became victims of the scheme. There is no dispute regarding their ownership of the various assets, both movable and immovable, identified by the applicant in his founding papers.

[6] On 26 September 2014 the applicant was appointed as a repayment administrator as already mentioned above. On 29 September 2014 the Registrar of Banks issued a directive in terms of the provisions of s83(1) read with the provisions of s84 of the Banks Act wherein the respondents were directed to repay all monies obtained in contravention of the Banks Act.

[7] It is common cause that the respondents have failed to review the decision of the Registrar of Banks to issue the aforesaid directive against them.

RESPONDENTS' DEFENCES

[8] The respondents' defences are premised on two points *in limine* raised by them in their opposing affidavits: the *first* is that the applicant has failed to disclose material facts in order to warrant the relief sought in the application; and the *second* is that there is no such provision as s84(1A)(b)(i) in the Banks Act as relied upon by the applicant. By the time the matter was argued on 23 May 2016, the respondents had effectively abandoned the second point *in limine* relating to the existence of the provisions of s84(1A)(b)(i) in the Banks Act. In their heads of argument and in oral submissions counsel for the respondents contended that there was a dispute of fact regarding the amount to be paid to the applicant as well as disputes regarding the actual amount received by the respondents. Because of these alleged disputes it was submitted that the matter be referred for the hearing of oral evidence. Additionally, and for the first time, the respondents also contended that their rights to property would be seriously violated in terms of section 26 of the Constitution (Act 108 of 1996) if the rule *nisi* were to be confirmed. It was argued that the confirmation of the rule would result in an arbitrary deprivation of property and this should not be allowed.

FINDINGS

[9] Dealing firstly with the constitutional issue as set out above, it is clear that the respondents have not applied their minds fully to the purpose of the application and the powers, duties and obligations of the applicant which flow from the general scheme of the Banks Act. The purpose of the application is clearly to effect an attachment of the respondents' assets, the Registrar of Banks having satisfied himself that the respondents had obtained monies by carrying on the business of a bank. In my view, issues relating to the deprivation of property do not arise at this stage. They could well arise at a later stage if and

when the applicant wishes to exercise his powers under sub-section 84(4)(b) to liquidate assets which says represent assets into which unlawfully obtained monies were converted. Those investigations will also be relevant to establish who is owed any money by way of repayment pursuant to the unlawful obtaining of deposits. I have no doubt that when that stage is reached (if it is) the respondents will be afforded ample opportunity of raising whatever issues they want to in connection therewith.

[10] The respondents' contention that there are disputes of fact regarding the amount to be paid to the applicant and the actual amount received by the respondent is, in my view, irrelevant. What is relevant is the attachment of the respondents' assets in terms of the Banks Act pursuant to a written directive issued by the Registrar of Banks in terms of s83(1) of the Act. This directive is contained in annexure 'JGK8' to the founding papers. The respondents have not taken any steps to review or otherwise set aside the Registrar's decision and the directive therefore stands¹.

[11] In terms of s84(1A)(b) the applicant is obliged to recover and take into his possession all of the assets of the persons subject to the directive, in other words, he is obliged to take into possession all of the respondents' assets, and not only any assets that may somehow be connected to the respondents involvement with the TV1 scheme. At issue in this application is simply the attachment of the respondents' assets at this stage and not whether they have contravened the provisions of the Banks Act or not.

[12] In my view, the respondents have clearly misconstrued the true nature and purpose of the application. I find no merit in any of the defences raised by the respondents whether in their answering papers or belatedly in their heads of

¹ Ouderkraal Estates (Pty) Ltd v City of Cape Town and Others 2004(6) SA 222 (SCA).

argument. I am accordingly satisfied that the rule must be confirmed. The costs of two counsel are justified and this will be reflected in the order I make.

ORDER

[13] The order I make is the following:

- (a) The rule *nisi* issued on 13 March 2015 is confirmed.
- (b) The 1st and 2nd respondents are ordered to pay the applicant's costs, such costs to include the costs of two counsel.

Date of Hearing	:	23 May 2016
Date of Judgment	:	27 May 2016
Counsel for Applicant	:	EL Theron SC & LE Combrink
Instructed by	:	Bowman Gilfillan Inc. c/o Austen Smith Attorneys
Counsel for Respondents	:	S Zondi & MW Dlamini
Instructed by	:	Thungo Attorneys c/o LB Majola Inc.