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

CASE NUMBER: 2023-019694

1. REPORTABLE: ~~YES~~/NO

2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

3. REVISED

DATE: 13 May 2024

SIGNATURE:

In the matter between:

MANDLAKAYISE PRINCE NDAMASE

APPLICANT

and

**COMMISSIONER: PRIVATE INQUIRY INTO THE
AFFAIRS OF SNS HOLDINGS (PTY) LTD
(IN LIQUIDATION)**

FIRST RESPONDENT

KURT ROBERT KNOOP N.O.

SECOND RESPONDENT

TASNEEM SHAIK MAHOMMED N.O.

THIRD RESPONDENT

ZAHEER CASSIM N.O.

FOURTH RESPONDENT

THAMSANQA EUGENE MSHENGU N.O.

FIFTH RESPONDENT

JUDGMENT

COERTZEN AJ:

- [1] The applicant makes application to review and to set aside a summons (subpoena) issued by the first respondent, directing the applicant to appear (as a witness) at an enquiry convened in terms of s 417 and s 418 of the Companies Act 61 of 1973 ('the Act'), on 27 January 2023, as unlawful. In the alternative the applicant seeks an order to review and set aside the annexure to the summons, as unlawful. The applicant also seeks an order to declare the venue for the enquiry, being the offices of the attorneys of the second to fifth respondents, as inappropriate for the purposes of an impartial enquiry by an impartial commissioner.

- [2] The second to fifth respondents, as the liquidators of SNS Holdings Proprietary Limited (in liquidation) - ('SNS'), oppose the application. The first respondent abides.

- [3] SNS carried on the business of an unlawful pyramid scheme. Members of the public invested some R650 million in the scheme. On 24 July 2020, SNS was placed in final liquidation by an order of court.

- [4] On 7 May 2021 The first respondent was appointed by the Master of the High Court KwaZulu-Natal, Pietermaritzburg, as commissioner for a commission of enquiry, in terms of Sections 417 and 418 of the Act, into the affairs of SNS.

- [5] Prior to its liquidation, SNS paid the sum of R6,295,101.30 into the bank account of an entity known as Champions Royal Assembly NPC ('Champions Royal Assembly'). On 24 August 2022 these payments were set aside as impeachable dispositions. Champions Royal Assembly was directed to pay the said sum to the liquidators of SNS. No monies were however recovered from Champions Royal Assembly. On 15 March 2023 Champions Royal Assembly

was placed in provisional winding-up.

- [6] Prior to its liquidation, SNS also paid the sum of R8,283,112.82 into the bank account of an entity known as Joshua Iginla Ministries NPC ('Joshua Iginla Ministries'). On 2 September 2022 these payments were similarly set aside as impeachable dispositions. Joshua Iginla Ministries was directed to pay the said sum to the liquidators of SNS. No monies were recovered from Joshua Iginla Ministries. On 15 March 2023, Joshua Iginla Ministries was also placed in provisional winding-up.
- [7] Both Champions Royal Assembly and Joshua Iginla Ministries carried on business as religious organisations under the direction of a self-styled Nigerian prophet, Mr. Joshua Lasisi Iginla ('Iginla').
- [8] Upon investigation, the liquidators found that Champions Royal Assembly had paid the applicant a sum R1,042,000.00. The liquidators further discovered that Joshua Iginla Ministries had paid the applicant a sum of R115,000.00.
- [9] The principal source of the funds in the bank accounts of Champions Royal Assembly and Joshua Iginla Ministries, was SNS. The directors of SNS were one Mr SC Sibiya, and one Ms NP Sibiya ('the Sibiyas').
- [10] The applicant was neither an employee, nor a client of SNS.
- [11] There is no litigation pending between the liquidators and the applicant.
- [12] Pursuant to the motivated request of the liquidators, which forms part of the record filed in terms of Rule 53 of the Uniform Rules of Court, the first respondent summoned the applicant to appear at the enquiry. In the annexure to the summons, the applicant was requested to provide:
 - a) A copy of the applicant's employment contract with Joshua Iginla Ministries NPC and Champions Royal Assembly NPC.

- b) Copies of any and all IRP5/IT3(a) employee tax certificates issued by Joshua Iginla Ministries NPC and Champions Royal Assembly NPC to the applicant.
- c) Copies of any and all tax returns submitted by the witness to SARS for the period 1 January 2019 to 1 January 2020.
- d) Copies of any and all salary slips/payslips received, by the witness, from Joshua Iginla Ministries NPC and Champions Royal Assembly NPC and/or any other employer during the course of his employment with same, for the period of 1 January 2019 to 1 January 2020.

[13] On the date of the enquiry, the applicant, through his legal representatives, objected to the summons, and to the annexure.

[14] The first respondent dismissed the applicant's objections.

[15] The applicant takes the first respondent decision on review.

[16] The first respondent's reasons for the dismissal of the applicant's objections, also form part of the record filed in terms of Rule 53.

[17] The applicant contends:

- (a) That the summons constitutes a gross irregularity because it is unconnected with the purpose of the enquiry, and that the summons constitutes an overreach, or an abuse.
- (b) That provision of the documents requested in terms of the annexure to the summons will unjustifiably infringe on the applicant's right to privacy.
- (c) That the selection of the venue (the boardroom at the offices of the liquidators' attorneys) creates a reasonable apprehension of bias.

- (e) That the summons violates the applicant's constitutional right to freedom of religion, in that a donation made at a church is universally considered an act of worship.

[18] It is not in dispute that the first respondent has the power to summon witnesses who the first respondent believes will be able to assist the liquidators and/or the first respondent in casting light on the affairs of SNS, and to determine the date, place and time of the enquiry.

[19] As to the apprehension of bias, it appears from the first respondent's reasons that the first respondent determined the offices of the liquidators' attorneys, as appropriate and convenient for purposes of the enquiry. The enquiry has already been conducted at various venues throughout the country, and at locations close to where the witnesses are located.

[20] The crux of the applicant's objection is that the choice of venue creates a reasonable apprehension of bias. The applicant contends in the founding affidavit that it is not unreasonable to conclude that the first respondent would be conflicted, if the first respondent had to make rulings against his "*hosts*" who will accommodate the first respondent, and who will provide the first respondent with refreshments. The choice of venue is, according to the applicant, a gross irregularity which could have been avoided.

[21] Reasonable grounds must be shown for the suspicion or perception of bias. The "*double-requirement of reasonableness*" must be satisfied. Both the person who apprehends bias and the apprehension itself must be reasonable; "*even a strongly and honestly felt anxiety — is not enough*" - *Bernert v ABSA Bank Ltd* 2011 (4) BCLR 329 (CC) ; 2011 (3) SA 92 (CC) (9 December 2010), 31 – 35. The fact that the enquiry is held, or is to be held, at the venue in question, is in my view, without more, insufficient to hold that the applicant's apprehension of bias is reasonable.

[22] As to the documents which the applicant is required to produce in terms of the

summons, the liquidators contend that they are entitled to investigate whether the payments made to the applicant by Champions Royal Assembly and Joshua Iginla Ministries, were lawfully made. The liquidators contend that if it emerges from the enquiry that the payments were not made for any lawful cause, but simply as a “*money-laundering exercise*”, the liquidators may have a claim against the applicant. Similarly, if it emerges from the enquiry that the payments are impeachable dispositions, then the liquidators of Champions Royal Assembly and Joshua Iginla Ministries may have cause to recover the payments from the applicant. Pursuant to the enquiry, and pursuant to the examination of the applicant, the liquidators may be in a position to consider whether or not to fund such litigation. The employment records and tax returns of the applicant relate to, and are relevant to, the question whether the applicant received the payments as remuneration during the course of his employment, and/or for services rendered i.e. whether for lawful cause or not. The liquidators contend that in the circumstances, the first respondent had reasonable cause or grounds to issue the summons, and to require the applicant to produce the documents in question.

[23] The liquidators referred me to *Ex parte Brivik* [1950] 3 ALL SA 169 (W), 171 where it was held:

“It is sufficient if the Court is satisfied that there is fair ground for suspicion and that the person proposed to be examined can probably give information about what is suspected.”

The same test applies for examination under s 417 and s 418 of the current Act - *Cooper NO and Others v South African Mutual Life Assurance Society and Others* 2001 (1) SA 967 (SCA); [2001] 1 All SA 355 (A), 13.

[24] As to the right of privacy, the proper approach is to determine:

“[W]hether there is reason to believe that the documents requested will throw light on the affairs of the company before the winding-up. If so, their relevance will in general outweigh the right to privacy.” - *Gumede and Others v Subel and*

Others [2006] 3 All SA 411 (SCA); 2006 (3) SA 498 (SCA), 19.

- [25] Ackermann J in *Bernstein and Others v Bester NO and Others* 1996 (4) BCLR 449; 1996 (2) SA 751 (CC), 90, stated:

"I have repeatedly emphasised that privacy concerns are only remotely implicated through the use of the enquiry. The public's interest in ascertaining the truth surrounding the collapse of the company, the liquidator's interest in a speedy and effective liquidation of the company and the creditors' and contributors' financial interests in the recovery of company assets must be weighed against this, peripheral, infringement of the right not to be subjected to seizure of private possessions. Seen in this light, I have no doubt that sections 417(3) and 418(2) constitute a legitimate limitation of the right to personal privacy in terms of section 33 of the Constitution."

And, 92:

"It is, as already indicated, notionally possible that under sections 417(3) and 418(2) of the South African Companies Act the production of documents which are not company documents or records in the strict sense might be compelled. Nevertheless, provided the documents were relevant to any legitimate enquiry under section 417, their compelled production would be justified for the very same reason that the compelled answers to similarly relevant questions would be justified. Sections 417 and 418 of the Act are accordingly not inconsistent with any of the section 13 rights."

- [26] In my view the documents requested are relevant to the enquiry, and appear to be connected to the trade, dealings, affairs or property of SNS. There is reason to believe that the documents requested will shed light on the affairs of SNS before the winding-up.

- [27] As to the issue of religious freedom, the applicant states in the founding affidavit that the investigation was sparked by the donations which the Sibiyas made to the church (presumably Champions Royal Assembly and Joshua Iginla

Ministries). The argument seems to be that the Sibiyas exercised their religious rites by making donations to the church as an act of worship. I fail to see how, on the facts, the enquiry and the summoning of the applicant as a witness, may constitute an infringement of the Sibiyas' right to freedom of religion. As pointed out by the liquidators, the payments made to Champions Royal Assembly and Joshua Iginla Ministries were made by SNS, not the Sibiyas. For the same reasons I fail to see how the summons violates the applicant's right to freedom of religion. The applicant's argument fails on the very distinction that the applicant wishes to draw from the facts.

[28] In the foregoing I am not persuaded that the first respondent has improperly or irregularly exercised his discretion to issue the summons and the annexure thereto. I am further not persuaded that the first respondent's decision to dismiss the applicant's objections, has been shown to be improper or irregular.

[29] In the premises the application cannot succeed. Costs should follow the result.

[30] I therefore make the following order:

1. The application is dismissed;
2. The applicant is ordered to pay the second to fifth respondents' costs, such costs to include the costs of senior counsel.

YVAN COERTZEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 18 March 2024

Date of judgment: 13 May 2024

The judgment was provided electronically by circulation to the parties' legal representatives by email and by uploading the judgment to the electronic case file on Caselines. The date and time for delivery of the judgment is deemed to be at 10h00 on 13 May 2024.

Appearances:

Counsel for the applicant:	Adv E Sepheka
Instructed by:	Mahlakoane Attorneys
Counsel for the second to fifth respondents:	Adv GME Lotz SC
	Adv CGVO Sevenster
Instructed by:	Vezi & de Beer Inc