



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

**REPORTABLE
CASE NO: 22696/2024**

In the matter between:

CURRO HEIGHTS PROPERTIES (PTY) LTD

Applicant

And

NOMIC 151 (PTY) LTD UNDER LIQUIDATION

First Respondent

CHAVONNES BADENHORST ST CLAIRE COOPER N.O.
Respondent

Second

SUMIYA ABDOOL GAFAAE KHAMMISSA N.O.

Third Respondent

COMPANIES & INTELLECTUAL PROPERTY COMMISSION

Fourth Respondent

MASTER OF THE HIGH COURT CAPE TOWN

Fifth Respondent

ABSA BANK LIMITED

Sixth Respondent

Coram: Parker, AJ

Matter heard on: 13 November 2024

Judgment delivered electronically on: **21 November 2024**

JUDGMENT

PARKER, AJ:

Introduction

[1] The applicant brought this matter on an urgent basis seeking an order by placing the first respondent under business rescue in terms of section 131 of the Companies Act, 2008.

[2] The first respondent is a company that has been in final liquidation and has not traded since 2012. The application is opposed by the second and third respondents (the liquidators of the first respondent) and the sixth respondent who is the only proven creditor of the first respondent in the winding up. The term “the respondents” will be employed for the sake of convenience.

[3] The respondents contend that the application is vexatious, an abuse of the Court and the business rescue process in order to avoid the finalisation of the winding up of the first respondent.

Postponement of the urgent application

[4] The applicant, represented by Mr Molyneux, sought a postponement of the urgent application on the grounds that he requires additional time in terms of the rules, to file his replying affidavits. He claims that he only had one day to prepare a reply, despite being entitled to ten court days to do so in terms of the Rules.

[5] The respondents opposed the postponement of the matter on the basis that it will be prejudiced in a manner that cannot be adequately addressed by way of an order for costs and that granting a postponement would not be in the interests of justice.

[6] Whilst it is so that postponements are not for the mere asking,¹ however, where it is met with a tender for the wasted costs such postponements are often than not, granted.²

[7] However, I engaged and informed the applicant that he brought this matter to court on an urgent basis and hence he was in control of the timelines, so to speak. Consequently, his notice of motion not only prayed for urgent relief but also that the noncompliance of the rules be condoned. He placed respondents in a position to file their opposing affidavit under a constrained timeline, whereas he was seeking a postponement to deliver his replying affidavit which simply makes no sense

[8] Firstly, the time periods the applicant contends he requires, are incorrect, both in terms of the facts and especially regarding the uniform rules of court. Applicant failed to recognize the cardinal principles in bringing matters to court on an urgent basis. In terms of the rules, the ten court days designated for delivering a relying affidavit according to the Rules does not apply to urgent applications, and applicant sought condonation of the time prescribed to be dispensed with in prayer 1 of the Notice of Motion. That is why urgent matters invariably contains a prayer for the condonation for the noncompliance with the court rules and for an abridgment of the time period.³ After all he chose this procedure.

[9] On the other hand, the respondents contend that the application is urgent, given that the vexatious application suspends the finalisation of the winding up of the first

¹ *Psychological Society of South Africa v Qwelane and Others* (CCT226/16) [2016] ZACC 48; 2017 (8) BCLR 1039 (CC) (14 December 2016) Also see *Cassimjee v Minister of Finance* 2014 (3) SA 198 (SCA)

² *M F v Cummins South Africa (Pty) Ltd and Others* (27028/2019) [2020] ZAGPJHC 143 (16 April 2020) Also see *Van Tonder v Road Accident Fund* (1736/2020; 9773/2021) [2023] ZAWCHC 305 (1 December 2023)

³ Rule 6(12)(a).

respondent in terms of section 131(6) of the Companies Act until the application is determined.

Vexatious litigant

[10] Mr Molyneux is familiar with this court and has been declared a vexatious litigant as contemplated in the Vexatious Proceedings Act, 3 of 1956⁴. He is the sole director and shareholder of the applicant and has indicated in the founding affidavit that the applicant does not have funds to pay for attorneys and counsel.

[11] The applicant, in pursuing this urgent application, is violating the judgment issued against him by Judge Cloete on 12 November 2014. Regarding the order, Mr. Molyneux may not initiate any proceedings without the court's permission.

[12] I invited Mr Molyneux to present his submissions concerning his failure to secure the necessary leave as required, as a preliminary step before instituting any proceedings in this court. He agreed that he was aware of the Cloete J order, however, he felt justified that he could proceed as he did. He referenced another case in which he appeared before Acting Judge President Goliath, where he was permitted to be heard in a matter in which he was a defendant. In response I specifically draw his attention to the provisions of the order of Judge Cloete clause 2 which read:

“2. That the applicant is declared a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956. No legal proceedings may be instituted by the applicant against any person in any division in the High Court of South Africa or any inferior court, without the leave of that court or any Judge of the High Court.”

[13] Given the provisions of clause 2 above, applicant is not properly before me in this matter. Firstly, he is not a defendant/respondent as he alleged he was in the matter

⁴ Cloete J judgment 12 November 2014

mentioned. In interpreting the contents of clause 2 as against this application, it is clear that in this matter he is an applicant.

[14] As evidenced by the respondents submissions, the Vexatious Proceedings Act and Judge Cloete's order were designed to prevent Mr Molyneux from instituting unsubstantiated applications against other parties, thus reducing unnecessary expenses for respondents and avoiding frivolous use of court resources. Additionally I contend that Mr Molyneux is barred until he has met the required conditions for obtaining leave to sue, consistent with Judge Cloete's order.

[15] In this matter, Mr Molyneux seeks to circumvent the prohibition against instituting legal proceedings without the leave of a judge or by making use of the separate legal personality (incorporation) of the applicant.

Irregular step

[16] The respondents, in relying on the irregular step of the applicant, requested that the application be dismissed with costs. The respondents sought closure in order to move forward with the final liquidation proceedings. Notwithstanding Mr Molyneux's history of being a vexatious litigant, judicial responsibility dictates his rights, however skeptical the circumstances may appear to be. This speaks to the purpose of the Cloete J order, however, he needs to apply for leave to do so.

Conclusion

[17] Second and third respondents are not required to wait on the applicant in order to proceed with the winding up process. Therefore, dismissing the application does not prejudice the winding up process. Under the circumstances I am reluctant to shut the door on a litigant at this stage. The applicant will have to set out his reasons in detail as to why leave ought to be granted should he wish to pursue the application against the first respondent. In conclusion, there is no need for me to determine the merits of the

matter nor to consider the postponement. I will therefore strike the application for reasons provided above.

Costs

[18] I find no justification to depart from the usual costs order, that costs follow the result. In expressing my disdain of the applicant's conduct, not only by wasting the court's resources and valuable time, especially when the court is seized with numerous urgent matters vying to be heard. It is only appropriate that an award of attorney client costs is suitable, as applicant was fully aware of his breach of the Cloete J order.

[19] In the circumstances the following order is made:

19.1 The application is struck from the roll.

19.2 The applicant is liable to the respondents for costs on an attorney and client scale.

R K PARKER
ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for Applicant : Mr R J C Molyneux
Instructing Attorney : In Person

Counsel for First, Second,
Third and Sixth Respondents : Adv. L Wessels

Instructing Attorney

: Sandenbergh Nel Haggard – Ms E Loubser