



IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION, BLOEMFONTEIN)

Not Reportable

Case Number: **4006/2024**

In the matter between:

ALTERNATIVE FINANCE SOLUTIONS (PTY) LTD

Applicant

and

MASTER OF THE FREE STATE HIGH COURT,

BLOEMFONTEIN

First Respondent

ELRICH RUWAYNE SMITH N.O.

Second Respondent

ADEL DOREEN McQUARRIE N.O.

Third Respondent

STANDARD BANK OF SOUTH AFRICA

Fourth Respondent

Neutral citation: *Alternative Finance Solutions (Pty) Ltd v Master of the Free State High Court, Bloemfontein, 4006/2024*

Coram: **Daffue, J**
S. Grobler, AJ

Heard on: **19 March 2025**

Delivered on: **27 March 2025**

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 14H00 on 27 March 2025.

Summary: **Application for leave to appeal**

ORDER

1. The application is dismissed with costs, the costs of counsel to be on scale C.
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JUDGMENT

- [1] This is an application for leave to appeal against an order we granted on 13 February 2025. The Applicant contends we have erred in material respects and concerning our judgment on the *claim 17* dispute.
- [2] Four essential grounds of error are advanced, stating firstly, we had erred in finding that the Master had properly exercised his discretion in relation to whether or not the liquidators had been entitled to admit claim 17. Secondly, it is contended that the Master had exercised his discretion improperly, as he did so without knowledge that the liquidators had not examined the documents put up to show compliance with s 45 of the New Companies Act. Thirdly, and in light of the new evidence disclosed in the answering affidavits (dealt with extensively in the judgment), we had erred in not reviewing and setting aside the decision.
- [3] Lastly, we had erred in not finding that the documents which purported to constitute compliance with s 45 did not constitute proof of such compliance at all.
- [4] Much reliance was placed upon the decisions of **Trust Bank of Africa v Muller N.O. and Another 1979 (2) SA 368 (D)** and **Muller N.O. v Trust Bank of Africa Ltd and Another 1981 (2) SA 117 (NPD)**. Mr Hitchings argued that these decisions both indicate that we were wrong in finding that the actual objection we were called upon to decide is not the one that served

before the Master. Mr Hitchings further submitted that even if we were correct in finding the difference in the actual objection, the matter should have been remitted to the Master to decide the objection afresh.

- [5] As to the latter contention, I do not think that we could have done so in the absence of a finding of irregularity. The referral of the matter to the Master again would have been consequent relief upon a primary finding of an irregularity. We could not make such a finding. And in any event, we were not asked for such relief, notwithstanding the obvious problems the Applicant faced with the apparent dispute of fact and the attempt to make its case in reply.
- [6] As to the first contention, I do not think that another court would come to a finding that the objection raised to the Master was the same advanced in this court. In **Trust Bank** *supra*, **Page AJ** dismissed a point *in limine* raised similar to what we effectively allowed in the present matter, because the court there found that the fresh grounds sought to be relied upon in the application had been fully canvassed before the Master, in part in the written representations prior to his decision and in part in the affidavits filed in support of an application to amend the Notice of Motion subsequent to his decision. In the present matter there was no application to amend the Notice of Motion and no further evidence was advanced in the form of an affidavit.
- [7] Further to this, there is no indication that the factual basis advanced in the reply to undo the liquidators' decision had served before the Master for consideration. That is because the Bank stated in its affidavit that it only instructed its attorney of record in the present proceedings to provide the correct resolutions to the liquidator after the application was launched.¹ The Master could not have been appraised of the actual facts for ventilation in this way.

¹ Record p 528, para 8.8 and 8.9.

[8] And to the extent that it is argued – as per the grounds of the proposed appeal – the Master shouldn't have allowed all this, the answer I believe still lies in the *sui generis* nature of proceedings in terms of s 407. I have explained my reasoning on that in the judgment extensively and I shan't regurgitate it herein.

[9] It follows that the application should be dismissed and the following order is made:

1. The application for leave to appeal is dismissed with costs, such costs to include the costs of counsel on scale C.

I concur.

GROBLER, AJ

DAFFUE, J

On behalf of the applicant:

Adv Hitchings

On instruction of:

HJ Booysen Attorneys
BLOEMFONTEIN

On behalf of 2nd and 3rd Respondents:

Adv Tsangarakis

On instruction of:

Rossouws Attorneys
BLOEMFONTEIN

On behalf of the 4th Respondent:

Adv Ziestman SC

On instruction of:

Phatsoane Henney Attorneys
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