

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.:A278/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

05/06/2025

In the matter between:

CLIVE MALCOM ELLISON

Appellant

and

MARTHINUS JACOBUS DEWALD BREYTENBACH
NO

First Respondent

RICHARD HICKEN NO

Second Respondent

JUDGMENT

Van der Westhuizen, J

[1] The appellant appealed the whole judgment and order by Collis J delivered on 17 June 2022 in an application for the eviction of the appellant from the property occupied by the appellant. In her judgment Collis J held that the

appellant be evicted from the property known as 2[...] D[...] Road Waterkloof, Pretoria, and that the appellant's counterclaim stood to be dismissed.

- [2] The said application before Collis J followed on an order on 12 April 2018 by Kollapen J as he then was, which acknowledged an order granted by the Deputy Registrar Schaffer of the High Court of Justice in Bankruptcy (UK) on 4 October 2000. In the latter order the appellant was held to be bankrupt. Kollapen J further recognised the appointment of the first respondent as trustee of the appellant's insolvent estate. The second respondent was the trustee appointed in the UK.
- [3] Following investigations in South Africa, the first respondent obtained information that the appellant owned property situated in South Africa that fell within his insolvent estate. That information led to the launch of the application before Kollapen J. The order granted by Kollapen J entitled the first respondent to administer the assets of the appellant within South Africa in terms of the South African Insolvency Act (the Kollapen order).
- [4] It is to be noted that the appellant has not yet been rehabilitated in the UK and that he remains an undischarged bankrupt there, and following on the Kollapen order, in South Africa as well.
- [5] There was no appeal against the order of Kollapen J.
- [6] In the application before Collis, J., the appellant contended that the effect of the Kollapen order amounted to the granting of a sequestration order against the appellant in terms of the South African Insolvency Act. Presumably this contention by the appellant was derived from the wording of the Kollapen order where it stated "*Entitling the applicant (first respondent) to administer the first respondent (the appellant) as if a sequestration order had been granted against him by a South African court.*"
- [7] In my view, there is no merit in the appellant's contention in that regard. The order by Kollapen J is clear, and there is no ambiguity. Primarily the

bankruptcy order of the UK was acknowledged and the empowerment of the first respondent followed consequentially. No “new” insolvency order in terms of the South African Insolvency law was granted.

[8] Furthermore, the application before Collis J was not the forum to address any possible ambiguity in the Kollapen order, of which there is none.

[9] In respect of the principles applicable to orders of foreign jurisdictions, *Ex Parte Palmer NO: In re Hahn 1993(3) SA 359 (C)* held as follows:

“The point is clearly made in the judgment in the Stegman case that immovable property of an insolvent is governed by the lex rei sitae and inasmuch as his movable property is concerned by the law of his domicile, it is a matter of convenience that a court in whose jurisdiction the insolvent’s immovable property lies, in the exercise of its discretion, permit all the property of the insolvent situate within in its jurisdiction, whether it be movable or immovable, to be administered by a foreign trustee appointed pursuant to a sequestration order issued by the Court of the insolvent’s domicile, who would as a matter of law, have the authority and power to deal with immovable property of the insolvent.” (my underlining).

[10] The Supreme Court of Appeal in *Lagoon Beach Hotel v Lehane 2016 (3) SA 143 (SA)* endorsed the *Palmer* dictum.

[11] The Supreme Court of Appeal further held as follows:

“As pointed out above, the grant of recognition to a foreign trustee to deal with an insolvent’s immovable property in South Africa is a matter for the local Court’s discretion. The discretion is absolute. It is exercised on the basis of comity and convenience.”

[12] From the foregoing it is clear that the order of Kollapen J was appropriate in the exercise of his absolute discretion and which order remains in force until set aside by a competent court. That has not occurred. Consequently, the Kollapen order was binding upon Collis J. All that Collis J was requested by

the appellant to do, was to apply a different interpretation to the Kollapen order, albeit in terms of the counter application by the appellant.

[13] The appellant contended that due to the effluxion of time, he became rehabilitated. There is no merit in that contention. An order was granted in the UK which held that the period of discharge of the bankruptcy order was suspended and consequently the appellant remained bankrupt as at the time of the Kollapen order.

[14] In the foregoing, the findings of Kollapen J were *res iudicata* before Collis J. The court *a quo* had no jurisdiction to entertain an apparent appeal to that order, albeit in the form of applying a different interpretation thereof, and consequently correctly refused to entertain such.

[15] It follows that there is no merit in this appeal and it stands to be dismissed.

[16] Accordingly, I propose the following order:

The appeal is dismissed with costs.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

I agree and it is so ordered

N DAVIS
JUDGE OF THE HIGH COURT

I agree

N G M MAZIBUKU
JUDGE OF THE HIGH COURT

On behalf of Applicant: Adv CB Ellis
Instructed by: Jacobson & Levy Inc.

On behalf of Respondent: Adv DJ Groenewald
Instructed by: Serfontein Viljoen & Swart Attorneys

Date of Hearing: 19 February 2025

Judgment Delivered: 05 June 2025