

**IN THE HIGH COURT OF SOUTH AFRICA  
(WITWATERSRAND LOCAL DIVISION )**

**CASE NO: 09/1668**

In the matter between:

**ROGER AINSLEY RALPH KEBBLE**

Applicant

and

**GAINSFORD N.O. & OTHERS**

Respondents

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**SUMMARY OF REPORTABLE JUDGMENT**

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1. The Applicant sought to set aside a summons to attend an insolvency enquiry in terms of section 417 of the Companies Act. The Applicant maintained that the enquiry was a “*clear abuse*” and sought to have the summons quashed.
2. The Applicant was the sole surviving director of the company in liquidation. He contended that he was a non-executive director and was ignorant of the affairs of the company. The only executive director, his son, Brett, was deceased.
3. The Applicant maintained that the enquiry was an abuse for two main reasons. First, the Applicant contended that, when he had entered into a settlement with the sole proved creditor of the estate, Randgold, without the participation of the liquidators, Randgold’s claim against the company was also satisfied. The Court held that there had not been a discharge of the sole claim against the company.

4. Second, the Applicant maintained that, because the liquidators had formed the opinion that they might have claims against the Applicant and others, there was no longer any need for an enquiry. They had sufficient information at their disposal and were seeking only to “*dot their i’s and cross their t’s*”.
5. The Court held that, in order to obtain the relief he sought, the Applicant had to demonstrate a “*clear abuse*”. Not only had he failed to do so, but the facts demonstrated a need for an enquiry.
6. The Court concluded that it had a very wide discretion. In exercising its discretion, it had to weigh up numerous factors, both for and against an enquiry in order to decide whether the enquiry was a “*clear abuse*”.
7. The judgment analysed the existing case law concerning the circumstances in which an enquiry should be held and the duties of liquidators to investigate the affairs of an insolvent company.
8. There were a number of factors that militated in favour of conducting an enquiry. Among other things, the Applicant admitted that the company had never conducted business and that it had been conceived solely for the purpose of perpetrating a fraud. The fraud ran into hundreds of millions of rands. The examinee was a former director of the company and fell into a category of persons who can be more readily examined at enquiries than others.
9. The Court also dealt with the undesirability of creditors effecting settlements with third parties without the participation of the liquidators when the settlement might have the effect of preferring one creditor over other creditors of the company.

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**LEVENBERG, AJ**  
Acting Judge of the High Court