

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**



(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

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Case number: 06069/2015

In the matter between:

DANIEL MNCUBE & 55 OTHERS

Applicant

and

EUGENE JANUARIE N.O.

First Respondent

JOHANNES ZACHARIAS HUMAN MULLER NO
in their capacities as the joint provisional liquidators of

Second Respondent

CIDA CITY CAMPUS NCP
(IN PROVISIONAL LIQUIDATION)
Master's reference no: G211/2014

MASTER OF THE SOUTH GAUTENG HIGH COURT

Third Respondent

JOFFE CHARITABLE TRUST

Fourth Respondent

CITY OF JOHANNESBURG

Fifth Respondent

ABSA BANK LIMITED

Sixth Respondent

CIDA EMPOWERMENT TRUST

Seventh Respondent

**STUDENT REPRESENTATIVE COUNCIL OF
CITY CAMPUS NPC**

Eighth Respondent

JUDGMENT

SATCHWELL J:

INTRODUCTION

1. This application was heard in the urgent court on Wednesday 25th February 2015. I reserved Judgment. It was my intention to prepare a judgment and hand down a typed judgment in the course of the next week. Unfortunately my mother who is aged 88 was admitted to hospital this morning. I have only just learnt of that this afternoon when I came out of court and I am now flying down to Port Elizabeth. I do not know if I will be back in court next week. Because this matter was heard on an urgent basis, I think it would be most unfortunate if the judgment were not to be handed down because of my absence.
2. His Lordship Mr Justice Bashier Vally handed down an order in this matter on 29th January 2015. He followed that order with a careful judgment dated 16th February 2015.
3. Pursuant to that order the Master of the High Court (third respondent) convened a meeting which ended without progress or useful action.
4. The applicants in this matter bring this application on an urgent basis firstly to have the Master declared to be in breach of the order of his Lordship Mr Justice Vally and secondly to ask for further directions to be given to the Master.

MASTER'S BREACH

5. I have no doubt that the Master who is the third respondent in this matter, is neither in contempt of court nor in wilful breach.
6. His careful report dated 20th February 2015 (found at pages 340 to 347 of the papers) sets out his concerns about the legality of the order, and also issues of concern to him and also to those parties who were present at and who raised such concerns at the meeting which he convened. The Master's report also sets out his understanding of the legal position and certain problems arising out of the order of his Lordship Mr Justice Vally.
7. Correctly the Master notes that he is a creature of statute and that he exercises only those powers conferred upon him. In no manner does the Master indicate that he will not or that he refuses to abide or act upon the order of Judge Vally. He does no more than express his difficulties and his concerns as to implementation of that order. He does so carefully by reference to legislation and to reported judgments of our courts.
8. In the result I cannot grant the order as prayed for in prayer 2.

THE MEETING:

9. Paragraph 3 onwards of the Notice of Motion is premised upon the existence of a breach by the Master and the need to remedy or rectify such breach. As I have already indicated that causa no longer exists because I do not find that there has been a breach.
10. However the Master's own report clearly indicates that there are difficulties in the implementation of the order of his Lordship Mr Justice Vally. There is clearly a need to clarify and to amend the order of Judge Vally so as to render the order capable of lawful implementation.
11. I am indebted to Mr Brickhill's, most courteous acknowledgment of the assistance given to the applicants in this matter by Advocate Botes who appeared for the

liquidators (First and second respondents). I note that the liquidators no longer oppose this application. I too am indebted to Advocate Botes. I note that Advocate Van Twis who appears for the creditors (who were not cited or joined), has also set out his concerns and has provided assistance, in the amendment of the order as prayed so as to ensure both lawful and efficacious clarification.

12. I certainly do not and cannot regard the order of Vally J as a nullity. This was argued by counsel for the Master. It remains a judgment of this court until it is set aside.

13. I appreciate that the proposed amendments will assist in ensuring exploration of all opportunities to possibly ensure continuation of the educational facility of CIDA. I need comment no further on the value which such organisation is considered to provide.

CONCLUSION:

14. In the result an order is made which essentially is the prayers set out in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Notice of Motion but with certain amendments. For the benefit of the typist and for those in court I will read out the entire order.

Order

1. The creditors of CIDA and any other concerned party or stakeholders may submit and prove their claims within 14 days from date of this order, in accordance with the provisions of Section 44 of the Insolvency Act 24 of 1936 as provided for in Sections 354(2) and 413 of the Act on a suitable date.
2. The parties who prove their claims as envisaged in paragraph 1 above may attend a general meeting of creditors in terms of Section 386(1)(d) or 314 of the Companies Act 71 of 1973, as read with Regulation 8(1) of the Winding Up and Judicial Management Regulations to the Companies Act at which the following shall be conducted:
 - a. First and second respondents shall table any offers received for the assets and/or business of CIDA;

- b. Creditors may give directions to the First and second respondents regarding the acceptance, with or without amendments, of any of the offers tabled at the meeting; and
 - c. Creditors may give directions to the First and second respondents to submit any of the offers tabled at the meeting to creditors for consideration in terms of Section 155 of the Companies Act 71 of 2008, in which event the First and second respondents shall be required forthwith to submit the relevant offer to creditors in terms of Section 155 and to convene the meetings of creditors as required by Section 155 for creditors to consider and vote for the acceptance or the rejection of the offer in terms of Section 155.
- 3. Prospective or interested buyers or investors may submit written offers to purchase CIDA's assets or to purchase CIDA as a going concern to the First and second respondents at least 7 days prior to the general meeting, envisaged in paragraph 2 above.
- 4. The First and second respondents are ordered to disseminate all offers or proposals which are received from interested buyers or investors, to the creditors of CIDA referred to in paragraph 2 above, at least 5 days prior to the general meeting.
- 5. The First and second respondents are ordered to disseminate this order to all known creditors of CIDA by email transmission within a period of 2 days of the date of this order, to inform CIDA's creditors of the existence of this order and to allow them the opportunity to prove their claims and to be present at the meeting envisaged in paragraph 3 above.
- 6. The third respondent is directed to convene the meeting forthwith and to place the advertisement convening the meeting in the soonest possible Government Gazette.
- 7. The meeting to convene by third respondent shall be provided over by Senior Counsel nominated by the third respondent, in terms of Regulation 8(1) of the Regulations.
- 8. The Counsel nominated by the third respondent is directed to file a written report with this Honourable Court within 72 (seventy two) hours of the date of the meeting and to take any further steps necessary to comply with this order. The following issue should be identified and addressed in the report:
 - a. All persons who attend the meeting;

- b. A summary of all claims that were proved;
 - c. A summary of all offers that were submitted by prospective buyers or investors to purchase the assets of CIDA or CIDA itself as a going concern;
 - d. The result of votes cast; and
 - e. The Master's proposals, if any, regarding the procedure that should be followed to implement or execute any offer that was accepted by CIDA's creditors at the meetings.
9. The costs occasioned by this application together with the costs incurred in respect of the general meeting, are costs in the administration of CIDA's estate, as provided for in Section 89 of the Insolvency Act 24 of 1936.
10. The First and second respondents shall be bound by the majority vote (in value) at the meeting and are directed to implement any directions made by such majority of creditors, in terms of paragraph 1 above within 7 (seven) days of such directions, save where such directions provided for a different period of time.
11. First and second respondents are interdicted from selling or alienating or disposing of any of CIDA's assets pending the meeting of creditors referred to in paragraph 1 herein.
12. Any concerned party is entitled to set the matter down (with or without supplementation of the founding papers) upon notice, as a matter of urgency to seek appropriate relief in respect of any part of this order.
13. Each party is liable for its own costs occasioned by this application. Accordingly I make no order in respect of the use of Senior Counsel or two Counsel in this matter.
14. In the result the draft order as amended by myself, and which I have initialled and dated 26th February 2015, is made an order of court.

DATED AT JOHANNESBURG MARCH 2015

SATCHWELL J

Date of hearing: 25th February 2015

Date of judgment: 26th February 2015

Appearances:

Applicants: Adv N Ferreira (LRC)

First and Second Respondents: Adv N Du Toit

Third Respondent: Adv J Suttner