



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

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: No

23/05/2023

CASE NO:5540/2022

In the matter between

LION OF AFRICA LIFE ASSURANCE CO. LTD

Applicant

and

N-e-FG FUND MANAGEMENT (PTY) LTD

First Respondent

ADRIAAN EVERT PRAKKE N.O.

Second Respondent

FINANCIAL SECTOR CONDUCT AUTHORITY

Third Respondent

COMPANIES AND INTELLECTUAL PROPERTIES

COMMISSION

Fourth Respondent

N-e-FG UMBRELLA RETIREMENT FUND (PENSION)

Fifth Respondent

N-e-FG UMBRELLA RETIREMENT FUND (PROVIDENT)

Sixth Respondent

OPTIMAL RETIREMENT ANNUITY FUND

Seventh Respondent

OPTIMAL PENSION PRESERVATION FUND

Eighth Respondent

OPTIMAL PROVIDENT PRESERVATION

Ninth Respondent

CLASS OF ANNUITANTS

Tenth Respondent

Neutral Citation: *Lion of Africa Life Assurance Co. Ltd v N-e-FG Fund Management (Pty) LTD & Others* (Case No. 5540/2022) [2023] ZAGPJHC 550 (23 May 2023)

REASONS

YACOOB J:

1. The first respondent was provisionally liquidated on 4 March 2022, and a rule *nisi* was issued. The rule was extended twice, and the intervening parties were admitted and granted leave to file papers, before the matter came before me on 09 November 2022. The intervening parties are now the fifth to tenth respondents.
2. I granted an order confirming the rule, placing the first respondent in final winding-up, and that costs be costs in the winding up, save for costs occasioned by the fifth to tenth respondents, the extension of the rule on 22 August 2022 and the arguing of the application on 09 November, which were to be borne by the fifth to ninth respondents. The fifth to ninth respondents requested written reasons for the order.
3. The night before the hearing, the fifth to tenth respondents uploaded over 250 pages of documents, not under cover of an affidavit, not commissioned, and with no application for condonation. It bears emphasizing that these are motion proceedings, that evidence is adduced under oath by affidavit, that there are ordinarily three sets of affidavits filed, well before the matter is ripe for hearing, and that no further affidavits may be filed without the condonation of the court.
4. Obviously if a case is made out that there have been new developments which the court needs to consider, a court is likely to grant an application to admit a further affidavit. However, in this case, not only was there no application to admit a further affidavit, there was no affidavit.
5. I declined to consider the additional documents. Mr Guldenpfennig then sought permission to make a condonation application from the Bar, but in the absence of

a proper affidavit confirming and explaining the documents uploaded, there would be no prospect of such an application succeeding.

6. Mr Guldenpfennig then submitted that his clients are not parties to this application, which is clearly not the case, since their application to intervene was granted.
7. It is also worth noting that the fifth to tenth respondents failed to file any heads of argument or practice note.
8. The first and second respondents did not oppose the confirmation of the rule *nisi*. Mr Badenhorst indicated that, although they do not oppose and he is only on a watching brief, his clients aligned themselves with the fifth to tenth respondents' position.
9. The submissions for the fifth to tenth respondents were that there was a "lifeboat" which would obviate the need for the liquidation. They requested the extension of the rule. However, since they did not provide any evidence of that "lifeboat", their submissions were rejected.
10. The first respondent has lost its licence and is unable to trade. There is no indication that the licence may be restored. Financial statements appear to have been falsified and money was diverted from where it was supposed to be invested. There is still no indication of where exactly the "diverted" money is. There is a report from the provisional liquidators, confirmed by affidavit, which shows that there is further conduct that requires investigation.
11. It was clear that there was no basis on which not to confirm the rule and place the first respondent in final liquidation.

12. As far as costs were concerned, the matter was postponed and the rule extended on 22 August 2022 because of the sudden appearance of the fifth to tenth respondents seeking admission. The applicants agreed to them being joined simply to avoid further delays. Nothing has been added to the matter by their involvement, and the way in which they have conducted themselves in this court, both on 22 August when they appeared at the last minute without notice and on 9 November when they did not file heads of argument or a practice note and uploaded hundreds of pages of documents with no explanation or affidavit, leaves much to be desired.

13. I was therefore satisfied that the fifth to ninth respondents should bear the costs occasioned by their intervention, including the extension of the rule and everything that occurred thereafter, because had it not been for their intervention the rule would have been confirmed on 22 August.



S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the applicant:

I Green SC and L Acker

Instructed by:

Clyde & Co Inc

For the first and second respondents:

MA Badenhorst SC and JA Kloppe

Instructed by:

Geyser Attorneys

For the intervening parties:

S Guldenpfennig

Instructed by:

Eastes Incorporated

Date of hearing:

09 November 2022

Date of judgment:

23 May 2023