



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 41680/2016

In the matter between:

CHARLES FREDRICK MATTHEW

22/9/2016
Applicants

MATHILDA LOUISA MATTHEWA

JUDGMENT

MBONGWE AJ;

- [1] The applicants, a couple married in community of property, seek the following order: that the surrender of the estate of the Applicant be accepted and the estate be placed under sequestration in the hands of the Master of The High Court.
- [2] As the basis for this application, the applicants state thus in paragraph 6 of the founding affidavit

“6. Ons het as gevolg van omstandighede buite ons beheer en sonder enige bedrog aan ons kant, insolvent geraak en ons is inderdaad tans insolvent.”

The deponent goes further to allege that he is the breadwinner in his family and that his wife is unemployed. He ascribes his financial woes to the fact that "my werkgewer (het) my werkure verminder nawee moeilike finansiele omstandighede."

- [3] In my view, ordinarily the applicant's would have made out a case deserving of the order they seek at this stage for it is a pre requisite of the law that the unfortunate circumstances the applicants find themselves in not be caused by their own doings, including fraudulent ones.
- [4] The turning and adversarial fact in this application appears on paragraph 6.1 where the applicant states: "Ons het verkeerdlike begin om die te kort tussen ons uitgawes en inkomste te financier met kort termynlenings en ander kredit produkte. Dit het veroorsaak dat ons al hoe verder en verder n moeilikheid beland het en ons uitgawes gegroei het en net elke maand meer onbekostigbaar geword het."
- [5] In my view , the deponent was already aware of looming financial challenges when his working hours were reduced. A reasonable man in his circumstances would have adjusted his life style and aligned it with his earnings. In this case the deponent admits that he incorrectly sort short term loans and other credit facilities. It is important to state that the National Credit Act, 2005 requires that credit providers carefully assess the financial situation of a credit seeker with specific reference to his ability to repay the debt. To ensure compliance, the Act defines as reckless lending any case where credit should never have been given had a proper evaluation of the loan seeker been done.
- [6] That the applicant, despite the changes in the deponent's earnings, still managed to raise loans and credits can only mean one of two or even both possibilities: the credit lender could have been reckless, in which event the applicants have defence or, the applicants may have given misinformation to the lender regarding their financial status and this induced the granting of the credit. In the latter case it is not open to the applicants to submit that the unbearable financial difficulties they find themselves in were not of their own making, be it fraudulent or otherwise.

[7] The present applicants had full knowledge of the fact that they had no alternative means of repaying the loans they created, yet went on to obtain the loans. They are, therefore, the authors of their misfortune.

[8] Resulting from the findings in this judgment, the following order is made:

The application is dismissed.

A handwritten signature in black ink, appearing to read 'M. Mbongwe', is written over a horizontal line.

M. MBONGWE, AJ

ACTING JUDGE OF THE GAUTENG HIGH COURT