IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 7163/14 (& 21236/2014)

In the matter between:

MOHAMED ISMAIL PATEL Applicant

And

MASTER OF THE HIGH COURT, WESTERN CAPE DIVISION, CAPE TOWN 1st Respondent

BAREND PIETERSEN N.O. 2nd Respondent

DANIEL TERBLANCHE N.O. 3rd Respondent

ADV C S STEWART 4th Respondent

FIRST NATIONAL BANK 5th Respondent

Coram: Cloete, J
Dates of Hearing: 3 March 2015
Date of Judgment: 15 May 2015

JUDGMENT

CLOETE, J

INTRODUCTION

[1] This is a review of the decision of the first respondent ("the Master") to authorise an enquiry in terms of sections 417 and 418 of the Companies Act, 61 of 1973 ("the

1973 Act") for the purpose of interrogating the applicant , who is one of three joint liquidators of Crimson Moon Investments 32 CC [in liquidation] ("Crimson Moon"). The applicant was duly appointed by the Master as a joint liquidator along with the second and third respondents on 17 February 2011 after Crimson Moon was placed in final liquidation on 3 December 2010.

[2] It is common cause that the applicant has been solely responsible for the day to day administration of Crimson Moon since its liquidation. It is also common cause that the enquiry was convened by the Master at the instance of the fifth respondent ("the bank") which is a disgruntled proven creditor of Crimson Moon. The fourth respondent has been appointed by the Master as the Commissioner of the envisaged enquiry.

[3] In terms of an order granted by agreement on 5 December 2014, the applicant persists only in his personal capacity in seeking to set aside the decision of the Master in terms of section 151 of the Insolvency Act, which expressly provides that "any person" aggrieved by any decision of the Master may bring it under review by the court. In the alternative, the applicant seeks the review of the Master's decision in terms of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). He also challenges the validity of the summons issued and served upon him by the Commissioner to appear at the enquiry in order to be interrogated. Only the bank opposes the relief sought.

[4] According to an interim report filed by the Commissioner the bank approached the Master to convene the enquiry because of certain concerns which it had with the applicant's administration of Crimson Moon. Regrettably, although the Master is a party to these proceedings, was served with a copy of the review application and has a direct

interest in the relief sought, he has not seen fit to take the court into his confidence by providing reasons for his decision to convene such an enquiry for the purpose of interrogating the applicant.

[5] It is unnecessary to consider the merits or otherwise of the bank's complaints which led it to approach the Master, because the parties are *ad idem* that what lies at the heart of the dispute is whether, as a matter of law, an enquiry can be convened in terms of sections 417 and 418 of the 1973 Act for the purpose of interrogating a liquidator of an insolvent company about his conduct in administering that company post liquidation. The issue is thus the proper interpretation of the provisions of sections 417 as read with 418, and section 381 of the 1973 Act.

[6] Also in issue was whether the applicant's failure to apply for condonation when launching the review application five weeks after the 180 day period stipulated in section 7(1) of PAJA expired should have resulted in its dismissal on that ground alone. However, the bank now accepts that, given the decision in *Firstrand Bank Limited (t/a Rand Merchant Bank) & Another v Master of the High Court, Cape Town & Others* 2014 (2) SA 527 (WCC) in particular at para [38], this court is not bound to consider the merits of the review application in terms of PAJA only. It may also do so in terms of the legality principle. As was held in *Fedsure Life Assurance Limited & Others v Greater Johannesburg Transitional Metropolitan Council & Others* 1999 (1) SA 374 (CC) at para [56]:

> "… it is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law – to the extent at least that it expresses the principle of legality – is generally understood to be a fundamental principle of constitutional law."

[see also *President of the Republic of South Africa & Others v South African Rugby Football Union & Others* 2000 (1) SA 1 (CC) at para [148]; *Albutt v Centre for the Study of Violence & Reconciliation & Others* 2010 (3) SA 293 (CC) at para [49].]

RELEVANT STATUTORY PROVISIONS

[7] Section 381 of the 1973 Act provides as follows:

> "**381. Control of Master over liquidators.** – (1) The Master shall take cognisance of the conduct of liquidators and shall, if he has reason to believe that a liquidator is not faithfully performing his duties and duly observing all the requirements imposed on him by any law or otherwise with respect to the performance of his duties, or if any complaint is made to him by any creditor, member or contributory in regard thereto, enquire into the matter and take such action thereanent as he may think expedient.
>
> (2) The Master may at any time require any liquidator to answer any enquiry in relation to any winding-up in which such liquidator is engaged, and may, if he thinks fit, examine such liquidator or any other person on oath concerning the winding-up.
>
> (3) The Master may at any time appoint a person to investigate the books and vouchers of a liquidator.
>
> (4) The Court may, upon the application of the Master, order that any costs reasonably incurred by him in performing his duties under this section be paid out of the assets of the company or by the liquidator *de bonis propriis.*

(5) Any expenses incurred by the Master in carrying out any provision of this section shall, unless the Court otherwise orders, be regarded as part of the costs of the winding-up of that company."

[8] Section 417(1) of the same Act stipulates that:

"**417. Summoning and examination of persons as to affairs of company.** – (1) In any winding-up of a company unable to pay its debts, the Master or the Court may, at any time after a winding-up order has been made, summon before him or it any director or officer of the company or person known or suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company."

[9] Section 418 of the same Act deals with the appointment of, and examination by, commissioners. Section 418(1)(a) provides that:

"**418. Examination by commissioners.** – (1) (a) Every magistrate and every other person appointed for the purpose by the Master or the Court shall be a commissioner for the purpose of taking evidence or holding any enquiry under this Act in connection with the winding-up of any company."

THE APPLICANT'S CASE

[10] It is the applicant's case that section 417(1) of the 1973 Act cannot apply to him because he personally is not a "director or officer of the company or person suspected to have in his possession any property of the company or believed to be indebted to the company, or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company".

[11] In a related interdict application the bank applied to be joined in these proceedings on the basis that it is a creditor of Crimson Moon and that:

> "4.2 The bank does have major concerns with the administration of the liquidated estate of Crimson, and therefore applied to the Master of the High Court, CAPE TOWN for the convening of an inquiry (sic) through the bank's attorneys … in terms of Section 417 read with Section 418 of the Companies Act, Act 61 of 1973 …"

[12] In essence, the bank's complaints relate to the delay in finalising the liquidation of Crimson Moon's estate; that so-called "interim dividends" were not paid with the consequence that the security bond has not reduced; that the proceeds of the sale of the immovable property were not deposited into an interest bearing account; and that VAT was not collected and paid over to SARS. The applicant points out that all of these complaints relate to the *post-liquidation* administration by the liquidators, and in particular, the applicant in his capacity as such; and *not* to the affairs of Crimson Moon itself which, in turn, are relevant to the winding-up process. Put differently, it is not Crimson Moon's affairs that the bank wishes to investigate, but the affairs of the liquidation itself.

[13] It is thus the applicant's contention that, instead of convening a section 417 enquiry, the Master should have invoked the provisions of section 381 of the 1973 Act, the purpose of which is described in *Henochsberg on the Companies Act* Vol 1 [Issue 32] at 808 (2) as follows:

> "[Section 381(1)] imposes duties on the Master and to that end arms him with the power of enquiry and the power to take such action as he thinks expedient; these duties arise if he has reason to believe that the liquidator is not faithfully performing his duties and duly observing all requirements imposed upon him by the Act or any other law or by resolutions of creditors or members (or contributories) or directions of the Master himself or the Court; or if a complaint is made to him by any creditor or member (or contributory): thus, if a complaint is made by any of these the Master must exercise such powers. In addition, the section vests in the Master the powers under sub-ss (2) and (3) which he may exercise unilaterally and at any time. The intention is clearly that the Master should maintain overall control over the winding-up and ensure that it is properly administered."

THE BANK'S CASE

[14] The bank agrees that it requested the Master to convene the section 417 enquiry because of concerns which it had with the administration of the insolvent company by the joint liquidators and the applicant in particular.

[15] It also accepts that sections 417 and 418 provides statutory mechanisms for the proper investigation into the affairs of a company and that, in consequence of information revealed at an enquiry, offences or irregularities, if any, and dishonest conduct in the affairs of the company may be exposed. The information obtained may also lead to the recovery of assets or monies for the benefit of the company and its creditors.

[16] The bank contends however that it was clearly the intention of the legislature that the powers conferred on the Master in terms of section 381 *include* the power to invoke sections 417 and 418 in order to enable the Master to comply with the statutory

obligations imposed upon him by section 381. Put differently, it is the bank's submission that section 417 as read with section 418 supplement section 381 rather than each having separate and distinct purposes as is contended by the applicant.

[17] In support of this argument, the bank relies on *Henochsberg* at 891 where the learned author writes:

> "Notwithstanding Power NO v Bieber 1955 (1) SA 490 (W) at 502, it is respectfully submitted that the liquidator of the company may also be summoned in his capacity as such: on the ordinary meaning of the language, the 'trade', 'dealings' or 'affairs' contemplated are those existing before or after the inception of the winding-up, and (notwithstanding the conclusion in *Standard Bank of SA Ltd v Master of the High Court & Others* [2006] JOL 18517 (E) at para 89 and the cases referred to therein at paras 87 and 88) no reason occurs to one why the Legislature should intend the liquidator's conduct to be outside the Court's or the Master's power of investigation, notwithstanding the latter's powers under s381 *(cf Venter v Williams* 1982 (2) SA 310 (N) at 316). It is submitted that the correct position is not that an examination of the liquidator's conduct in the winding-up or issues relating to the liquidation process are as such outside the ambit of the matters contemplated in s 417, but that because of powers accorded to a liquidator by s 381, the Court, and particularly the Master, would summon the liquidator only in exceptional circumstances."

[18] The bank submits that the Master was thus correct to invoke section 417 in order to convene the enquiry. The applicant is involved in the administration of the liquidation and can therefore furnish information concerning such administration at the enquiry. The Commissioner himself will not make any finding. The sole purpose of the

enquiry will be to elicit information to which the bank is entitled as a proven creditor of Crimson Moon.

[19] The bank also argues that support for its view is to be found in a line of cases which it contends have held that section 152 of the Insolvency Act is equivalent in its ambit and application to section 417 and 418 of the 1973 Act and that therefore the applicant can be subjected to interrogation at a section 417 enquiry. Section 152(2) provides that:

> "(2) If at any time after the sequestration of the estate of a debtor and before his rehabilitation, the Master is of the opinion that the insolvent or the trustee of that estate or any other person is able to give any information which the Master considers desirable to obtain, concerning the insolvent, or concerning his estate or the administration of the estate or concerning any claim or demand made against the estate, he may by notice in writing delivered to the insolvent or the trustee or such other person summon him to appear before the Master or before a magistrate or an officer in the public service mentioned in such notice, at the place and on the date and hour stated in such notice, and to furnish the Master or other officer before whom he is summoned to appear with all the information within his knowledge, concerning the insolvent or concerning the insolvent's estate or the administration of the estate."

DISCUSSION

[20] In *Poswa v MEC for Economic Affairs, Environment and Tourism, Eastern Cape* 2001 (3) SA 582 (SCA) the Supreme Court of Appeal held at paras [10] – [11] as follows:

"[10] The literal meaning of an Act (in the sense of strict literalism) is not always the true one, but escaping its operation is usually not easy, most often impossible, for:

'The cardinal rule of construction of a statute is to endeavour to arrive at the intention of the lawgiver from the language employed in the enactment. . . . in construing a provision of an Act of Parliament the plain meaning of its language must be adopted unless it leads to some absurdity, inconsistency, hardship or anomaly which from a consideration of the enactment as a whole a court of law is satisfied the Legislature could not have intended.'

*(*Per *Stratford JA in* Bhyat v Commissioner for Immigration *1932 AD 125 at 129). (Emphasis supplied.)*

[11] The effect of this formulation is that the court does not impose its notion of what is absurd on the legislature's judgment as to what is fitting, but uses absurdity as a means of divining what the legislature could not have intended and therefore did not intend, thus arriving at what it did actually intend."

[21] In *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para [18] it was held that:

> "The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and

> guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

[22] Applying these principles the following main distinctions emerge between section 381 on the one hand, and section 417 as read with section 418, on the other.

[23] The first distinction is that section 381, on its plain wording, is designed for the specific purpose of not only empowering, but also obliging the Master to monitor and exercise proper control over the conduct of all liquidators in the exercise of their duties and functions. The Master exercises the powers conferred on him by section 381 irrespective of the reason for the winding-up. Section 417 on the other hand, applies only to a company which is wound-up because it is unable to pay its debts, and to no other company in liquidation.

[24] The second distinction is that in terms of section 381 the Master may, in his sole discretion, examine a liquidator on oath "concerning the winding-up" and may further appoint an independent person to investigate the liquidator's books and vouchers in relation to the winding-up. In contradistinction section 417 enables the Master or the Court to summon specific categories of persons to give information "concerning the trade, dealings, affairs or property of the company". Accordingly, the purpose of section

381 is to furnish information concerning the winding-up, whereas the purpose of section 417 is to provide information concerning the company itself which is being wound-up.

[25] Section 418(1)(a), in turn, refers only to the examination "by commissioners" for the purpose of taking evidence or holding "any enquiry under this Act in connection with the winding-up of any company". On the other hand, section 381 does not refer at all to the appointment of a "commissioner" to fulfil, or even supplement, the Master's role as overseer of all liquidators in the proper fulfilment of their duties and functions.

[26] Accordingly, when regard is had to the plain language of these provisions, the context in which they appear, and the apparent purposes to which they are directed, it appears clear that the intention of the legislature was to exclude from the ambit of section 417 as read with section 418 the convening of an enquiry for the sole purpose of having a commissioner interrogate a liquidator about the performance of his duties and functions in the management and administration of the winding-up of a liquidated company.

[27] This interpretation will not lead to some absurdity, inconsistency, hardship or anomaly, given that section 381 on its own provides a perfectly workable and tailor-made remedy for the bank, which is at liberty to approach the Master to apply his mind to its complaint, and to take whatever action he deems necessary in terms of the wide powers conferred on him under that section.

[28] It bears mentioning that in terms of section 384(2) of the 1973 Act, the Master is also empowered to penalise the applicant by disallowing or reducing his remuneration

on account of any failure or delay on his part in the discharge of his duties. Furthermore, the bank has the additional remedy of taking any decision made by the Master under section 381 and/or section 384(2) on review if it is dissatisfied with the outcome of that process.

[29] Support for this interpretation is to be found in the following. In *Venter v Williams* 1982 (2) SA 310 (N) at 316 C-F it was stated that:

> "Mr *Lawrence* argued that a liquidator of a company could not be examined as to his conduct *qua* liquidator and that, regard being had to the provisions of s 439 of the Companies Act, a similar principle should be applicable in the case of a judicial manager. In support of this submission he relied upon *Bieber's* case *supra* at 502 and on the case of *Scott-Hayward NO & Another NO v Queensland Insurance Co Ltd & Another* 1961 (4) SA 540 (W) at 543. I am not sure that either of those two cases go to the extent of saying that a liquidator of a company can never be questioned or interrogated as to his conduct *qua* liquidator even where the enquiry relates to the company of which he is a liquidator. As I understand the remarks made in both those cases, they are to the effect that such an enquiry would not normally be allowed, since a liquidator is accountable to the Master for his conduct and the Master is able in other ways, for example, by invoking the provisions of s 381 of the Companies Act, to obtain information concerning the conduct of the liquidator. It is, however, unnecessary to pursue this line of thought any further."

[30] The remarks in *Venter,* which were obviously *obiter,* are contextualised by the later decisions of the Constitutional Court in *Ferreira v Levin NO & Others; Vryenhoek & Others v Powell NO & Others* 1996 (1) SA 984 (CC) and *Bernstein & Others v Bester & Others NNO* 1996 (2) SA 751 (CC). At paras [15] and [16] of *Bernstein,* the court

summarised the conclusions reached in *Ferreirra v Levin,* and it is worthwhile to quote the aforementioned paragraphs in full:

"[15] Some of the major statutory duties of the liquidator in any winding-up are:

(a) to proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable;

(b) to give the Master such information and generally such aid as may be requisite for enabling that officer to perform his or her duties under the Act;

(c) to examine the affairs and transactions of the company before its winding-up in order to ascertain -

(i) whether any of the directors and officers or past directors and officers of the company have contravened or appear to have contravened any provision of the Act or have committed or appear to have committed any other offence; and

(ii) in respect of any of the persons referred to in subpara (i), whether there are or appear to be any grounds for an order by the Court under s 219 of the Act disqualifying a director from office as such;

(d) except in the case of a member's voluntary winding-up, to report to the general meeting of creditors and contributories of the company the causes of the company's failure, if it has failed;

(e) if the liquidator's report contains particulars of contraventions or offences committed or suspected to have been committed or of any of the grounds mentioned in (c) above, the Master must transmit a copy of the report to the Attorney-General.

[16] The enquiry under ss 417 and 418 has many objectives.

(a) It is undoubtedly meant to assist liquidators in discharging these abovementioned duties so that they can determine the most advantageous course to adopt in regard to the liquidation of the company.

(b) In particular it is aimed at achieving the primary goal of liquidators, namely to determine what the assets and liabilities of the company are, to recover the assets and to pay the liabilities and to do so in a way which will best serve the interests of the company's creditors.

(c) Liquidators have a duty to enquire into the company's affairs.

(d) This is as much one of their functions as reducing the assets of the company into their possession and dealing with them in the prescribed manner, and is an ancillary power in order to recover properly the company's assets.

(e) It is only by conducting such enquiries that liquidators can:

(i) determine what the assets and who the creditors and contributories of the company are;

(ii) properly investigate doubtful claims against outsiders before pursuing them, as well as claims against the company before pursuing them.

(f) It is permissible for the interrogation to be directed exclusively at the general credibility of an examinee, where the testing of such person's veracity is necessary in order to decide whether to embark on a trial to obtain what is due to the company being wound up.

(g) Not infrequently the very persons who are responsible for the mismanagement of and depradations on the company are the only persons who have knowledge of the workings of the company prior to liquidation (such as directors, other officers and certain outsiders working in collaboration with the former) and are, for this very reason, reluctant to assist the liquidator voluntarily. In these circumstances it is in the interest of creditors and the public generally to compel such persons to assist.

(h) The interrogation is essential to enable the liquidator, who most frequently comes into the company with no previous knowledge and finds that the company's records are missing or defective, to get sufficient information to reconstitute the state of knowledge that the company should possess; such information is not limited to documents because it is almost inevitable that there will be transactions which are difficult to discover or understand from the written materials of the company alone.

(i) The liquidator must, in such circumstances, be enabled to put the affairs of the company in order and to carry out the liquidation in all its varying aspects.

(j) The interrogation may be necessary in order to enable the liquidator, who thinks that he may be under a duty to recover something from an officer or employee of a company, or even from an outsider concerned with the company's affairs, to discover as swiftly, easily and inexpensively as possible the facts surrounding any such possible claim.

(k) There is a responsibility on those who use companies to raise money from the public and to conduct business on the basis of limited liability to account to shareholders and creditors for the failure of the business, if the company goes insolvent. Giving evidence at a s 417 enquiry is part of this responsibility. This responsibility is not limited to officers of the company, in the strict sense, but extends also to the auditors of the company."

[31] The purpose of sections 417 and 418 has thus conclusively been found by the Constitutional Court to be to assist liquidators in discharging their duties as such. It must therefore be so that it is inappropriate for the self-same statutory provisions to be invoked at the instance of an aggrieved creditor (albeit via the Master) to subject liquidators to interrogation about the manner in which they have exercised their duties

and functions. To my mind, this is a further reason why the legislature saw it fit to enact section 381. To place on sections 417 and 418 the construction contended for by the bank could, in principle at least, render a liquidator vulnerable to interrogation at the instance of a creditor who may have an agenda unrelated to the interests of the company in liquidation and/or the body of creditors as a whole.

[32] As previously stated, the bank relies on a line of cases relating to section 152 of the Insolvency Act in support of its argument that the powers conferred on the Master in terms of section 381 are supplemented by sections 417 and 418, because, so it is contended, these cases have held that the latter sections are equivalent in ambit to section 152.

[33] The first is *Nedcor Bank Limited & Others v The Master of the High Court, Pretoria & Others* (2) [2002] ZASCA 54, where the only question to be determined was whether section 152 of the Insolvency Act, which regulates the holding of a private enquiry in the administration of an insolvent's estate, applied to close corporations in liquidation, given that section 66 of the Close Corporations Act, 69 of 1984 expressly excluded sections 417 and 418 of the 1973 Act from its operation. The court *a quo* had found that because the Close Corporations Act was silent on the holding of the equivalent of a section 417 enquiry, section 152 of the Insolvency Act applied by virtue of section 339 of the 1973 Act, which deals with the general application of the Insolvency Act to a company unable to pay its debts in respect of any matter not specially provided for by the 1973 Act.

[34] At para [7] the Supreme Court of Appeal held that:

> "Counsel for the appellant could suggest no reason why a close corporation should be treated differently from an individual who is sequestrated or from a company being wound up. In both these instances, provision is made for confidential enquiries. Assuming that the complexity of the procedures set out in ss 417 and 418 of the Companies Act is not warranted in respect of a close corporation, and for that reason the legislature excluded their application, it seems obvious that the simpler process entailed in s 152 enquiries, designed for individuals, should have been made applicable to close corporations."

[35] In my view, the aforementioned decision is not authority for the bank's contention. The very reason why the Supreme Court of Appeal found that section 152 of the Insolvency Act applied to close corporations is because there was no provision equivalent to sections 417 and 418 in the Close Corporations Act. The court expressly referred to the fact that separate provisions exist in both the Insolvency Act and the 1973 Act, and thus applied a purposive interpretation to make section 152 of the Insolvency Act applicable to close corporations.

[36] The second case relied upon by the bank is *Podlas v Cohen & Bryden NNO & Others* 1994 (4) SA 662 (TPD). This case dealt with an entirely different issue, namely, whether the applicant was entitled to an interdict to prevent a section 152 enquiry from proceeding pending a challenge to the constitutional validity of that section. It is thus wholly distinguishable.

[37] The third case is *Nedbank Limited v Master of the High Court, Witwatersrand Local Division, & Others* 2009 (3) SA 403 (WLD). Again, that case is distinguishable from the present. It related to whether or not the Master's decision to convene a section 417 enquiry amounted to administrative action for purposes of PAJA. The court found that it did not. The paragraph relied upon by the bank in heads of argument filed on its behalf, namely, para [42] is merely a reference to *Podlas* and thus takes the matter no further.

[38] The last case relied upon by the bank is that of Blignault J in *Firstrand Bank Limited* to which I referred earlier in this judgment. Again, it is not authority for the bank's contention. Blignault J was not called upon to deal with this issue at all, and in any event came to the opposite conclusion from the court in the *Nedbank Limited* decision to which I have just referred.

CONCLUSION

[39] Having regard to the aforegoing, I am persuaded that the Master made an error of law in deciding to convene a section 417 enquiry for purposes of interrogating the applicant who, on any version, could only have furnished information in his capacity as a joint liquidator of Crimson Moon. As such, the Master's decision falls to be set aside under the principle of legality.

[40] In the result the following order is made:

(1) The first respondent's decision to convene an enquiry in terms of sections 417 and 418, taken on 11 February 2014, as well as all

process arising from such enquiry, are hereby reviewed and set aside.

(2) The fifth respondent shall pay the applicant's costs in this application as well as in the related interdict application on the scale as between party and party, and including all reserved costs orders.

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J I Cloete
Judge of the High Court