IN THE HIGH COURT OF SWAZILAND

(HELD AT MBABANE)

CASE NO.: 2635/06

In the matter between

KOBLA QUASHE N.O. **1st Applicant**
CENTRAL CO-OPERATIVE UNION OF SWAZILAND LIMITED **2nd Applicant**

and

CRANE FEEDS (PTY) LTD. **1st Respondent**
FARM SERVICES (PTY) LTD. **2nd Respondent**
MARTIN AKKER N.O. **3rd Respondent**

MATTER HEARD ON 4th, 14th, 15th and 16th AUGUST 2006
JUDGMENT DELIVERED ON: 23rd AUGUST 2006

CORAM: P.Z. EBERSOHN J.

FOR APPLICANT: **Me. T. HLABANGANA/ADV. L, MAZIYA**
FOR **1st** AND **2nd RESPONDENTS:** ADV. M. **VAN DER** WALT
Instructed by Att. RODRIGUES

JUDGMENT

EBERSOHN J:

[1] In this matter the prayers read as follows:

> **" 1 . That the usual forms and service relating to the institution of proceedings be dispensed with and that this matter be heard as one of urgency.**
>
> **2. Compelling the Respondents to release and deliver all goods attached under Case No. 1755/2006 and 1758/2006 with immediate effect to the 1st Applicant.**
>
> **3. Costs of suit in the event Application (sic) is opposed.**
>
> **4. Further and/or alternative relief.**
>
> **5. That order 2 operate as an interim rehef(sic) pending the finalisation of the matter."**

Most amazingly and glaringly so there was the clear mistake in that there was no prayer to stay the sale in execution which was to take place cn the 4th August 2006 and which the applicants were aware of.

[2] The 1st applicant is the liquidator of the 2nd applicant.

[3] The 1st and 2nd respondents are creditors of the 2nd applicant and obtained judgments against the 2nd applicant and thereafter caused attachments of assets of the 2nd applicant to be made and a sale in execution of these assets was advertised to take place at 10:00 on Friday the 4th August 2006.

[4J 1'he Commissioner of Co-operative Societies purporting to act in terms of section 100(l)(d) of the Co-operative Societies Act, Act no. 5 of 2003,("the Act"), however, issued a notice and "declared" the 2nd applicant "for liquidation" on the 6th July 2006 and appointed the 1st applicant as liquidator thereof.

[5] After his appointment the 1st applicant on the 18th July 2006 addressed a letter to Rodrigues & Associates, the attorneys of the 1st and 2nd respondents, calling upon the applicants to deliver to him certain assets which were attached by the Deputy Sheriff, the 3rd respondent, within a period of 24 hours.

[6] On the 19th July 2006 Rodrigues & Associates responded by informing the 1st applicant that **"we are not liable in law to comply with the request."**

[7] The notice of the sale in execution was published in the press on the 21st July 2006.

[8] The applicants then apparently instructed attorneys Hlabangana & Associates to bring an urgent application in the High Court which process was issued by the office of the Registrar on die 24th July 2006 and it was served on Rodrigues & Associates on the same day.

[9] Rodrigues &. Associates filed a notice of opposition on the 24th July 2006 and answering affidavits on the 25th July 2006.

[10] As 1 have mentioned already there was no prayer that the sale in execution be stayed. As grounds of urgency the applicant stated in paragraph 21 of the founding affidavit the following:

> **"21. The matter is urgent by virtue of the fact that:**
>
> **i) I am unable to carry out my mandate fully, as I am not in**

possession of all assets, thus I cannot make a comprehensive report nor *assess* the value of the goods in totality.

ii) Everyday with each day lapsing, the goods in the 3rd respondent's custody are attracting high storage costs, which costs at the end of the day will be borne by the 2nd applicant, thus dwindling the proceeds to be realised from the liquidation.

iii) The 1st and 2nd Respondents seek to have an unfair advantage over stock and motor vehicles to the detriment of all other creditors. Their refusal to deliver the goods to me indicate an attitude which could prove detrimental in that they can proceed without regard to any one and sell the goods to the prejudice of other creditors as evidenced by the Notice of Sale attached hereto marked "G".

iv) I need urgently do stocktaking on all stock in all of the 2nd Applicant's outlets before the employees break in and loot same."

No mention is made of the date of die sale and one is to get that from reading annexure "G" itself.

[11] It is to be noted that besides the many grammatical errors in the founding papers the applicants attached to the founding papers a copy of the 3rd respondent's inventory of goods attached by him, consisting of several pages, which this Court could only partially read as every page thereof was smudged.

[12] No proof of Swazi Bank's alleged ownership of the attached goods was provided and the only reference to that may be the words **"2. Charge over stock held valued at** E7 **million"** which appears in a letter by Swazi Bank dated the 22nd February 2006 addressed to the 2nd applicant but which letter was not signed by the 2nd applicant. One would have expected that at least a copy of the instrument transferring ownership of the goods to Swazi Bank would have been attached in compliance with the provisions of rule 6 of the High Court which requires that the necessary allegations must be made in the founding affidavit and the supporting documents be attached thereto. (See **Plascon Evans Paints Ltd. v Van Riebeeck Paints (Pty) Ltd.** 1984 (3) SA 623 (A) at 634E-635C)

[13] The 1st and 2nd respondents filed answering papers wherein they raised three point in limine.

[14] The first point in limine being that this Court did not have the requisite jurisdiction to hear the matter and they obviously relied on section 104 of the Act, which reads as follows:

> **"104. Save in so far as expressly provided in this Act no court of law shall have any jurisdiction in respect of any matter concerned with the winding-up of a co-operative."**

Relying on the same argument raised with regard to the first point in limine the second point in limine was to the effect that the applicants disclosed no cause of action against the 1st and 2nd applicants.

[15] The third point in limine was that the applicants failed to comply with the requirements of High Court Rule 6(25)(a) in that it was not explicitly set out in the applicants' founding papers that the applicants would not be afforded substantial redress at a hearing in due course, nor have any grounds in support thereof been advanced. This is a well known principle in the courts.

[16] The 1st and 2nd respondent filed a supplementary answering affidavit wherein they challenged that the 2nd applicant was properly liquidated as section 100(l)(d) of the Act required that three-fourths of the members of the co-operative must consent in writing to the liquidation before the Commissioner may declare the co-operative for liquidation and they did not believe that three-fourths of the members did consent in writing.

[17] The applicants, for a reason which was at that stage not clear, just ignored the question of die three-fourths written consent and did not respond to the challenge in their replying affidavit.

[18] It appears that some other creditors of the 2nd applicant on the 3rd August 2006 tried to intervene in the matter before Mamba J. but as dieir notice of motion was not in order the application was withdrawn but proceeded with again on the 14th August 2006 whereafter it was again abandoned.

[19| Earlier this year the judges of this Court caused draft practice rules Lo be compiled. These rules were meant to streamline the proceedings here at the High Court. One of the proposed rules was that the Acting Chief Justice or a Judge designated by him was to take control over and allocate matters which could not be heard by the duty Judge who dealt with urgent matters, to judges who happened to be available. These draft practice rules were forwarded to the Law Society who in

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writing objected to the Acting Chief Justice or a designated Judge allocating such cases to the available Judges and they insisted that it be handled by the Registrar of the High Court. The position thus remained that the Registrar allocates cases to Judges. This procedure is causing problems with the smooth flow of cases in this Court. At all the other Courts I have been in Southern Africa the Senior Judge allocates cases to the Judges to hear and the Senior Judge is in constant control of the situation and knows exactly how far every case has progressed.

[20] It must be pointed out here that the late Registrar of the High Court, for some reason or another, perhaps because this Court was running with one Judge short, one Judge being out of the country doing duty in another country, did not indicate on the duty list for the week commencing Monday the 31st July 2006 which judge was to be the duty judge who was supposed to hear urgent applications during that week.

[21] On the 31st July 2006, at about 9:50, and just as I was summoned by die police officer who was to escort me to Court to commence with the trial which was allocated to mc in terms of the roll which was published at the commencement of the third term, the acting Registrar and several counsel approached me in chambers to ascertain whether I would be available to hear a matter. I was not and at that stage knew nothing about the matter and counsel commented that they would look for another Judge. They left my Chambers.

[22] They apparently then went to the Chambers of the Acting Chief Justice where they left the file with him in order to give him time to read the papers.

[23] Judges as a rule do not hear matters concerning people whom they know and when a Judge realises that he would perhaps be embarrassed it is custom that one of die parties be informed so as to inform the other party(ies) of the Judge's concern.

[24] In this instance the Acting Chief Justice apparently realised that an acquaintance of his was involved in the matter and he per telephone informed the one counsel of his concern but the applicants' counsel, quite unreasonably and unnecessarily, took offence to this and maintained that the Acting Chief Justice should have informed her simultaneously of his concern. From my experience of over 35 years in High Courts all over Soudiern Africa I can say unequivocally that she was mistaken and there is no onus on a Justice of die High Court to telephone all counsel as the one counsel passes on the comments of the Justice to the other counsel involved in the case and diat suffices. In this instance the applicants' counsel lost her temper and she made unpleasant utterances in the Chambers of the Acting Chief Justice. As the Acting Chief Justice indicated that due to his concern he would in any case not hear the matter the counsel left with the court file. The Acting Chief Justice without specifying also advised the applicants' attorney that there was a problem in her papers which she must attend to.

[25] The next day the applicants' counsel accompanied by an attorney approached the Acting

Chief Justice in his Chambers where an apology was tendered to the Acting Chief Justice for her conduct the previous day which apology the Acting Chief Justice accepted and where the Acting Chief Justice assured her that she was welcome in his Court and she and the other counsel left.

[26] The Acting Chief Justice then carried on with his work.

[27] The next day, it being Wednesday the 2nd August 2006, the applicants' counsel approached the acting Registrar with the request that she finds a judge to hear the matter. The acting Registrar dien went to the Conference Room where she hoped to find some judges. I happened to be present but was at that time engaged in a matter and was not available. The Acting Chief Justice who was present enquired from the acting Registrar whether the problem in the applicants' papers was corrected whereupon one of the other judges remarked that it was not wise to allocate the matter to a judge unless the mistake was rectified. The acting Registrar then left. According to her affidavit filed with this Court she then informed the applicant's attorney and the applicant's attorney asked the acting Registrar to go to the Acting Chief Justice and enquire from him what was wrong with her papers. The acting Registrar told her that she could not do it alone as she was not the attorney and the acting Registrar indicated that she was prepared to take the attorney to the Acting Chief Justice so that the attorney could understand what the problem was and which had to be corrected.

[28] According to her affidavit the acting Registrar and the attorney could not see the Acting Chief Justice as he was engaged in consultations with visitors to the High Court at the time. Attorney Hlabangana left and the court file remained in the office of the acting Registrar according to her affidavit.

[29] The acting Registrar then waited for attorney Hlabangana to show up again so that she could take her to the Acting Chief Justice but she did not turn up.

[30] The question arises whether it would have been proper for the Acting Chief Justice to advise an attorney in a matter which was to be heard by another Judge. There also seems to be the idea that it was incumbent upon the Acting Chief Justice to note on the Court file what was wrong with the applicants' papers. The Acting Chief Justice was not seized with die matter and he could thus write no comments regarding problems and/or mistakes on the Court file. Perhaps those who are of the opinion that the Acting Chief Justice was to make notes of the problems on the Court file are confused with applications for default judgment where Justices did make notes on the court 'Ties about aspects they wanted to be corrected, documents to be furnished etc., and these notes were made because the applications for default judgment thereafter invariably were placed before other Judges who thereafter had to consider the applications for default judgment afresh. In trial matters and in contested motions this is not done as it would be improper for a Judge to advise any particular party regarding his/her case which is to be heard by another Judge.

[31] On Thursday the 3rd August 2006 attorney Henwood who represented several clients came with an urgent application to intervene in the above matter and as Judge Mamba was available the acting Registrar instructed one of the Court interpreters to take the Court file from her office to Judge Mamba.

[32] According to the affidavit of the acting Registrar att. Hlabangana for some reason neither telephoned her nor did she come back to her again and on Friday the 4th August 2006, after the acting Registrar received a telephone call from the Acting Chief Justice about the matter, the acting Registrar sent an interpreter, Mr. Shongwe, to Judge Mamba's Chambers where he located the Court file and he brought the file to my Chambers where we were waiting for the file.

[33] The acting Registrar then telephoned att. Hlabangana to ask her to come to Court widiout

delay and learned from her that she was in Manzini at diat stage and she promised to come as soon as possible. She arrived about 35 minutes later.

[34] According to the acting Registrar's affidavit the Court file of the matter was with, her from early the particular week and it was not in die Chambers of the Acting Chief Justice and not in his possession. The acting Registrar contends that when she is approached by an attorney for the enrolment of a case before a Justice of this Court she goes with the attorney to various judges to look for one that is available and the time when the matter will be heard is arranged in advance with the Justice. She is adamant that the applicants' attorney did not approach her again after they attempted to see the Acting Chief Justice on the Wednesday but found him busy at that stage.

[35] I was at the High Court the whole of Tuesday the 1st August, Wednesday the 2nd and Thursday the 3rd and I, in between hearing cases, prepared for the motion court roll on Friday the 4th August and read all the motion court files. If I was approached on the Thursday I would have been able to make time available to hear the applicants' application.

[36] On Friday the 4th August 2006 I, at 8:15, heard a matter which the acting Registrar and counsel arranged with me to hear and at about 8:30 I commenced with the hearing of matters in the motion court. Quite often motion courts are interrupted when there are urgent matters to be heard and the motion judges then deal with these urgent matters first. This is a common practice known to all attorneys. Some urgent matters were raised in my motion court that morning and I dealt with them straightaway. If the applicant's attorney was there she could have raised die matter !v)o. My motion court ended at about 10:40. In my Chambers I was approached by the acting Registrar in a state of distress and she informed me of the application of the applicants against the respondents. My interpreter, Mr. Shongwe, fetched the file from the Chambers of Judge Mamba and I directed that she communicates with

counsel to urgently come to Court D as soon as possible. Why the applicants' attorney in any case was not at the High Court at least on the morning of the 4th August 2006 clamouring for her case to be heard is not clear and why she allowed the day of the sale in execution to dawn, and why she remained in Manzini, is also not clear. To say that the fault lies at the High Court is ludicrous.

[37] Upon the arrival of applicants* counsel I heard the matter in Court D and made the interim order, stopping the sale in execution and rescinded all the sales of items which already took place. In order to be able to do this the Court relied on the prayer for alternative relief which the Court granted mero motu and not because the applicants' counsel asked for it.

[38] I later learned that the return day of die matter would be before me in the contested motion court roll on Friday the 11th August 2006 but as the roll was totally congested I ordered that the matter be heard on the following Monday the 14th August 2006. Having seen the article in the Observer Newspaper alleging impropriety on the part of the Acting Chief Justice in the sense that he "threw" the court tile at die applicants' attorney and that he had kept the court file in his Chambers so as to prevent the applicants from obtaining relief and having noted the general tenor of the article slandering **all the Justices of this Court,** and in order to ascertain the true facts which may have costs implications, I called for an explanatory affidavit from attorney Rodrigues and attorney Hlabangana and in any case also called for full heads of argument. The affidavits and heads of argument were to be delivered at my Chambers by 14:00 on Friday the 10th August 2006 as per my directive. I wanted the affidavits and heads of argument to be filed by the Friday so that I could read them and prepare for the hearing of the matter on the Sunday afternoon upon my return to Swaziland.

[39] Mr. Rodrigues filed his affidavit and the 1st and 2nd respondents' heads on the Friday but att. Hlabangana did not.

[40] I had two matters to hear on Monday the 14th August 2006 and shortly before my court commenced I received att. Hlabangana's heads of argument with no explanation why they were late. She also did not file the required affidavit.

[41] When the matter was called before me att. Hlabangana indicated that she was busy and could not timeously prepare the heads of argument and that she did not prepare an application for condonation of her late filing of the heads of argument. This Court did not have an opportunity to study her heads of argument and the matter was then postponed to Tuesday the 15th August 2006 and att. Hlabangana was ordered to file her application for condonation and affidavit and this Court, as this Court is entitled to do, indicated to her that she was interrupting the flow of the case and delaying it and if she persisted with her contempt this Court would not hesitate to have her incarcerated. It was by then also known to all the Justices of this Court that she, after her rudeness in the Chambers of the Acting Chief Justice, and clearly in order to protect herself, raised the matter with the President of the Law Society, who instead of admonishing her, abetted her and raised the matter on her behalf with the Principal Secretary of Justice and I informed her that I would protect the dignity of this Court and respect for its orders and that it would not help her to run to the Principal Secretary. In this regard I had in mind her running through the President of the Law Society to the Principal Secretary.

[42] The admonishment worked and Miss Hlabangana fded her affidavit and the application for condonation early the morning of Tuesday the 15th August 2006.

[43] When the matter was called on Tuesday the 15th August 2006 I noticed that att. Hlabangana was not in court but that adv. Maziya appeared for the applicants. I invited all counsel to my Chambers and expressed the view that I should invoke the provisions of rule

6(18) and receive die oral evidence of the Commissioner, Mr. Ginindza, with regard to two aspects namely the three-fourths written consent and whether notification was given by any creditor of the 2nd applicant who instituted action against the 2nd applicant. All the parties consented thereto and Mr. Ginindza was telephoned to come to Court with his file. Mr. Hcnwood, who appeared for the parties who wanted to intervene, excused himself. Mr. Ginindza gave evidence in court and he stated that he relied on a document called **MINUTES OF A SPECLAL GENERAL MEETING HELD AT THE CO-OPERATIVE COLLEGE ON JULY 6, 2006** which meeting was attended by some members of the 2nd applicant. This document was admitted by die Court as Exhibit "C". Mr. Ginindza did not have all his files with him and he could not resolve the second aspect namely whether rule 13 was complied with by the creditors who sued the 2nd applicant. Adv. van der Walt, who appeared for the 1st and 2nd respondents indicated that the applicants did not give notice but stated that appropriate argument would be addressed to the Court in this regard. The matter was postponed to the next day namely the 16th August 2006 to enable Mr. Ginindza to go through his files and to look for answers.

[44] On the 16th August 2006 adv. van der Walt conveyed to the Court that Mr. Henwood indicated to her that his clients no longer wished to intervene. Att. Hlabangana attended the hearing and sat next to adv. Maziya. Mr. Ginindza thereafter testified that not one creditor who sued the 2nd applicant, complied with rule 13.

[45] The evidence of another witness one Grace Dludlu was also heard with regard to the membership of the 2nd applicant. Counsel then argued the matter.

[46] With regard to the first and second points in limine att. Hlabangana in very competent drawn heads of argument seemed to concede that, as section 104 reads, the applicants had a legal problem, but she raised the very interesting point that in view of the provisions of

section 151 (i)(a) of the Constitution the High Court has unlimited original jurisdiction in civil and criminal matters and the Constitution in terms of section "2(i)", apparently meaning section 2(1) thereof, was the supreme law of

Swaziland and if any other law of Swaziland is inconsistent with the Constitution, that other law shall to the extent of the inconsistency, be void.

[47] Adv. Maziya in his heads of argument stated the following about this aspect:

> **"Section 104.... seeks to oust the jurisdiction of the Court only in relation to issues of winding up of a co-operative. This is understandably so in view of the fact that such matters are the exclusive domain of the Commissioner of Co-operatives in terms of Section 100 of the Act."**

[48] Relying inter alia on **Shepstone & Wylie and Others v Geyser NO** 1998 (1) SA 354 (N) at 316, and authorities quoted therein, adv. van der Walt argued on behalf of the 1st and 2nd respondents that the jurisdiction of the courts was ousted by the provisions of section 104.

[49] It is not necessary to further analyze the contentions advanced by the parties. I agree with adv. Maziya. Section 104 was enacted purely to prevent the courts from interfering in a domestic matter with the functions of the Commissioner, who had the sole discretion to declare co-operative societies to be wound up in terms of section 100 of the Act. The courts, however, still retained all the other powers the courts all along had. It is thus not necessary to go the Constitutional route Miss Hlabangana proposed in her heads of argument and I am of the opinion that her argument in that regard, if given credence to by this Court in this instance, may lead to untenable situations in other instances lateron.

[50] This Court is thus of the opinion that the first and second points in limine should be dismissed.

[51] The third point in limine namely that the applicants have failed to comply with the

requirements of High Court Rule 6(25)(a) in that it was not explicitiy set out in the applicants' founding papers that the applicants would not be afforded substantial redress at a hearing in due course, nor have any grounds in support thereof been advanced was dien also argued. What the applicants could have done was to let die sale in execution proceed and to ask for an order to the effect that the proceeds be frozen until the matter of the liquidation of the 2nd applicant, which in any case could not go on trading, be finalised. I am of the considered opinion that this point was correcdy taken by the 1st and 2nd respondents.

[52] As is known the 1st and 2nd respondent filed a supplementary answering affidavit wherein they challenged whether the 2nd applicant was properly liquidated as section 100(l)(d) of the Act required that three-fourths of the members of the co-operative society must consent in writing to the liquidation before the Commissioner may declare the co-operative society for liquidation. The applicants' did not respond thereto as one would have expected them to do. According to the undisputed evidence of Mr. Ginindza he relied on the minutes of die meeting this Court already referred to. There are several reasons why these minutes cannot be regarded as the requisite three-fourdis written consent. The signatures of the members do not appear thereon, all the persons who attended the meeting were delegatees, namely members of affiliated co-operatives and there is no proof that the delegates were authorised by the affiliated co-operatives to give consent in writing for the winding up of the 2nd applicant. Adv. Maziya in his heads of argument argued that the Secretary and Chairman of the 2nd applicant signed the minutes and that that sufficed. The problem is that the minutes were brought into being for a particular specific purpose namely to record what had happened at die meeting and not to serve as the required written consent. The written consent required by section 100(l)(d) is precisely what the Act says namely unqualified written consents by three-fourths of the affiliated members of the 2nd applicant whose delegates were properly authorised in advance to give the written consents and who are acting as delegatees of their principals and whose audiority must appear from the written consents. It seems to me that Mr.

Ginindza, bona fide but mistakenly, regarded the minutes as the written consent as is provided for by the Act. It is unfortunate that the applicants did not take this aspect up with Mr. Ginindza upon receipt of the 1st and 2nd respondents' supplementary answering affidavit, and had they done so a lot of costs would not have been wasted.

[53] The order issued by Mr. Ginindza liquidating the 2nd applicant is thus not valid and I thus find that there was non-compliance with the peremptory provisions of section 100(l)(d).

[54] I now turn to regulation 13 of the Act which regulation reads as follows:

> **"13. Civil summons shall not he issued out of any court of law against a registered society unless the party applying for the summons has given at least fourteen days written notice to the Commissioner of the intention to do so."**

[55] It is common cause that the 1st and 2nd respondents did not comply with the provisions of regulation 13.

[56] Adv. van der Walt referred the Court to section 107 of the Act which is the empowering section with regard to the regulations which section reads as follows:

> **"107. The Minister may make Regulations for such matters as which are referred in this Act to be prescribed in the Regulations."**

[57] Upon a careful analysis of the Act no such an empowering section with regard to the contents of regulation 13 could be found.

[58] Section 10 of the Interpretation Act which deals with implied powers also does not assist the applicants.

[59] This Court dierefore came to the conclusion that regulation 13 is ultra vires the Act and of no force and effect.

[60] This brings me to several unpleasant aspects which this Court is compelled to deal with.

[61] Firstly, there is the article written by a reporter named Alec Lushaba in the Observer newspaper of the 5th August 2006 with the heading **"CCU auction case tests High Court's integrity."** In the article it is alleged that the Acting Chief Justice threw the Court file against the applicants' attorney. According to the affidavit of attorney Rodrigues who was present this never happened and even the applicants' attorney in an affidavit which was filed with this Court did not support the said allegation. There are also allegations that the Court did not attend to the matter promptly and that the **"integrity"** of the Court is under suspicion. This Court resents that and the law will have to take its course in this regard. It is also clear that the commentators did not listen to the other side of the story and merely jumped to conclusions and went on record. In my opinion what is contained in die article and the comments, excluding that of Mr. Walter Bennett, may constitute contempt of Court.

[62] On the 7th August 2006 one of the commentators who was quoted in the article in the Observer, the Permanent Secretary of Justice addressed a letter to several people including the Acting Chief Justice with a copy of the article which appeared in the Observer attached to it. The first sentence of paragraph 3 of the letter reads as follows:

"What appears on(sic) the paper is apparently the tip of an ice-berg."

In my opinion what is contained in the sentence may constitute contempt of Court.

[63] Att. Hlabangana registered a complaint with the Law Society and die President thereof, without at least first checking the facts or taking the matter up with the Acting Chief Justice, wrote a letter to the Principal Secretary of Justice. In paragraphs 4.1, 4.2 and 4.3 he deals with die matters this Court already dealt with in paragraphs [23] to [27] of this judgment. Paragraph 4.4 of his letter reads as follows:

> **"4.4 The allegations that he sat on the file and kept it away from access by the parties particularly Applicants who needed to note the alleged defects and from there to pursue the application in Court in view of the harm being prevented. It is even worse that he allegedly disappeared without noting the defects complained of, nor returning it to the Registrar notwithstanding his being aware the harm meant to** be **prevented in(sic) it the matter was going ahead on the 4th August 2006. The Judge's conduct in this regard, if proved may not just amount to misconduct but could in my view amount to a crime as** well."

[64] According to the affidavit of the acting Registrar the tile was in her office for several days preceding die 4th August 2006 without the applicants' attorney coming to light to have the matter enrolled before a Judge.

[65] That the Acting Chief Justice **"sat on the tile"** and kept it away from anybody is a malicious untruth denigrating the Acting Chief Justice of this Court and constitute contempt of Court in the worst form and requires severe punishment.

[66] There is a further letter dated the 16th August 2006 by the Permanent Secretary of Justice to the Judicial Services Council to the effect that this Court **"virified"** him. This Court already dealt with the matter elsewhere in this judgment. He apparently meant to say that this Court **"vilified"** him. That his contentions are incorrect is clear upon listening to the tape recording of the proceedings in die Court and it is unfortunate that he apparently lent out his ears without at least showing some respect for the dignity of the High Court by first listening to the tape recording of the proceedings to verify the correctness of what was told him before going on record.

[67] On the 11th August 2006 the very same Mr. Gaiindza, the Commissioner of Cooperative Societies, addressed a letter to die Secretary of the Judicial Services Commission wherein he alleged that the matter was **"not handled properly but was** dealt **with in a manner suggesting a conflict of interest by the judicial** officer handling the matter.". He also stated in the last paragraph "We **are** hoping the **Commission will investigate the allegations and**

properly deal with them to **restore the public's faith in the judicial system."** I was the judicial officer who handled the matter in Court and I resent his false and ludicrous allegations. In ray opinion the quoted matter constitute malicious and deliberate contempt of Court and must be punished severely.

[68] Even the 1st applicant addressed a letter dated the 10th August 2006 to the Principal Secretary.

[69] The general impression gained is that these false allegations were made in a frenzy to discredit the Acting Chief Justice and other Judges of the High Court. Why is was done only the persons who made these despicable utterances will know. What is deplorable is that although some of the makers of the scandalous allegations are legally trained, they forgot, for some reason or another, to apply the audi alteram partem rule.

[70] I am thus obliged, in order lo protect the dignity of the High Court, to refer the contempt of Court matters to the Director of Public Prosecutions for urgent attention and prosecution which will naturally also include the reporter and the editor of the newspaper which published the article.

[71] There is one aspect which I must correct and that is as the intervening creditors abandoned their attempt to intervene they would not be entitled to any costs of the 14th August 2006 and in that regard I recall that portion of die costs order I made in their favour on that day.

[72] In view of the fact that the Government will unavoidably become involved in the matter lateron a copy of this judgment is to be forwarded by the Registrar to the Attorney-General.

[73] I accordingly make the following order:

1. **It is declared that the notice of the Commissioner of Co-operative Societies issued on the 6th July 2006 to be invalid and that the 2nd applicant has not been declared for liquidation.**

2. **The rule granted on the 4th August 2006 is discharged.**

3. **The 1st and 2nd respondents are barred from taking further execution steps against the 2nd applicant subject to the Commissioner of Co-operative Societies obtaining the written consent of at least three-fourths of the affiliated members of the 2nd applicant and to declare the 2nd applicant for liquidation on or before the 11th September 2006 and failing to do so this bar is uplifted and the 1st and 2nd respondents may proceed with execution steps against the 2nd applicant.**

4. **The costs hereof and of the 3rd respondent with regard** to **the execution steps he took and all costs of the auction and his fees, are to form part of the costs of the administration of the estate** of **the 2nd applicant if declared for liquidation and if not so declared are to be paid by the 2nd applicant. The costs of counsel are also certified in terms** of **rule 68(2).**

5. **The costs order in favour of the intervening creditors made on the 14th August 2006 against the applicants' attorney, is recalled.**

6. **The Registrar of this Court is ordered to refer this judgment and order to the Director of Public Prosecutions to indict such parties the Director of Public Prosecutions may decide to do so on charges of contempt of Court which cases must be heard in the High Court.**

7. **The Registrar of this Court is directed to refer a copy** of **this judgment to the Attorney-General.**

P.Z. EBERSOHN
JUDGE OF THE HIGH COURT