IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 400/2013

In the matter between:

IVAN JAMES GROENING	**PETITIONER**
AND	
STEALTH SECURITY (PTY) LTD	**1ST RESPONDENT**
ANITA HAYES	**2ND RESPONDENT**
SIKHUMBUZO M. SIMELANE	**3RD RESPONDENT**
MASTER OF THE HIGH COURT	**4TH RESPONDENT**

Neutral citation: *Ivan James Groening v. Stealth Security (Pty) Ltd and 3 Others (400/2013) [2014] SZHC 218 (22nd September 2014)*

Coram **M.C.B. MAPHALALA, J**

Summary

Company Law – Liquidation – petition to liquidate a company on the basis that it is unable to pay its debts and/or that it is just and equitable to wind-up the company – sections 286 to 290 dealing with the Companies Act of 2009 dealing with the winding up companies considered – held that the Petitioner has failed to show that the court should exercise its discretion in favour of winding up of the company – petition dismissed.

JUDGMENT
22nd SEPTEMBER 2014

[1] This is a petition seeking an order directing that the first respondent be provisionally wound up in the hands of the Master of the High Court and/or a duly appointed authorised person. The petition was brought in the form of a Rule Nisi calling upon all interested parties to show cause why an order for liquidation should not be made final. However, when the matter was heard at the first instance, the Petitioner did not insist on the Rule Nisi, and, all interested parties agreed to a consent order to file the necessary pleadings pending the allocation of a date of hearing.

[2] The Petitioner further sought an order that Lucky Howe should be appointed a liquidator of the first respondent with immediate effect. He also sought the Court's leave that the Order herein should be served upon the Respondent and further published in the Times of Swaziland or any other newspaper circulating within the jurisdiction of the court as well as in the Swaziland Government Gazette. In addition, he sought an order that costs of the petition should be granted against the respondents and/or that they should form part of the costs of litigation. The petition is opposed.

[3] It is common cause that the first respondent company was registered and incorporated on the 7th April 2010 and its principal object is to carry on the business of surveillance and security services. The second respondent is the Managing Director of the company and is responsible for the daily operations of the company including the financial management of the company.

[4] The petitioner alleges that he is a shareholder of the company on the basis of a Sale of Share Agreement in terms of which he holds three hundred shares in the company. He further contends that the second and third respondents are shareholders and likewise hold three hundred shares each; and, that the total subscription of the company shares is nine hundred shares.

[5] The Petitioner further alleges that in terms of an unwritten agreement between the shareholders and directors of the company, it was expressly and/or tacitly agreed that: firstly, he would be a non- executive member of the company. Secondly, that he would not participate as a Director on the Board of Directors of the company. Thirdly, that he would loan and advance certain sums of money to the company to finance its start-up operations. Fourthly, that he would participate in regular monthly

management meetings of the company. Fifthly, that he would participate in the financial management of the company on a monthly basis. Lastly, that members (shareholders) of the company would meet periodically either in terms of the Memorandum and Articles of the Association or at the end of each financial calendar year and thereat declare dividends, if any.

[6] The Petitioner contends that in terms of the tacit agreement, he loaned and advanced various sums of money to the company totaling E135 921.00 (one hundred and thirty five thousand nine hundred and twenty one emalangeni) to finance the startup operations of the company. He further contends that the second and third respondents have excluded the Petitioner from all the affairs of the company including management and Board meetings; and, that the respondents are refusing to call Annual General Meetings as envisaged in terms of the constitution of the company, and if held, the Petitioner has not been notified of such meetings.

[7] The Petitioner contends that the respondents neglect and/or refuse to call shareholders' meetings and have failed to invite him to any shareholders' meetings in terms of the constitution of the company or to the said tacit agreement. The Petitioner contends that the respondents refuse to account to the Petitioner on financial matters and general operations of the company; and, that no books of account have been presented to him as

shareholder with a vested interest in the company. He accuses the respondents of being aggressive, fractious and hostile towards him when called upon to account; and, that they have colluded against him as evidenced from the Board's Resolution dated 3rd February 2011.

[8] The resolution provides the following:

STEALTH SECURITY (PTY) LTD

COMPANY RESOLUTION

Resolution passed by a majority of the company's directors and shareholders, held at Matsapha on the 2nd February 2011 wherein it was resolved as follows:

1. **Ivan Groening be and is hereby voted out of the company and as such, he forfeits, including but not limited to shares he may have acquired in the company when it was floated and registered on the basis that Mr. Groening has consistently failed to make financial contributions to the company at any time after May 2010 despite several calls of financial contributions by the remaining shareholders.**
2. **Mr. Groening further remained unavailable for attendance of general meetings of shareholders wherein he was expected to**

make meaningful contributions both financially and in terms of business ideas, hence, his non-presence and attendance of such general meetings negatively affected the continued existence and smooth running of the company business.

3. **Thirdly, Mr. Groening committed an offence of false misrepresentation to the remaining directors and shareholders of the company in that he made a false representation at the initial stages of the business of the company in May 2010 that he would contribute money that would be used to pay the company's creditors, including but not limited to, First Watch Security Services business from whom security contracts, office furniture and other equipment were purchased but he failed to honour his representations thus, as a consequence, the company's creditors Johan Grobler and First Watch Security Services filed a lawsuit against the company and damaged the reputation of the company through bad media publicity.**
4. **It is herein agreed that:**

4.1 Mr. Groening will calculate the total amount of money he contributed to the company and that amount of money will be refunded to him on terms and conditions which will be negotiated and agreed upon between the parties.

5. **Any dispute that may arise out of this issue of forfeiture of shares shall be referred to arbitration before any competent arbitrator agreed upon between the parties who shall be an attorney or advocate with not less than ten (10) years experience post admission and practicing law in Swaziland.**

DATED AT MATSAPHA ON THIS THE 3RD FEBRAURY 2011

S.M. SIMELANE	**A. HAYES**
DIRECTOR/SHAREHOLDER	**DIRECTOR/SHAREHOLDER**

[9] The objects for which the company was established are the following: firstly, to carry on the business of providing general security services to legal and natural persons within Swaziland. Secondly, to carry on the business of installing security alarms, surveillance cameras, security gates, security boundaries and any other gadgets that enhance and improve security in building and immovable property. Thirdly, to carry on the business of providing cash security services to financial institutions and business entities including conveyance of cash for and on behalf of clients. Fourthly, to carry on the business of providing bodyguards to individual and corporate clients.

[10] The Sale of Shares Agreement provides that the first respondent wishes to sell three hundred (300) shares to the applicant at a purchase price of E3 500.00 (three thousand five hundred emalangeni). The contract was concluded on the 20th April 2010, and the parties confirm that at the time of signature of the agreement, the purchase price had been paid in full by the buyer to the seller, and, that the seller acknowledges receipt of the full purchase price from the buyer. The contract further provides, *inter alia,* that the first respondent company is not a party to any contracts or agreements with third parties, Director, officers or employees. Lastly, the contract expressly provides that the agreement constitutes the entire agreement between the parties and no other conditions shall be of any force and effect unless they are reduced into writing and signed by both parties.

[11] The petitioner argues that it is a creditor of the company and consequently entitled to payment of his loan account. He further argues that the company has no regard for the interests of creditors including himself as both creditor and shareholder. To that extent the Petitioner contends that the company should be dissolved in the interests of shareholders and creditors due to the lack of corporate governance in the company as well as the failure of the company to pay its debts. The Petitioner seeks the dissolution of the company due to a deadlock between shareholders, a disregard by the company to the interests of creditors, and, a failure to account to himself as

a shareholder. He contends that if the company is wound up, there are sufficient disposable assets to satisfy all the claims of creditors and further finance the costs of such litigation.

The Petitioner further contends that a liquidator should be appointed to take physical control of the affairs and assets of the company in the interests of shareholders.

[12] The petition is opposed by the first, second and third respondents. The second and third respondents are the majority shareholders. In *limine* two points of law were raised. Firstly, that the Petitioner has adopted an irregular proceeding by moving a petition instead of suing out summons against the first respondent for payment of the alleged debt. They argue that it was only on receipt of a *nulla bona* from the deputy sheriff showing that he could not execute the writ that he would be entitled to petition for liquidation of the first respondent. They argued that the present proceedings are incompetent in the absence of proof that the first respondent has committed an act of insolvency.

Secondly, that the court should strike out illegally obtained evidence from the petition, being annexure “S53” as well as the audited annual financial statement of the first respondent. They contend that the financial statement

was only given to the Swaziland Revenue Authority, and, that the petitioner obtained the document illegally and subsequently used the document to his benefit in the liquidation petition. The respondents contend that the court should not allow such conduct.

[13] The respondents disclosed that the company's first directors were the third respondent and one Welile Simelane who later resigned and was replaced by the second respondent. They contend that the petitioner at the time when the company was incorporated and registered undertook to contribute financially to the company and buy a third of the share; and, that he has to honour his undertaking. They contend that the only financial contribution he made was in respect of partitioning the first respondent's offices, paying a few company set-up expenses as well as loaning his vehicle, a Nissan 1400 bakkie to the first respondent whilst the company was preparing to buy its motor vehicle for operations.

[14] They further contend that sometime in 2011, the Petitioner resurfaced and demanded that a meeting of shareholders be convened to discuss various issues including auditing financials of the company. In the meeting the petitioner's demand could not succeed in light of his failure to honour his financial undertaking to the company. According to the respondents, the conduct of the petitioner in this regard amounted to misconduct which

entitled the shareholders to pass a resolution declaring that the petitioner had forfeited his shares in the company.

[15] The respondents contend that on the 2nd February 2011, shareholders convened a meeting in which a resolution was passed voting out the petitioner from being a shareholder of the company; the resolution further confirmed the forfeiture of shares by the petitioner. As stated in the Resolution, the petitioner is accused of having failed to make any financial contribution to the company after May 2010, he remained unavailable for attendance of general meetings of shareholders wherein he was expected to make meaningful contributions financially and in terms of business ideas. It is contended that his non-appearance in the general meetings negatively affected the continued existence and smooth running of the company business. The financial contribution by shareholders was intended to pay creditors, buys furniture and equipment.

[16] The resolution further called upon the petitioner to calculate the total amount of money that he had contributed to the company so that he could be refunded upon such terms and conditions as agreed between the parties. Lastly, the resolution further provided that any dispute that may arise relating to the forfeiture of shares should be referred to arbitration in the

person of an attorney or advocate of not less than ten years experience as agreed between the parties.

[17] The respondents contend that the petitioner did not comply with the terms and conditions of the resolution. They further contend that the company is neither insolvent nor has it committed any act of insolvency. They concede that in 2011 the company made a loss of E19 383.00 (nineteen thousand three hundred and eighty three emalangeni); however, they contend that it is not unusual for a company to make a loss in its first year of business.

[18] The respondents disclose that in the year ending June 2012, they made a profit of E12 943.00 (twelve thousand nine hundred and forty three emalangeni); and, that the company has made a significant improvement in its business and, that it has clients who pay a total of E512 211.17 (five hundred and twelve thousand two hundred and eleven emalangeni seventeen cents) per month as per the financial documents attached to the Opposing Affidavit. They argue that the cashflow forecast as in the financial documents shows that the company is running its business at a profit and that it is not insolvent.

[19] Similarly, the respondent argue that the company owns valuable assets including motor vehicles, office furniture and fittings; and, that the company has sufficient funds to pay the petitioner's loan of E103 265.00 (one hundred and three thousand two hundred and sixty five emalangeni) in twelve monthly instalments; and, that the non-payment of the loan is due to the failure of the petitioner to forward his claim to the company as required by the Resolution.

[20] It is the contention of the respondents that the petitioner ceased to be a shareholder of the company on the 2nd February 2011 when the shareholders passed a resolution by a majority in a general meeting to vote him out as a shareholder. They contend that by virtue of the resolution, he forfeited his shares.

[21] The respondents contend that they could not include the petitioner in the executive membership and directorship of the company on the basis that he was personally insolvent and his company, Colour Sound Transport, in which he had bound himself as surety and co-principal debtor was in deep financial crisis and the subject of legal suits from financial institutions. Furthermore, that the petitioner had not yet fulfilled his undertaking of making financial contributions to the company to pay Johan Grobler of First Watch Security as a purchase price of the business.

[22] It is further contended by the respondents that sometime in 2010, they called upon the petitioner to comply with his financial undertaking to the company and settle the debt to Grobler; however, that he failed to honour his financial undertaking and instead bought himself an expensive Porche Cayenne motor vehicle. Thereafter, he had disappeared and could not even answer his calls let alone attend general meetings; according to the respondents, the petitioner vanished when the company was faced with lawsuits from creditors. They deny that they have been aggressive, fractitious and hostile towards the petitioner. To that extent the respondents argue that the company observes principles of corporate governance, is sufficiently liquid and pays its creditors accordingly, fully accounts to its existing shareholders and further convenes general meetings as required in terms of its Articles and Memorandum of Association; and, that there is no legal or factual basis for liquidating the company.

[23] The Petitioner has deposed to a Reply in which he reiterated the allegations made in the petition. In addition he has stated correctly that the audited Financial Statements obtained from the Swaziland Revenue Authority constitutes a public document; and, that such a document could be accessed by members of the general public who have the requisite interest.

[24] He further contended that he is entitled as a creditor to call for a liquidation of the company on the basis that he made a demand for payment which was not honoured; however, he concedes that he has not instituted legal proceedings against the company for payment of the debt which has been granted in his favour. Similarly, he concedes that he is not in receipt of a Nulla Bona Return of Service from a Deputy Sheriff confirming that the company has no assets to satisfy the debt. Furthermore, the company has tendered payment of the amount owing. The Resolution by the company further calls upon the Petitioner to calculate the total amount of money that he contributed to the company and submit the claim for payment on terms and conditions which will be negotiated and agreed between the parties. The contention by the Petitioner in this regard is certainly misconceived.

[25] The Petitioner insists that he purchased the three hundred shares from the company at a purchase price of E3 500.00 (three thousand five hundred emalangeni) as evidenced by the Sale of Shares Agreement concluded between himself and the company on the 20th April 2010. Clause 2.4 thereof provides that the total price of the three hundred shares purchased by the Petitioner amounts to E3 500.00 (three thousand five hundred emalangeni), and, that the parties confirm that at the time of signature of the agreement, the purchase price had been paid in full by the buyer to the Seller and that the Seller acknowledges receipt of the full purchase price

from the buyer. The contention by the respondents that the petitioner did not purchase the three hundred shares from the company is not supported by the evidence in light of the Sale of Shares Agreement; and, such a contention ought to be rejected and dismissed.

[26] It is apparent from the evidence that the Petitioner did make a financial contribution to the company at its incorporation and registration. This is confirmed by the respondents who concede that the contribution was in respect of partitioning the company's offices, paying a few company set-up expenses as well as loaning his motor vehicle to the company, a Nissan 1400 bakkie. Similarly, the respondents concede that the petitioner is a creditor to the company; however, the Loan amount is disputed. The respondents contend that the loan amount is E103 265.00 (one hundred and three thousand two hundred and sixty five emalangeni) and the Petitioner contends that it is E135 921.00 (one hundred and thirty five thousand nine hundred and twenty-one emalangeni). The debt is clearly not liquidated and the petitioner has to prove it.

[27] In their Opposing Affidavit the respondents contend that after his initial contribution, the petitioner disappeared and did not make subsequent financial contributions which were required to settle the company's debts including a debt payable to Johan Grobler, for the purchase price of a

company called First Watch. This failure led to a lawsuit against the first respondent to recover the said debt. The petitioner has not dealt with this contention in his replying affidavit.

[28] Similarly, the respondents have contended in their opposing affidavit that the petitioner failed to attend general meetings of shareholders, and, to that extent failed to make personal contributions to the company in terms of ideas that would advance the business of the company. The respondents contend that when the petitioner resurfaced, he made various demands including auditing the financial books of the company. The petitioner did not address this contention in his Reply.

The respondents have admitted that they did not include the petitioner in the executive membership and directorship of the company on the basis that he could not make financial contributions to the company as did the other shareholders. In addition the petitioner did not attend several meetings of the company. According to the respondents, these are some of the factors which led to the Company Resolution made on the 2nd February 2011.

[29] The petitioner argues that he is entitled to the order sought for the winding up of the company, on the facts of this case in terms of sections 286 – 289 of the Companies Act of 2009. A company may be wound up by the court

or voluntarily either by members or the creditors. The Act provides the following:

> ***“286. (1) A company may be wound up—***
>
> **(*a*) by the court; or**
>
> **(*b*) voluntarily.**
>
> **(2) A voluntary winding-up of a company may be—**
>
> **(*a*) a member’s voluntary winding-up; or**
>
> **(*b*) a creditor’s voluntary winding-up.**
>
> **287. A company may be wound up by the court if—**
>
> **(*a*) the company has by special resolution resolved that it would be wound up by the court;**
>
> **(*b*) the company has not commenced its business within a year from its incorporation or has suspended its business for a whole year;**
>
> **(*c*) more than seventy-five percent of the issued share capital of the company has been lost or has become useless for the business of the company;**
>
> **(*d*) the company is unable to pay its debts;**
>
> **(*e*) it appears to the court that it is just and equitable that the company should be wound up.**

288. A company shall be deemed to be unable to pay up its debts if it is proved to the satisfaction of the court that it is unable to do so—

(*a*) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than five thousand Emalangeni then due—

(i) has served on the company, by

(ii) leaving it at its registered office, a demand requiring the company to pay the sum so due; or

(ii) in the case of anybody corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the court may direct,

and the company or body corporate has twenty-one days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(*b*) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or messenger with an endorsement that he has not found sufficient assets to satisfy the judgment, decree or order or that any assets found did not upon sale satisfy such process; or

(*c*) it is proved to the satisfaction of the court that the company is unable to pay its debts.

289. (1) An application to the court for the winding-up of **a company may, subject to this section, be made —**

(*a*) by the company;

(*b*) by one or more of its creditors (including contingent or prospective creditors);

(*c*) by one or more of its members or any other person referred to in section 97(3) irrespective of whether his name has been included in the register of members or not;

(*d*) jointly by any or all of the parties mentioned in paragraphs (*a*), (*b*) and (*c*);

(*e*) in the case of any company being wound up voluntarily, by the Master or any creditor or member of that company;

(*f*) in the case of the discharge of a provisional judicial management order under section 366(3) or 370(2) by the provisional judicial manager or the company; or

(*g*) in the case of a cancellation of a judicial management order under section 379, by the judicial manager or the court.

(2) Every application to the court referred to in subsection (1), except an application by the Master in terms of paragraph (*e*) of that subsection shall be accompanied by a certificate by the Master, issued not more than ten days before the date upon which the application is issued, to the effect that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all winding-up proceedings and of all costs of administering the company in liquidation until a provisional liquidator has been appointed by the

court and has furnished security as provided in section 337(2).

(3) Before the application for the winding-up of a company is presented to the court, a copy of the application and of every affidavit confirming the facts stated therein shall be lodged with the Master.

(4) The Master may report to the court any facts ascertained by him which appear to him to be pertinent to the hearing of the application and shall transmit a copy of that report to the applicant or his agent and to the company.

290. (1) The court may grant or dismiss any application under section 289, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other order it may deem just, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has assets.

(2) Where the application is presented by members

of the company and it appears to the court that the applicants are entitled to relief, the court shall make a winding-up order, unless it is satisfied that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) If the application is presented to the court by—

(*a*) any applicant under section 289(1)(*e*), the court may in the winding-up order or by any subsequent order, confirm all or any of the proceedings in the voluntary winding-up; or

(*b*) any member, the court shall satisfy itself that the rights of the member will be prejudiced by the continuation of a voluntary winding-up."

[30] It is apparent from the petition that the main basis for the winding up of the company is essentially that the company is unable to pay its debts. However, on the papers filed of record, the petitioner has not established that the company is unable to pay its debts. A further basis for the

liquidation of the company is that it is just and equitable to do so. Section 287 of the Companies Act provides that the grounds outlined above must be established on a balance of probabilities. It is incumbent upon the petitioner to establish either that the company is unable to pay its debts or that it is just and equitable that the company should be wound up.

In support of the second ground of dissolution, “the just and equitable” factor, the petitioner sought to rely on circumstances including: that he was excluded from all the affairs of the company including management meetings, refusal by respondents to call Annual General Meetings, failure by respondents to call shareholders’ meetings, failure by the respondents to account financially to him and on the general operations of the company, as well as a failure by the company to honour the interests of creditors.

As stated in the preceding paragraphs, the petitioner has not disputed the evidence of the respondents that after the initial financial contribution to the company, he failed to make further contributions which were necessary to keep the company afloat to the extent that the company was subject to lawsuits by creditors, that he disappeared immediately after the incorporation and registration of the company, that he avoided calls from management to make his own financial contribution to the company with his phone running unanswered, and that, he failed to attend several

meetings of shareholders to make a personal contribution to the development of the company. It is against this background that on the 2nd February 2011, the company took the Resolution of voting out the petitioner from being a shareholder.

[31] Articles 31-38 of the Articles of Association provide for the payment of a call by shareholders and the forfeiture of shares for non-payment; thereafter, that person ceases to be a member. The provisions of the Articles are attached for ease of reference. Similarly, Articles 17-22 give powers to the Directors to make calls upon members from time to time in respect of any moneys unpaid on their shares.

> **"31. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may, at anytime thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.**
>
> **32. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.**

33. If the requirements of any such notice as aforesaid are not complied with, any share, in respect of which the notice has been given may at anytime thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

34. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Director thinks fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

35. A person whose share have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were payable by him to the company in respect of the shares, but his liability shall cease if and when the company shall have received payment in full of the nominal amount of the shares.

36. When any shares shall have been so forfeited, notice of the resolution shall be given to the person in whose name the shares stood prior to the forfeiture, and an entry of the forfeiture with the date thereof shall forthwith be made in the register.

37. An affidavit that the deponent is a Director or the Secretary of the Company, that a share in the company has been duly forfeited on a date dated in the declaration, shall, unless fraud or mistake be proved, be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any,

given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share is sold not be bound to see to the application of the purchase money, if any, shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the shares.

38. The provisions of the regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time whether on account of the amount of the share, or by way of premium as if the same had been payable by virtue of a call duly made and notified.

ALTERATIONS OF CAPITAL

39. The company may from time to time by special resolution, increase the capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

40. Subject to any direction to the contrary that may be given by the resolution in increasing the share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company."

[32] In the circumstances the petitioner has failed to establish that the company is unable to pay its debts or that it is just and equitable that the company

should be wound up. It is apparent from the Financial Statements of the company that its assets exceed its liabilities.

[33] Accordingly, the Petition is dismissed with costs on the ordinary scale.

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

For applicant: Attorney Jose Rodrigues
For respondent : Attorney Sipho Nkosi