IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Civil Case 1217/14 & 1218/14

In the matter between:

LIQUIDATION OF VALLEY FARM CHICKENS (PTY) LTD (In liquidation)	1st Intervening Applicant
NGWANE MILLS (PTY) LTD t/a FEEDMASTER SWAZILAND	2nd Intervening Applicant
KANHYMA ESTATES (PTY) LTD	3rd Intervening Applicant

In re April 2015 Rule 42 (a) (b) variation application between:

NKONYENI FARMS (PTY) LTD	1st Applicant
JOHAN JACOB RUDOLPH	2nd Applicant
JOHAN JACOB RODOLPH III	3rd Applicant

And

SWAZILAND INDUSTRIAL DEVELOPMENT COMPANY LIMITED	Respondent

In re: in liquidation and sequestration application under case number 1217/14 and 1218/14:

SWAZILAND INDUSTRIAL DEVELOPMENT COMPANY LIMITED Applicant

And

NKONYENI FARMS (PTY) LTD 1st Respondent

JOHAN JACOB RUDOLPH 2nd Respondent

JOHAN JACOB RUDOLPH III 3rd Respondent

Neutral citation: *Swaziland Industrial Development Company (Ltd) vs Nkonyeni Farms (Pty) Ltd and Two Other (1217/14 & 1218/14) [2015] [SZHC 185] 23rd October 2015*

Coram: **MAPHALALA PJ**

Heard: 2nd April 2015

Delivered: 23rd October 2015

For Applicant: Advocate P. Flynn
Instructed by J.M Currie Attorneys

For the Respondent: Mr. S. Dlamini
From Magagula & Hlophe Attorneys

For the Intervening parties: Advocate C.I Hoffman S.C
Instructed by Robinson Bertram

Summary:

(i) Before court is an Application in terms of Rule 42 (1) (b) of the High Court to clarify an order of this court of 20th March, 2015.

(ii) Other parties further intervened in the suit.

(iii) The Applicant and Respondent oppose such intervention advancing a number of arguments **inter alia** that the intervening parties have no **locus standi** as they were not parties in the matter where clarification is sought in terms of Rule 42 of the High Court Rules.

(iv) The Court heard arguments of the parties on all these questions and rule that the intervening parties have the required **locus standi.** It is trite law that upon a winding up order, a **concursus creditorum** comes into existence and any creditor is vested with **locus standi** to intervene.

(v) The court further rules on the Rule 42 Application by agreeing with the submissions of the Applicant and adopt the order proposed by the Applicant and it is so ordered.

Legal authorities cited

1. **Meskin, Insolvency Law para 7 1.11**
2. **Bitcon vs City Council of Johannesburg and Arenon Behrman & Co., 1931 W.L.D. 273 at page 293 to 294.**

JUDGMENT

Introduction

[1] Before court is an Application in terms of Rule 42 (1) (b) of the High Court Rules. The Respondent herein being Swaziland Industrial Development Company sought provisional orders and a rule **nisi** in both the liquidation Application and the Petition. The order in paragraph [31] of the judgment of this court is that an order for liquidation and sequestration is granted. The court added that the ancillary orders in the Notice of Motion and Petition were also granted. The court did not specifically indicate that the order were provisional nor did it frame a Rule with a return date in its reference to ancillary orders.

[2] The attorneys of the parties approached this court in Chambers for clarity on the above uncertainty on the 2nd April, 2015 were the Applicant was represented by Advocate Flynn and Mr S. Dlamini for the Respondent. This Application was instituted because the Applicants herein were uncertain as to the terms of the order as there is reference to provisional liquidation and sequestration nor a return day of the Rule sought by the Respondent as would require to allow the Applicant so show case why the order should not be made final. That it is also necessary for provisional orders to be advertised.

[3] On the day for the arguments on the above Application for clarification in terms of Rule 42 (1) (b), the intervening parties being Liquidators of **Valley Farm Chickens (Pty) Ltd 1st Intervening party, Ngwane Mills (Pty) Ltd t/a Feedmaster Swaziland being the 2nd Intervening party and Kanhym Estate (Pty) Ltd being the 3rd Intervening party** entered into the fray filing an Application to intervene in these proceedings.

The Background

[4] The background of the matter is that this court issued a judgment on the 30th October, 2014 stating at paragraph [3]1thereof that "**in the result, for the aforegoing reasons and order is granted for liquidation and sequestration of the Respondents and the ancillary orders. As the Notice of Motion and Petition respectively with costs".**

[5] This order emanates from an Application brought by Respondent on Notice of Motion for orders under section 287 (a) of the Companies Act of 2008. The Applicant who was the Respondent in that Application oppose the application stating various points **in limine** in opposition.

[6] The Applicant then filed this application in terms of Rule 42 (1) (b) of the High Court seeking clarity of the order as stated in the para (1) (supra).

The Intervention

[7] I must also put it on record that the intervening parties also joined in the dispute were, as I have stated above in para [3]. The issues for decision became complex where the court is also to consider the contentions of the intervening parties within the preview of clarifying a judgment in terms of Rule 42 (1) (b) of the High Court Rules. It remains to be seen whether the efforts of the intervening parties have any substance in view of the fact that they were not parties in the original suit between the Applicant and the Respondent.

[8] On the 15 April, 2015 the 1st , 2nd and 3rd intervening parties being Liquidators of Valley Farm Chickens (being 1st intervening party); Ngwane Mills (Pty) Ltd t/a FeedMaster Swaziland and Kanhyma Estates (Pty) Ltd cited as the 3rd

intervening party filed a Notice of Motion for orders in terms of prayers 1 to 12.

[9] In paragraph 1 thereof the intervening applicants pray to be granted leave to intervene and be heard regarding Johan Jacob Rudolph 111 in prayers 2 to 4.2. Further in prayers 5 to 9.2 regarding Nkonyeni Farms (Pty) Ltd and in paragraphs 10 to 12 for any orders as above cited.

[10] The Founding Affidavit of one Stephnus Andreas Redelinghuys who is an attorney in Lesotho as Associate in the firm M.J. Matsav's Company filed a Founding Affidavit in support of the Application for intervention in the main matter.

[11] The Applicant and the Respondent in the Rule 42 Application oppose the Application for intervention filing an Application to strike out and Respondent filed a Notice to oppose the Intervention Application. I shall outline the nature of the opposition as I proceed with this judgment.

The arguments of the parties

(i) For the Applicant

[12] I shall outline in brief the arguments of the attorneys of the parties to assist a better understanding of the issues for decision by this court in the following paragraphs.

[13] Advocate Flynn for the Applicant has advanced arguments in this court and filed Heads of Arguments for which I am grateful. The nub of the argument by

Mr Flynn is that this court is empowered to clarity its own judgment if on the proper interpretation it remains obscure, ambiguous or otherwise uncertain or there is an omission in the order to give effect to its true meaning citing the legal text book by **Erasmus "Supreme Court Practice" page B1 – 309** and the cases there cited.

[14] That the judgment records that the Respondent sought a provisional winding up order and the order sought is set out in the judgment. Insofar as the Respondent contends that, in respect of the sequestration, the order of the court must be interpreted to mean a provisional sequestration it must logically follow that the court also intended to grant a provisional winding up order. In this regard Advocate Flynn cited section 290 (1) of the Companies Act. Various arguments were made by Advocate Flynn in para 6, 7, 8 ,8 10, 11, 12, 13 14, 15 to 21 of this Heads of Arguments in this regard.

[15] In paragraphs 22 to 35 of his Heads of Arguments Advocate Flynn raised points **in limine** to the Application for the intervening parties stating that the intervening Applicants in this matter relied on documents and information which is inadmissible as evidence in the Application to intervene and claim **locus standi** on this basis. In this regard cited the case of **Simmons N.0. vs Gilbert Hamer & Co. Ltd 1963 (1) S.A 897 at 914 – 981.**

[16] I shall revert to the pertinent arguments as I proceed with my analysis and conclusions in this judgment.

[17] Finally, that the reliance on inadmissible evidence which is in writing and speculative and the intervention in the Application under Rule 42 justifies the costs sought in paragraphs 40 to 40.1 in respect of the Applicants to intervene.

[18] Further, that the Respondent in the Rule 42 Application (SIDC) contends for a final liquidation should be ordered to pay costs of that Application..

(ii) For the Respondent

[19] The attorney for the Respondent in the Rule 42 Application Mr. S. Dlamini advanced arguments for his client and filed Heads of Argument for which I am grateful. I shall in like manner outline in brief these arguments for one to understand the issues for decision by this court.

[20] The attorney for the Respondent filed two sets of Head of Argument being main heads of arguments on the points of law raised in opposition to intervention Application. These points being that the Notice of Motion is a nullity. In para 5 to 7 made submission on the issue of **locus standi** citing the **High Court Case of Vilakati Khumalo Design and Quality Surveyors (Pty) Ltd Vs Convenient of Christ Ministries – High Court Case No. 3720/09 paragraph 20.**

[21] In paragraph 8 to 20 advanced a point of law of non-joinder of the Liquidator and Trustee citing pertinent cases.

[22] In the Heads of Arguments labelled **"SIDC Supplementary Heads of Arguments"** the attorney for the Respondent advances arguments on the Rule

42 Application in paragraphs 1 to 19 of such Heads. I shall revert to pertinent argument as I proceed with my analysis and conclusions later on.

(iii) For the Intervening Parties

[23] Advocate G1 Hoffman S C advanced argument for the intervening parties filing three sets of Heads of Arguments being the **" Intervening Application's Heads of Argument"** and what he has captioned **"Notes on Application Heads"** and those described as the **"Response to SIDC Heads".** The main Heads of Arguments cover various topics and in page 25 cover the topic of the alleged **locus standi** at paragraphs 70 to 83 of the Heads of Argument. That at paragraph 71 in essence there are two basis upon which it is asserted that the intervening Applicants do not have **locus** according to the Applicants.

[24] That the first attack is based on section 384 (4) that provides that any answer given to any question put to a person at a private enquiry may thereafter be used in evidence against him. That JJR 111 goes on to say that **"it is not admissible against any other person"** that this attack has no merit. That the intervening parties did not and do not rely on any answers to questions.

[25] That the second attack is that the evidence and documents gathered in the enquiry before **Masuku J** are said to be inadmissible by virtue of the secrecy provisions of section 354 (5) of the Companies Act. It is contended for the intervening parties as is demonstrated in the Replying Affidavit that the enquiry is one in terms of the provisions of section 352 and not section 354. Accordingly the provisions of section 354 of the Companies Act are irrelevant. Further arguments are advance in para 73, 74, 78 up to paragraph 83 of the main Heads of Argument. I shall revert to pertinent submission later on as I

proceed with my analysis and conclusions. I shall also advert to pertinent topics in the main Heads of Arguments later on.

[26] The second set of Heads of Arguments being the **"Response to SIDC Head"** addressing the argument of SIDC from page 1 to 28 of such Heads of Argument and I shall refer to pertinent and submissions as I proceed with this judgment.

[27] The third set of Heads being the **"Notes on Applicant's Head"** to assist the court in the disposal of the matter from page 1 to 13 of such Heads of Arguments in paragraph 13.1 Advocate Hoffman contends that in the Heads of Arguments filed on behalf of the intervening Applicants it is demonstrated that there is no requirement in the Companies Act (as opposed to the Insolvent Act) for a provisional order of liquidation.

[28] That once again, in order to curtail these proceedings the intervening Applicants will not pursue an application for a final winding order. Whilst it adds to the expense of winding up, the intervening Applicants will not take issue with the granting of provisional order with a return date to be fixed by the court.

<u>The issues for decision by this court</u>

1. **Application to strike out**
2. **Right to intervene**
3. **Inquiry in terms of section 354**
4. **Loci standi of the intervening parties**
5. **Joinder**

[29] The above topics are essentially the points for decision by the court on the points of law raised by Applicant and the Respondent in their opposition of the Application for intervention. I shall then deal with the arguments of both the Applicant and the Respondent in the Application in terms of Rule 42 and award the proper order sought in the circumstances.

The Court's analysis and conclusions thereon

[30] Having considered the papers filed of record and the arguments of the attorneys of the parties before dealing with the issue of clarification in terms of Rule 42 this court needs to first decide whether the intervening parties can be heard by this court. I say so, in view of the fact that the intervening parties where not parties in the dispute that brought about the order that has come for clarification in terms Rule 42. Therefore, it is my considered view that the topic No. 2 and No. 4 above commence my consideration. If I find the intervening parties have no **locus standi** I will have to dismiss their intervention and then proceed with the arguments of the Applicants and the Respondents in the clarifying proceedings under the High Court Rules.

[31] I proceed as follows:

1. Right to intervene (locus standi of the intervening parties)

[32] The assertions made bye the Rudolph in paragraph 8 of the Affidavit Johan Jacob Rudolph 111. In essence there are two basis upon what it is asserted that the intervening Applicants do not have **locus.**

[33] The first attack is based on section 354 (4) that provide that any answer given to any question put to a person at a further enquiry may therefore be used in

evidence against him. Johan Jacob Rudolph 111 goes on to say that **"It is not admissible against any other person".** It is contended for the intervening parties that this attack has no merit because the intervening Applicants did not and do not rely on any answer given by any witness at the enquiry. They rely on documents, not to answers to questions.

[34] I have considered the arguments of the parties in this regard and would agree with the intervening parties contentions in this regard.

[35] The second attack is that the evidence and documents gathered in the enquiry before **Masuku J** are said to be inadmissible by virtue of the secrecy provisions of section 347 of the Companies Act.

[36] On the other hand it contended for the intervening parties in their Replying Affidavit that the enquiry is one in terms of the provisions of section 352 and not 354. Accordingly the provision of section 354 of the Companies Act are irrelevant. In this regard I am in agreement with the contentions of the intervening parties as stated in paragraphs 73 to 83 of the intervening Applicants' Heads of Arguments that in enquiry is one in terms of the provision of section 352 not section 354.

[37] Coming to the right to intervene as I have stated in the opening paragraphs of my analysis the first matter which falls to be dealt with is the intervening Applicants entitled to intervene. The relevant principles are set out in **Meskin,** Insolvency Law paragraph 2.1.11 **which can** be summarised as follows:

"13.1 At common law the court has a discretion to permit intervention and this is not limited by any provisions of the Insolvency Act. (nor, in my submission, the Companies Act).

13.2 An application to intervene may be brought at any time:

'To quote the words of KRAUSE, J., in the case of Bitcon v City Council of Johannesburg and Arenow Behrman & Co., 1931 W.L.D. 273 at page 293 to 294

'..... it is matter entirely within the discretion of the court to allow a party to intervene, provided the intervening party can show that he is specially concerned in the issue, and that the matter is of common interest to himself and the party who desires to join, and that the issues are the same'.

The learned Judge then goes to refer to certain authorities and continues.

'..... the Privy Council had to consider our law on intervention and LORD WYNFORD states the law as follows: 'The principle of the law of intervention is, that if any third person considers that his interest will be affected by a cause which is pending, he is not bound to leave the care of his interest to either of the litigants, but has a right to intervene or be made a party to the cause, and taken on himself the defence of his own rights, provided he does not disturb the order of the proceedings. The intervener may come in at any stage of the case, and even after judgment, if an appeal can be allowed.....". (my emphasis)

[38] It is contended for the intervening parties that an Applicant for intervention must show a direct and substantial interest in the proceedings. That there is a interest which may be prejudicially affected by the judgment in the proceedings.

[39] Further that upon the granting of a sequestration order on a winding up order, a **concursus creditorum** comes into existence and any creditor accordingly is vested with **locus standi** to intervene.

[40] The Applicant on the other hand has contended that the intervening parties were not a parties in the proceedings giving rise to the Application in terms of Rule 42.

[41] I have considered the arguments of the attorneys to and fro and I am persuaded by the arguments of Advocate Hoffman for the intervening parties. In this regard I find the **dictum** in the South African case of **Helderberg Laboratories CC v Sola Technologies (Proprietary) Limited 2008 (2) SA 628 (c)** apposite.

[42] Further, it is trite law that a court, has a discretion on ground of convenience, to permit a person who is not a creditor but who **prime facie** has an interest in the sequestration on liquidation proceedings to intervene.

[43] All in all, under this Head of Argument it is clear to me that the intervening Applicants have shown that they have interest in the winding up / or sequestration of and are accordingly granted leave to intervene.

(ii) Inquiry in terms of section 354

[44] In respect of the above head Advocate Hoffman abandoned his arguments in this respect and therefore I shall decline to deal with this aspects of the matter any further.

(iii) Application to striking out

[45] The Applicant filed a Notice of Application for striking out in terms of High Court Rule 6 (28) for the following to be struck out from the Founding Affidavit and the Supplementary Affidavit with costs on the scale as between attorney and own client:

1. **On the basis that same are inadmissible by virtue of section 354 (4) and / or of the Companies Act, 2009 and therefore irrelevant:**

   1.1 Paragraph 181.4 Paragraph

   1.2 Paragraph 19

   1.3 Paragraph 20

   1.4 Paragraph 21

   1.4 Paragraph 22

   1.6 Paragraph 23

   1.7 Paragraph 24

   1.8 Paragraph 25 and all the annexures referred to therein

   (annexures "MBS 3" to MBS 20")

   1.9 Paragraph 26

   1.10. Paragraph 27

   1.11 Paragraph 28

1.12 Paragraph 29

1.13 Paragraph 30

1.14 Paragraph 31

1.15 Paragraph 32

1.16 Paragraph 33

1.17 Paragraph 34

1.18. Paragraph 35

1.19 Paragraph 36

1.20 Paragraph 37

1.21 Paragraph 38

1.22 Paragraph 39

1.23 Supplementary Affidavit by M Boxshall-Smith:

1.23.1 Paragraph 4

1.23.2 Paragraph 5 and annexure "MBS 22" referred to therein

2. Insofar as same may have not already been struck in accordance with 1 above, and on the basis that same are scandalous and vexatious:

2.1 Paragraph 18, second sentence

2.2 Paragraph 19

2.3 Heading "Prima facie wrongdoing and fraudulent conduct" above Paragraph 22

2.4 Paragraph 22

2.5 Paragraph 23, second sentence

2.6 Paragraph 25, first sentence

2.7 Paragraph 26

2.8 Heading "Portion 29 give away" above Paragraph 27

2.9 Paragraph 28

2.10 Paragraph 29

2.11 Heading "Transfer Duty Fraud" above Paragraph 30

2.12 Paragraph 31

2.13 Paragraph 32

2.14 Heading "False accounts and Misrepresentation" above Paragraph 33

2.15 Paragraph 33.2

2.16 Paragraph 35

2.17 Paragraph 36

2.18 Heading "plant and equipment misappropriated" above Paragraph 37

2.19 Paragraph 38, second sentence

2.20 Paragraph 39

2.21 Supplementary Affidavit by Ms M Boxshall-Smith, Paragraph 4

3. On the basis that same is irrelevant to the instant proceedings, Paragraphs 3 of the Supplementary Affidavit by Ms M Boxshall-Smith, and annexure "MBS 21" referred to therein.

[46] On the arguments of the parties advanced on the point and I am inclined to agree with the intervening parties' arguments that the enquiry into the affairs of VFC is one in terms of the providing of section 352 of the Companies Act and not section 357. Accordingly the evidence and documents given at and produced to the enquiry are not subject to confidentiality. A meeting in terms of section 352 is a public meeting and open to anybody. Accordingly to the documents and evidence may be referred to freely.

[47] Further I agree with the arguments of the intervening as parties in paragraphs 8.7 to 10 of the intervening Applicant's Heads of Arguments on this aspect of the matter.

(Non Joinder)

[48] In this regard the Respondent and the intervening parties are in agreement that the Application in terms of section 42 has not joined the liquidator (Sibusiso Motsa) and that this constitutes a fatal non joinder.

[49] In this regard the attorney for the Respondent has cited a case of **Sabelo Mduduzi Masuku N.O. vs Meridien Recoveries (Pty) Ltd, Appeal Case No. 24/2000** to this following:

> **"8.1 There can be no doubt in mind that by holding a dogmatic view that any proceedings may not be dismissed for non-joinder the a court *a quo* misdirected itself. The correct position is that each case is judged on its own peculiar circumstances. There are several cases where courts have correctly dismissed proceedings on non-**

joinder alone. If a party is non-suited by reason of non-joinder, the obvious result is dismissal of the case on that ground alone.....

As was stated in Matime's case (Supra) "non-joinder is a matter that no court, even at the latest stage in proceedings can overlook, because the Court of Appeal cannot allow orders to stand against person who may be interested, but who had no opportunity to state their case." It is for that reason that the Court may raise the issue of non-joinder *mero metu i*n order to do justice.

[50] Nkonyeni and the Rudolph's also contends that the Notice should have been given to the liquidator of Nkonyeni. I agree with the arguments of the intervening party that this is wrong in law.

[51] Notice to Nkonyeni is all that is required. It is established in law that upon liquidation of a company, the liquidator take charge of the company. Notice to the company is, in law, notice to the liquidator because this court has already ordered that the company be would up. In this regard the provisions of section 328 of the Companies Act of 2009 apply.

The Merits

[52] Having disposed all the points **in limine** by the Applicant the Application for intervention I proceed to deal with the merits of the dispute being the clarification of the judgment of the court under Rule 42 (1) (b) of the High Court Rules.

[53] This Application was instituted because the Applicants herein is uncertain as to the terms of the order as there is no reference to provisional liquidation and

sequestration with another date of the Rule sought by the Respondent as would be required to allow the Applicants to show cause why orders should not be made final. That is also necessary for the provisional orders to be advertised.

[54] According to the Applicant the court is empowered to clarity its judgment on order if on a proper interpretation it remains obscure ambiguous or otherwise uncertain or there is an omission in order to give effect to its true meaning. In this regard Advocate Flynn cited the legal authority in **Erasmus, Superior Court Practice, page B1 – 309** and the cases cited.

[55] Advocate Flynn contends that the judgment records that Respondent sought a provisional winding up order and the order sought is set out in the judgment. In so far the Respondent concedes that, in respect of the sequestration, the order of the court must be interpreted to mean a provisional sequestration, it must logically follow that the court also intended to grant a provisional winding up order.

[56] Advocate Flynn further cited section 290 (1) of the Companies Act, 2009 that the court may make an interim order or any order it deems just. He cited the legal authorities **Henochsberg on the Companies Act**, dealing with an identical section in South African Act pointing out that:

> **"The general, and almost invariable, practice is to grant an order for provisional winding up of the company and to issue a rule nisi (to be published in the Gazette and an appropriate newspaper) calling upon all persons to show cause on a fixed date why the company should not be finally wound up".**

[57] That for a court to grant a final order without a Rule and in the absence of an advertisement is prejudicial to the company and to any other interested person who may wish to be heard as to why a final order should not be granted.

[58] Further arguments are advanced by Advocate Flynn at paragraphs 7, 8, 9, 10, 11 to 16 where in paragraph 13 thereof has prepared a draft order marked as annexure "D" which is in accordance with the prayers sought by the Applicant in original Application.

[59] In paragraph 7 thereof it is contended by the Applicant that initially the Applications were clearly argued on the basis that provisional orders were sought and therefore it is inconceivable that final orders were granted by this court. That it should be noted that it was argued that it would be appropriable to place the company under judicial management in terms of section 365 (3) of the Companies Act and that therefore a final liquidation was clearly not argued and the parties addressed the order sought in the Notice of Motion.

[60] The attorney for the Applicant then dealt with various arguments on the intervening parties from paragraphs 16 to 20 and I shall revert to pertinent arguments in my analysis later on.

[61] On the other hand the attorney for the Respondent as I have stated before filed two sets of Heads of Arguments. I have considered these Heads of Arguments by the Defendant but I cannot decipher clearly what the Defendant seeks except to what was stated by Advocate Flynn above in paragraph [51] **supra**. The submission in this regard is that so far **as the Respondent concedes that,**

in respect of the sequestration, the order of the court must be interprited to mean a provisional sequestration.

[62] How ever, it is contended for the Defendant at paragraph 30 of its Answering Affidavit that the pursuit of first order by SIDC in the sequestration petition was not undertaken in accordance of section 12 of the insolvency Act. In other words, the attorney for the Respondent was not alive to the statutory requirement of provisional sequestration.

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[63] In paragraph 31 thereof it is contended for the Respondent that even if the court would maintain that it granted a final order of sequestration, SIDC would abandon it in favour of provisional order for purposes of compliance with section 12 of the Insolvency Act. As the Rudolphs contended in the Founding Affidavit deposed to on their behalf, SIDC has no objection to a provisional sequestration order in compliance with section 12 of the Insolvency Act.

[64] In view of the above arguments by the Respondents in paragraphs [62] and [63] this court is obliged to vary the order it has issued to conform to strictures of section 12 of the Insolvency Act. Without doing that the order initially given by the court for a final order is tainted with illegality, and of no consequence in law

The Appointment of the additional liquidator

[65] On the other hand Applicant objects to the .Application of Miss Boxshall –

Smith that the intervening parties were not parties in the main matter.

[66] The Respondent on the other hand also oppose the appointment of the said Miss Boxshall associating itself with the arguments of the Applicant

[67] I have considered the arguments of the parties regarding the appointment of an additional liquidator and I have come to the view that I will outline below.

[68] The thrust of the relief sought by the intervening Applicants is the appointment of Miss Marisa Boxshall – Smith as co-liquidator in the winding up of the company and or - Trustee to the sequestration of the Rudolph. In my view in the absence of any limitation in the capacity of the Rudolph appointed liquidator and trustee, there is no need for additional appointment especially coming at the eleventh hour, as it were, when the Applicant and Respondent had advanced their arguments in the main matter.

[69] I have considered the arguments of the Applicants, the intervening parties and the Defendant and I shall adopt the draft order proposed by the Applicant to be an order of this court on the basis of my conclusions above

[70] It is therefore ordered that:

1. The estates of Johan Jacob Rudolph 111 are provisionally sequestrated.

2. The Master of the High Court is directed to appoint Sibusiso Motsa as provisional trustee of the Estates of Johan Jacob Rudolph and Johan Jacob Rudolph 111.

3. A rule nisi issues calling upon Johan Jacob Rudolph and Johan Rudolph 111 to show cause on **11th December, 2015** at 0930hrs why the following order should not be made:

3.1 The provisional sequestration of their estates be made final;

3.2 Costs of the petition be costs in the sequestration of their estates.

4. The order is to be published once in the Swazi Observe and Times of Swaziland newspapers as well as in the Government Gazette.

STANLEY B. MAPHALALA

PRINCIPAL JUDGE