



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2423/2023

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

(Registration number: 1962/000738/06)

and

THE MASTER OF THE HIGH COURT, BLOEMFONTEIN

1st Respondent

ELRICH RYWAYNE SMITH N.O.

2nd Respondent

TSIU VINCENT MATSEPE N.O.

3rd Respondent

(In their capacities as trustees of the Insolvent Estate
of J.N. Herselman, Master's reference: B109/2013)

FJ SENEKAL INCORPORATED

4th Respondent

(Registration number: 2017/482348/21)

Coram: Mhlambi J et Opperman J

Heard: 2 December 2024

Delivered: 28 January 2025. This judgment was handed down in court and electronically by circulation to the parties' representatives by email and release to SAFLII on 28 January 2025. The date and time for hand-down is deemed to be 15H00 on 28 January 2025.

Summary: Application for leave to appeal – review in terms of ss 111(2)(a) read with s 111(2)(b) of the Insolvency Act 24 of 1936 of the decisions of the Master of the High Court – the issue of 'double dipping' and claims on account of an erstwhile service provider to the estate.

ORDER

1. Leave to appeal is granted to the Supreme Court of Appeal.
 2. Costs to be in the appeal.
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JUDGMENT

Opperman J

Introduction

[1] The decision of the Master of the High Court, Bloemfontein (first respondent) not to uphold Standard Bank's (applicant) objections in the Insolvent Estate of J.N. Herselman, is at the core of the review that served before the court. It was ordered in the court a quo that:

'ORDER

1. The first respondent's decision not to uphold the applicant's objections against the Amended Second Final Liquidation, Distribution & Contribution Account of the Insolvent Estate of J.N. Herselman, Master's reference: B109/2013, which objections were dated the 16th of March 2023 and 23rd of April 2023, is reviewed and set aside in terms of section 111(2)(a) read with section 111(2)(b) of the Insolvency Act 24 of 1936;
2. The applicant's objections against aforesaid Liquidation, Distribution & Contribution Account are upheld and the aforesaid account must be amended accordingly;
3. The costs of this application for review shall be paid by the fourth respondent.'

The parties

[2] It is only the applicant and F.J. Senekal Inc. (fourth respondent) that entered into the arena in the review application. The first, second and third respondents did not oppose. We will refer to the parties as Standard Bank and F.J. Senekal Inc. It is F.J. Senekal Inc. that now applies for leave to appeal.

The relief sought

[3] F.J. Senekal Inc. brings the application for leave to appeal to the Full Bench of the Free State Division of the High Court. It stands opposed by Standard Bank. The grounds for leave to appeal are:

'That there is a real possibility that a differently constituted Court may find that the Honourable Justices erred;

1.

1.1 In finding, in paragraph [7], that although numerous issues were taken by the respondent only the issue on hearsay apparently remained and was argued, in circumstances where:

1.1.1 the respondent, in paragraph 3 of the answering affidavit, raised the issue of non-joinder of the Jacobus Human Trust;

1.1.2 The non-joinder issue was canvassed in paragraph 2 of the respondent's Heads of Argument; and

1.1.3 The respondent at no point in time abandoned the non-joinder issue.

1.2 In finding, in paragraph [12], that the court aligns itself with the paper of a certain Mr. DM Pretorius relating to the Oudekraal judgment in circumstances where neither the applicant nor the respondent raised the argument proffered by Pretorius in his article, and nor was the rationale of the Pretorius paper debated during argument.

1.3 In finding, in paragraph [14], that the question in the review is whether the respondent may claim for legal costs incurred by Matsepes Inc before 2017 and without authorisation from Matsepes Inc and that the claim for the costs is between Matsepes Inc and the insolvent estate.

1.4 In finding, in paragraph [15], that it is not correct that the applicant's failure to take the Master's decision of 20 April 2021 on review, is fatal.

1.5 In finding, in paragraph [15], that the claim of Mr. Senekal's fees remains a claim for the benefit and the account of Matsepes Inc not the respondent and that the Master did not rule on this issue and in further finding that it is money that must go to Matsepes Inc not the respondent.

1.6 In finding, in paragraph [24] that the question in the review is whether the respondent may claim payment of the fees.

- 1.7 In finding, in paragraph [29] and [31] that the court order in case number 1251/2022 was conditional.
 - 1.8 In finding, in paragraph [30] that the issue was the liability of FJ Senekal Inc which ought to have been picked up during taxation.
 - 1.9 In finding, in paragraph [34] that the failure to establish who has the right to claim is where the case derailed.
 - 1.10 In finding, in paragraph [40] that the question is whether one service provider may claim on a legal relationship between two other entities.
 - 1.11 In finding, in paragraph [41]- 2 that the claim of FJ Senekal Inc against the insolvent estate of JN Herselman before 2017 for services provided by Matsepes Inc cannot be lawful.
 - 1.12 In finding, in paragraph [41]-3 that the decision of the Master to cause the applicant to contribute the amount of R1 085 723,12 payable to FJ Senekal Inc was based on unsound legal principals, irregular and unlawful.
 - 1.13 In finding, in paragraph [41]-3 that the prejudice to the administration of justice in that entities may claim from insolvent estates for services rendered by another entity and without authority of the actual service provider at the time may cause severe detriment to the control of the veracity of claims.
2. In not dismissing the application with costs.¹

The law

[4] The Supreme Court of Appeal in *Ramakatsa and others v African National Congress and Another*² in March 2021 ruled that:

'[10] . . . If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a

¹ Fourth respondent's Notice of Application for Leave to Appeal at p 3-6.

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021).

dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

Conclusion

[5] Counsel for the parties addressed the court extensively in their heads of argument as well as during the hearing of the application. We are convinced that the matter must go on appeal. F.J. Senekal Inc. did indeed show that they have prospects of success on appeal and specifically on the following issue:

[14] The question is whether the fourth respondent may claim for legal costs incurred by Matsepes Inc. before 2017 and without authorization from Matsepes Inc. The claim for the costs is between Matsepes Inc. and the Insolvent Estate. As the Master indicated in the reasons supplied to the court: 'Matsepes was substituted as the firm of attorneys by F.J. Senekal Inc.' Again, the fourth respondent was only established in 2017 and the claim is in the name of the entity F.J. Senekal Inc. and not in the name of Mr. F.J. Senekal for work he had done at Matsepes Inc. before 2017.'

[6] Counsel for Standard Bank correctly pointed out that the matter can only be adjudicated on appeal in the Supreme Court of Appeal. Leave to appeal cannot be granted to the Full Bench of the Free State High Court due to the provisions of s 16(1)(a)(ii) of the Superior Court Act 10 of 2013.³

Order

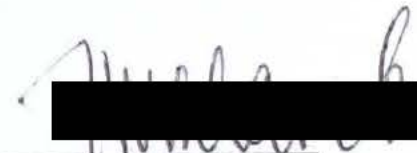

[7] In the result, the following order is made:

1. Leave to appeal is granted to the Supreme Court of Appeal.
2. Costs to be in the appeal.

³ 16. Appeals generally.—(1) Subject to section 15(1), the Constitution and any other law—
(a) an appeal against any decision of a Division as a court of first instance lies, upon leave having been granted—
(i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division, depending on the direction issued in terms of section 17(6); or
(ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;


OPPERMAN J

I concur



MHLAMBI J

Appearances:

For Standard Bank

Instructed by:

P Zietsman SC

Phatshoane Henney Attorneys

Bloemfontein

For F.J. Senekal Inc.:

Instructed by:

P.J.J. Zietsman SC

F.J. Senekal Inc.

Bloemfontein