



IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 13634/2019

DELETE WHICHEVER IS NOT

APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) NOT REVISED.

27 October 2022

In the matter between:

KAMALJID PREM SHIVANAND

First Applicant

SHIVCOM CC

Second Applicant

(REGISTRATION NO: 2007/108318/23)

and

KRUGKOR FRANCHISE (PTY) LTD

First Respondent

DEON MARIUS BOTHA

Second Respondent

SUNE SMITH

Third Respondent

PRIME UNIVERSAL FOODS

Fourth Respondent

CUBISOL INVESTMENTS 3 (PTY) LIMITED

Fifth Respondent

SOUTH AFRICAN REVENUE SERVICES

Sixth Respondent

THE MASTER OF THE HIGH COURT,

Seventh Respondent

JOHANNESBURG

THE COMPANY AND INTELLECTUAL PROPERTY

Eighth Respondent

COMMISSION

JUDGMENT ON LEAVE TO APPEAL

YACOOB J:

1. The applicants purportedly bring an application for leave to appeal against my judgment handed down on 15 July 2022, dismissing with costs and application to rescind an order placing the second applicant (“Shivcom”) in liquidation.
2. As I pointed out in the main judgment, Shivcom was not properly before me because it was in liquidation, and the first applicant (“Shivanand”) did not have the power to bring an application on its behalf. Only the liquidators had that power. This applies equally, if not more so, to the application for leave. Shivcom was not before me in the main application and therefore has no standing to apply for leave, even if the liquidators suddenly made an appearance.
3. However, as before, Shivkumar is entitled to bring this application. Also as before, only the first respondent (“Krugkor”) participates in these proceedings.
4. It is common cause that Shivcom has not traded since 2018. There is no allegation in the papers that Shivcom is not insolvent.
5. Taking into account that an appeal lies against an order rather than against the reasons for the order, I enquired from the parties what would be served by setting aside an order liquidating a company which appears by common cause to be insolvent. At least on the face of it, this application falls within the purview of section 16(2) of the Superior Courts Act, 10 of 2013, which provides that an appeal may be dismissed on the ground that the decision will have no practical effect, unless exceptional circumstances exist. Section 17(1)(b) requires that the decision sought on appeal must not fall under section 16(2), for an application for leave to be successful.
6. Mr Kaplan for the applicant submitted that the effect of the decision sought on appeal would be that Shivcom then would be able to pursue its claim against

Krugkor, the avoidance of which Shivkumar contends is the reason Krugkor sought to liquidate Shivcom.

7. I am not satisfied that that saves the application. The claim against Krugkor can and should still be pursued by the liquidator. Without more, such as any allegation that Shivcom has some kind of goodwill that may be lost, or some other kind of prejudice, it makes no practical difference whether the claim is pursued by the liquidator or the company. Nor can I see any exceptional circumstances that would require the matter to be dealt with by an appeal court.
8. The applicant identified sixteen grounds of appeal. I have read and considered all of them. Of them, the only one which I consider may have had some merit was the twelfth ground, that the court failed to consider that Krugkor's answering affidavit disclosed that Krugkor did not actually have the claim on which the liquidation application was premised.
9. In view of my conclusion that this application falls under section 16(2) of the Superior Courts Act, I do not have to determine whether there is a likelihood that another court would find in Shivkumar's favour.
10. For these reasons, I make the following order:

"The application is dismissed, the first applicant to pay the costs."

S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the applicants: J L Kaplan

Instructed by: Ian Levitt Attorneys

Counsel for Respondent: E van As

Instructing Attorneys: De Kock and Associates

Date of hearing: 27 October 2022

Date of judgment: 27 October 2022