

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 4105/2019

DATE: 2022-10-12

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(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED: YES DATE: 18 NOVEMBER 2022

In the matter between

ROOTH AND WESSELS INC T/A RW ATTORNEYS Applicant

and

GUNDO WEALTH SOLUTIONS (PTY) LTD Respondent

J U D G M E N T

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VILJOEN, AJ:

This is an application in which the applicant seeks the final, alternatively provisional winding up of the respondent. The application, on the face of it, was launched in February 2019 and for reasons unknown to me was only set down for today.

The applicant applies for the matter to be removed from the roll on account of the fact that the security bond from the Master that is

required was not uploaded to CaseLines. There is no explanation before me for this situation, apart from the submission that is made from the bar that the matter had been passed between various attorneys in the same firm and that somewhere between the various attorneys the documents were lost.

On further enquiry from the applicant's counsel, it appears that there is also no indication whether service of the application was effected on the Master, the South African Revenue Service or the employees of the respondent, as is required by section 346(4A) of the
10 *Companies Act*, 1973. There is no explanation for why this aspect of the application has not been clarified in the two and a half years since the matter had been launched.

The respondent opposes the removal of the matter from the roll. The respondent contends that the application is fatally defective and that it should therefore be dismissed, and be dismissed with costs on the scale as between attorney and client.

I am in agreement that little purpose would be served in postponing this application any further. It would be, in my view, unduly prejudicial to the parties involved to prolong this saga any further. The
20 question then is whether the respondent is entitled to the costs of the application on an attorney-and-client scale.

I am inclined to agree with the respondent. The applicant in the matter is a firm of attorneys. It ought to know the requirements for liquidation applications and it ought to know what is required to have a matter set down and successfully argued. The applicant appears not to

have taken any heed of any of the rules of court or the practice manual or indeed the *Companies Act*. And in so far as that is the case, it is the author of its own misfortune.

Under these circumstances, to allow the respondent to be out of pocket because of an application that never got off the ground appears to me unfair and without justification; and in those circumstances, I am of the view that the respondent should be compensated as fully as possible for costs incurred in this application. In the circumstances, therefore, I make the following order:

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ORDER

The application is dismissed with costs on a scale as between attorney and client.

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H M VILJOEN, AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES:

APPEARANCE FOR THE APPLICANT: ADV P BALOYI

APPEARANCE FOR THE RESPONDENT: MR M B MHANGO



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