REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: **77351/2015**

14/10/2015

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) ~~REVISED~~

....
SIGNATURE **DATE**

In the matter between:

Hlumisa Investment Holdings (RF) LTD	**First Applicant**
Eyomhlaba Investment Holdings (RF) LTD	**Second Applicant**
and	
Liebenberg Dawid Ryk Van Der Merwe N.O. *(In his capacity as duly appointed joint business rescue practitioner of African Bank Investment Limited)*	**First Respondent**
John Francis Evans N.O. *(In his capacity as duly appointed joint business rescue practitioner of African Bank Investment Limited)*	**Second Respondent**
African Bank Limited	**Third Respondent**
Investec Bank Limited	**Fourth Respondent**
The Standard Bank of South Africa Limited	**Fifth Respondent**
ABSA Bank Limited	**Sixth Respondent**
Rand Merchant Bank *(A division of FirstRand Bank Limited)*	**Seventh Respondent**

JSE Limited	**Eighth Respondent**
Link Market Services (PTY) Limited	**Ninth Respondent**
Tugendhaft Wapnick & Bhanchetti	**Tenth Respondent**
Price Waters Coopers Incorporated	**Eleventh Respondent**
KPMG Services (PTY) Limited	**Twelfth Respondent**
Nithia Nalia	**Thirteen Respondent**
Deneys Reitz Incorporated t/a as Norton Rose Fulbright South Africa	**Thirteenth Respondent**

JUDGMENT

THOBANE AJ

[1] On the 28th September 2015 I granted an order, details in respect of which appear below, and indicated at the time that my reasons for such an order will follow. These are my reason for that order.

[2] The applicants approached court on an urgent basis, in summary, for the following relief;

1.1. That this matter be deemed urgent and that the ordinary rules relating to form and manner of service be dispensed with in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court.

1.2. That a meeting scheduled to take place on the 29th September 2015 be postponed, alternatively interdicted pending;

(a) delivery of certain documents and information as per paragraph 3.1. of the Notice of Motion;

(b) the outcome of an application to be launched within 30 days for;

(i) setting aside the business rescue proceedings,

(ii) placing ABIL under final winding up in the hands of the master of the High Court,

(iii) alternatively, a declaration as unconstitutional, the provisions of section 151 and 152 of the Companies Act .

[3] The application is vigorously opposed by the first and the second respondents. The third respondent also opposes the application. The third respondent however did not file any opposing papers.

[4] These proceedings emanate from the placement of ABIL, (African Bank Investment Limited), under business rescue in terms of the provisions of section 129 of the Companies Act, the Act. As part of that process, a business rescue plan was published on the 14th September 2015 for consideration and possible adoption at a meeting scheduled to take place on the 29th September 2015. It is the publication and the envisaged meeting that resulted in these proceedings.

URGENCY

[5] The applicants argue that this matter is urgent and that urgency should be computed from the 14th September 2015, being the date of publication of a meeting to consider the business rescue plan. They argue that after that date, but before this application, there was correspondence and interaction between them and the business rescue practitioners, which correspondence and interaction did not yield any fruit. They requested a meeting with the business rescue practitioners which took place on the 22nd September 2015 during which meeting they sought disclosure of certain documents as well as postponement of the section 151 meeting. Both their requests were not acceded to.

Certain documents have since been made available to them however applicants are of the view that not all documents have been availed and that they are unable to exercise their rights as a result.

[6] Following the meeting of the 22nd September 2015, an urgent application was prepared and served in draft form on the 23rd September 2015. The signed papers were served on the 24th September 2015 which was a public holiday. When one considers the date of publication of the meeting to consider the business plan as well as the date of the meeting convened at the instance and request of the applicants, being the 22nd September also given the fact that the 24th September was a public holiday, it is my considered view that the applicants were not supine and that there is justification for enrolling the matter as urgent on a Monday.

[7] In terms of Rule 6 (12) of the Uniform Rules of Court, the applicants must state grounds on which urgency is relied upon and secondly, why they contend that they will not be afforded substantial redress at a hearing in due course. **In re: Several Matters on the Urgent Court Roll,** Wepener J, referred with approval to **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others [2012] JOL 28244 (GSJ)** at paras 6-7 where Notshe AJ held that:

> *'[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course.*

The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] *It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard.'*

[8] In this application the applicants contend that they will not be afforded substantial redress at a hearing in due course in that should the business plan be adopted and the sale be approved, which sale they argue is at a price substantially below the fair value of ABIL, they will not be in a position to obtain relief relevant to the undervalued sale. On the basis of this they submit that they will not be afforded substantial redress at a hearing in due course. The business rescue practitioners are of the view that there is redress in the form of a damages claim should it be found that the applicants were in the right. While this could be seen as redress, it is my view that it would not be substantial.

[9] Considering the timelines since the publication of the meeting to consider and possibly adopt the business rescue plan and the fact that there will not be substantial redress to the applicants in an application in due course, I am of the view that the applicants have made out a case for urgency and that deviation from the rules is in these circumstances justified. The application is accordingly enrolled as an urgent application.

ISSUES

[10] The following issues are in my view common cause;

10.1. That the first applicant is a shareholder of ABIL holding 25.9 million ordinary shares which equate to approximately 1.7% of the issued share capital of ABIL;

10.2. That the second applicant is a shareholder of ABIL holding 48.2 million ordinary shares which equate to approximately 3.2% of the issued share capital of ABIL;

10.3. That the applicants are "affected persons" as defined in section 128(1)(b)(i) of the Companies Act;

10.4. That the applicants were not consulted, as contemplated in section 151(1) of the Act, before the preparation of the business plan for consideration and possible adoption at a subsequent meeting.

[11] The business rescue practitioners are vehemently opposing the application. They raised the following points in resisting the application;

11.1. That urgency is self created,

11.2. That there is a non-joinder of various parties,

11.3. That the applicants have failed to comply with the provisions of section 133(a) or (b) of the Act, in that the requisite consent has not been obtained,

11.4. That the application lacks averments to make out a case for an interdict.

[12] I will not deal with the respondents' contention that urgency herein is self created in that I have already dealt therewith above. The balance of the points raised, will be briefly dealt with below.

NON-JOINDER

[13] The business rescue practitioners contend that the parties named below have not been joined to these proceedings and that such non-joinder renders this application fatally defective. Those parties are;

13.1. The Minister responsible for companies;

13.2. Board Members of the company, STANGEN;

13.3. Ellerines as a party with a legal interest in these proceedings;

13.4. Other ordinary and preferent shareholders of the company.

[14] To determine if these parties should have been joined one needs to answer the question as to whether they have "a direct and substantial interest" in the outcome of the proceedings. In these proceedings the applicants seek an order to postpone a meeting and to be provided with certain information. It is so that there are other interested parties, for example, creditors, preferent shareholders and other persons who have voting rights at a meeting to consider the future of the company. On the papers and in argument before me the business rescue practitioners could not advance reasons why they contend that the parties that have not been joined, except with regard to the minister, in respect of whom it was argued that in all proceedings involving a constitutional challenge he ought to be joined, have an interest in the outcome of this application. In the ***Judicial Services Commission v Cape Bar [2012] ZASCA 115 para 12,*** Brand JA, had the following to say with regard to non-joinder

> "*[12] It has by now become settled law that the joinder of a party is only required as a matter of necessity - as opposed to a matter of convenience - if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg* ***Bowring NO v Vrededorp Properties CC 2007 (5) SA 391 (SCA) para 21****). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea.*

The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one (see eg ***Burger v Rand Water Board 2007 (1) SA 30 (SCA) para 7; Andries Charl Cilliers, Cheryl Loots*** *and* ***Hendrik Christoffel Nel Herbstein & Van Winsen The Civil Practice of the High Courts of South Africa 5 ed vol 1 at 239.***

[15] In reply the applicants are of the view that the relief sought has nothing to do with the parties that have not been joined. Given the fact that the application is brought by a group of aggrieved shareholders who contend that there has not been proper consultation with them. Clearly their displeasure is distinct and not linked to any of the parties not joined to these proceedings. The applicants grievance, being the lack of consultation and the possible loss of their investment and the relief sought, i.e. to postpone a meeting, to be consulted and to be provided with information, is not of interest to the parties not joined. It is my view that the joinder of the mentioned above, is not necessary for purposes of this application.

SECTION 133 (a) or (b) OF THE COMPANIES ACT

[16] The first and second respondent contend that there has not been consent obtained as contemplated in the aforementioned section of the Act. Section 133 reads as follows;

"General moratorium on legal proceedings against company

133. (1) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except—

(a) with the written consent of the practitioner;

(b) with the leave of the court and in accordance with any terms the court considers suitable;

(c) *as a set-off against any claim made by the company in any legal proceedings, irrespective whether those proceedings commenced before or after the business rescue proceedings began;*

(d) *criminal proceedings against the company or any of its directors or officers; or*

(e) *proceedings concerning any property or right over which the company exercises the powers of a trustee."*

The question that arises is whether the provisions of section 133, on the circumstances of this case, find application. If they do, then a determination must be made as to whether the applicants have fallen foul thereto as contended.

[17] It is common cause that the first and second respondent are Business Rescue Practitioners duly appointed in respect of ABIL. They are cited herein in their capacity as such. The proceedings are aimed at the Business Rescue Practitioners and not the company under business rescue. I understand the purpose of the moratorium as stated in section 133, to be for the benefit of the company. The purpose has come to be stated as follows, "*protecting the company and its assets and to give breathing space*". These proceedings, which are primarily aimed at disclosure of documents and information and also interdicting consideration and adoption of a business plan, are in my view not those contemplated in section133, which is essentially about claims against the company, which have the potential to disrupt the business rescue process. In this regard see ***Moodley v ON Digital Media (PTY) LTD and Others 2014 (6) SA 279 (GJ) at 284 F-G para 11,*** where it was held per Meyer J, that;

> *"Section 133, therefore finds no application in legal proceedings against a company in business rescue and its business rescue practitioner in connection with the business rescue plan, including its interpretation and execution towards implementation (my emphasis)....."*

Therefore neither consent nor leave of the court is necessary in these proceedings. Section 133 is not applicable in these circumstances.

CONSULTATION WITH THE APPLICANTS

[18] The appointment of the first and second respondent, as business rescue practitioners to ABIL, took place on the 5th June 2015. In the exercise of their duties the business rescue practitioners may consult and be consulted by creditors, affected persons and management of the company. The applicants state that they are a special BEE investment vehicle created by ABIL. They further indicate that they have behind them 13 000 individual and unsophisticated black investors, on whose behalf they have acquired in total 74 million ordinary shares which are equal to about 5% of ABIL's issued share capital. They indicate that a majority of their investors are from previously disadvantaged communities who have invested approximately R268 million in ABIL. They make other further submissions to indicate that as shareholders and therefore affected persons, they are not being treated fairly by the business rescue practitioners.

[19] In reply to the above, the business rescue practitioners indicate that they have no knowledge of and therefore deny that;

19.1. The applicants are a BEE vehicle created exclusively to benefit about 13 000-00 black investors;

19.2. The investors are from previously disadvantaged communities;

19.3. The value of the shareholders investment is R268 million;

19.4. The loss in equity value that the applicants suffered following the collapse of ABIL is estimated at R1.5 Billion,

19.5. The value of the applicants' estimated reinvested dividends.

The posture of the Business Rescue Practitioners that they do not have knowledge of a group of BEE shareholders and the value of their investment is in my view unsatisfactory and in fact lends credence to the applicants contention that they are not, as affected persons, been treated fairly by the business rescue practitioners.

[20] Development of a business plan is provided for section 151 (1) of the Act which provides that;

"Development and approval of business rescue plan

Proposal of business rescue plan

150. (1) The practitioner, after consulting the creditors, other affected persons, and the management of the company, must prepare a business rescue plan for consideration and possible adoption at a meeting held in terms of section 151.

(2) The business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan, and must be divided into three Parts, as follows:

It is clear from a simple reading of section 150 (1) of the Act that the applicants as "affected persons" must be consulted. The applicants contend that there was no meaningful consultation and that the source documents which would have been critical in the preparation of the Business Rescue Plan, were not made available to them and that they were not consulted with until they requested a meeting with the first and second respondent. At this meeting still no documents were made available to them. The documents were made available only after the urgent application had been served on the respondents. A valuation report compiled by KPMG in respect of the value of shares in the business of STANGEN, was not made available to them. Counsel for the applicant was given access to it and proceeded to view the document under very stringent confidentiality and non-disclosure terms. The said evaluation report was made available to the court from the bar, according to the respondents, as a sign that they had nothing to hide. To the applicants however, this was again indicative of the unfair treatment at the hands of the Business Rescue Practitioners as well as lack of transparency of the worst order.

[21] The applicants are emphatic that they were not consulted in terms of section 150 (1) of the Act and that it was after they learned of the publication of the Business Rescue Plan that they realized that;

(a) the value at which the proposed sale of ABIL's shares in STANGEN was to take place, was significantly undervalued, and;

(b) the business rescue plan did not disclose sufficient information in regard to the transaction which would enable the applicants to meaningfully consider their position in regard to the proposed business rescue plan.

[22] The first and second respondent contend that there is sufficient information, in the business rescue plan, to enable the reader to meaningfully consider the agreement and alternative proposal. The respondents do not dispute that there was no consultation with the applicants as contemplated by section 151 (1) of the Act. They contend, however, that they *"informed"* creditors and shareholders of what was happening particularly in relation to the KPMG valuation, by way of SENS announcement and in meetings with individual shareholders and a body of preferent shareholders. No where do they assert that the applicants were *"consulted"*. There is a clear distinction between informing and consulting. With regard to consulting Rogers J had the following to say in ***Scalabrini Center Cape Town and Others v Minister of Home Affairs and Others 2013 (3) SA 531 (WCC),***

> *".....There are two points to emphasize from the cases: [a] At a substantive level, consultation entails a genuine invitation to give advice and a genuine receipt of that advice (see* ***R v Secretary of State for Social Services, Ex parte Association of Metropolitan Authorities [1986] 1 All ER 164 (QB) at 167g-h; Hayes & Another v Minister of Housing, Planning and Administration, Western Cape & Others 1999 (4) SA 1229 (WC) at 1242 c-f****). Consultation is not to be treated perfunctorily or as a mere formality* ***(Port Louis Corporation v Attorney-General of Mauritius [1965] AC 1111(PC) at 1124 d-f****). This means inter alia that*

engagement after the decision-maker has already reached his decision or once his mind has already become 'unduly fixed' is not compatible with true consultation ***(Sinfield & Others v London Transport Executive [1970] 2 All ER 264 (CA) at 269 c-e).*** *[b] At the procedural level, consultation may be conducted in any appropriate way determined by the decision-maker unless a procedure is laid down in the legislation. However, the procedure must be one which enables consultation in the substantive sense to occur. This means that sufficient information must be supplied to the consulted party to enable it to tender helpful advice; sufficient time must be given to the consulted party to enable it to provide such advice; and sufficient time must be available to allow the advice to be considered* ***(Association of Metropolitan Authorities supra at 167 h-j; Hayes supra at 1242 c-1243 b).***

[23] I am satisfied that the applicants were not consulted as contemplated in section 150 (1) of the Act.

[24] It is common cause that the applicants do not have voting rights, as the law stands, at a meeting to determine the future of the company as provided for in section 151 of the Act. They argue that their exclusion from this process amounts to an arbitrary and unreasonable deprivation of their rights which attach to their shareholding in ABIL. They argue that their exclusion constitutes an infringement of their right to property as contemplated in section 25(1) of the Constitution Act 108 of 1996. The opposition mounted by the respondents is to the effect that the applicants have acted unprocedurally in failing to dispatch a notice in terms of Rule 10 (A), non-joinder of the minister and that there is no merit to the argument. I agree that there has not been a deprivation of property as commonly understood. No case has been made for interim relief pending the outcome of a constitutional challenge.

REQUIREMENTS OF AN INTERDICT

[25] The applicants seek to postpone a meeting called in terms of section 151 of the Act. It is common cause that the applicants do not have voting rights in the meeting. In terms of section 150 (1) of the Act, the applicants must be consulted before a business rescue plan is prepared and presented for consideration and possible adoption at a meeting to determine the future of the company. The applicants as shareholders and therefore affected persons, as defined, had a right to be consulted, however such consultation did not take place. Section 128 of the Act defines affected persons as;

> *(a)* ***"affected person"****, in relation to a company, means-*
>
> *(i) a shareholder or creditor of the company;*
>
> *(ii) any registered trade union representing employees of the company; and*
>
> *(iii) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives;*

The fact that they do not have voting rights does no disentitle them consultation before the business rescue plan is prepared and published for adoption. The applicants have in my view established a *prima facie* right.

[26] Should interim relief not be granted and the meeting to consider the business plan proceed as scheduled and adopt the business rescue plan, which is a precursor to *inter alia* payment of creditors and shareholders, harm will be visited upon the applicants. In fact, in failing to consult with the applicants, the first and second respondent have caused injury to the applicants. Further, the applicants contend, and this is disputed by the first and second respondent, that the sale as currently structured will be effected at a price way below market value and as a result their shareholding in ABIL will be obliterated.

This contention is made against the backdrop of a valuation report by KPMG prepared at the behest of the first and second respondent whose contents they can not utilize to support their contention owing to the confidentiality and non-disclosure. This lack of transparency, applicants argue, offends against the principle of openness and fairness and is contrary to the framework applicable to a public company. When this report was handed over from the bar I enquired as to its status. Whether it it can be a public document and whether I can refer to its contents in considering an appropriate relief. I was informed that I was at liberty to utilize its contents but that it should not be made available to all and sundry. On the same breath I was informed that the applicants' legal representative, due to the confidentiality and non-disclosure arrangements, can not use its contents. I did not read the report in that I did not consider its contents to be of relevance for purposes of the urgent application. However, the circumstances surrounding the secrecy, non-disclosure and confidentiality thereof lends credence to the applicants apprehension that their interests will be harmed. The apprehension is in the circumstances a reasonable one.

[27] Having spoken to the first and second respondent at a meeting during or after which a request for a postponement was made and turned down. Having requested to meet KPMG, the authors of the valuation report, without success. Having been provided with documents some of which were in draft form, virtually on the eve of the section 151 meeting. Having been given the KPMG report belatedly and effectively sworn to secrecy. I am of the firm view that there was, in the aforementioned circumstances no other alternative remedy other than to approach court for intervention.

[28] This matter involves huge sums of money and the issues involved are complex. The first and second respondent contend that the balance of convenience favours them and that creditors as well as shareholders, which include the applicants, will be at a huge disadvantage and stand to lose substantially more if the business rescue route is not carried through and the company is finally liquidated. They further argue that the financier was not willing to extend current arrangements beyond the date of the meeting.

No reason was advanced why an extension could not be granted and the meeting postponed, in light of the allegation that the valuation that informed the business rescue plan, was the best tool relied upon for the sale of the business and was not availed to the applicants. In weighing the balance of convenience, which is normally weighed up between the parties to the dispute, I can not see how the consultation of the applicants, the provision of information, which includes documents, for purposes of consultation, would be unfair towards other parties hereto. It is also for the above reason that I am of the view that the interdict is not final in effect. I need not take it further than stating that the attitude adopted by the first and second respondent, in relation to lack of transparency, lack of openness and lack of consultation, points to the fact that there is merit in the applicants contention that the business rescue proceedings may be set aside and that final winding up be proceeded with.

[29] The sum total of all the above is that I am satisfied that the matter is urgent, that the applicants have made out a case for an interim interdict, hence the order that I granted. The order in marked "X" and attached hereto.

[30] I could see no reason why costs should not follow the event, which would include, given the complexity of the issues, the costs of both senior and junior.

SA THOBANE
ACTING JUDGE OF THE HIGH COURT

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 77351/15

In the matter between:

HLUMISA INVESTMENT HOLDINGS (RF) LTD	First Applicant
EYOMHLABA INVESTMENT HOLDINGS (RF) LTD	Second Applicant
and	
LIEBENBERG DAWID RYK VAN DER MERWE N.O. **(In his capacity as duly appointed joint business rescue practitioner of AFRICAN BANK INVESTMENTS LIMITED)**	First Respondent
JOHN FRANCIS EVANS N.O. **(In his capacity as duly appointed joint business rescue practitioner of AFRICAN BANK INVESTMENTS LIMITED)**	Second Respondent
AFRICAN BANK LIMITED	Third Respondent
INVESTEC BANK LIMITED	Fourth Respondent
THE STANDARD BANK OF SOUTH AFRICA LIMITED	Fifth Respondent
ABSA BANK LIMITED	Sixth Respondent
RAND MERCANT BANK **(A division of FirstRand Bank Limited)**	Seventh Respondent
JSE LIMITED	Eighth Respondent
LINK MARKET SERVICES (PTY) LIMITED	Ninth Respondent
TUGENDHAFT WAPNICK & BANCHETTI	Tenth Respondent
PRICEWATERHOUSE COOPERS INCORPORATED	Eleventh Respondent
KPMG SERVICES (PTY) LIMITED	Twelfth Respondent
NITHIA NALLIA	Thirteenth Respondent
DENEYS REITZ INCORPORATED **t/a NORTON ROSE FULBRIGHT SOUTH AFRICA**	Fourteenth Respondent

---

DRAFT ORDER

BEFORE THE HONOURABLE THOBANE AJ:

Having heard counsel in the matter, the following order is made:

1. The matter is enrolled as an urgent application;

2. The meeting scheduled for 29 September to consider the business rescue plan as contemplated in section 151 and 152 of the Companies Act 71 of 2008 ("the Act") is postponed pending:

   2.1. Consultation between the first and second respondents and the applicants, as contemplated in section 150(1) of the Act;

   2.2. the delivery to the applicants by the first and second respondents of:

      2.2.1. The final KPMG valuation report in respect of the value of the shares in or business of Standard General Insurance Company Limited ("Stangen") compiled at the behest of the first and second respondents;

      2.2.2. The agreement concluded between the first and second respondents, representing and African Bank Limited ("African Bank"), as represented by its duly appointed curator, Tom Winterboer, and Stangen, represented by its duly authorised representatives, concluded on 7 September 2015

in relation to the shareholding presently held by African Bank Investments Limited ("ABIL") in Stangen and other ancillary matters;

2.2.3. All valuation reports obtained by the first and second respondents in respect of ABIL's shareholding in Stangen;

2.2.4. Any correspondence exchanged between the first and second respondents and any Regulatory Authorities in respect of the potential revocation of any licenses held by Stangen;

2.2.5. Any correspondence between the first and second respondents and any regulatory authority in relation to the possible cessation of the ability of Stangen to write any new policies with any party other than African Bank;

2.2.6. Any correspondence between the first and second respondents and African Bank in relation to the cancellation of any contractual arrangements subsisting between Stangen and African Bank;

LA

2.3. the outcome of an application to be instituted by the applicants within a period of 30 days, failing which the interim interdict will lapse, for the following relief:

2.3.1. Setting aside the business rescue proceedings which presently subsist in respect of ABIL;

2.3.2. Placing ABIL under final winding-up in the hands of the Master of the above Honourable Court;

3. The first, second and third respondents shall pay the costs of the application, which costs shall include the costs consequent upon the employment of two counsel.

DATED ON 28 September 2015.

BY ORDER OF COURT