



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 16437/20

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED.

H FABRICIUS 19 NOVEMBER 2020

In the matter between:

DAVID TEBATSO MOTSOTSOANA

Applicant

and

RAD MINING AND ENERGY (PROPRIETARY) LIMITED

(Registration Number: 2013/025984/07)

First Respondent

THE COMPANIES AND INTELLECTUAL

PROPERTY COMMISSION ("CIPC")

Second Respondent

MARALCO BUSINESS ADVISORS CC

TRADING AS MARALCO PLANT SERVICES

Third Respondent

ALL AFFECTED PARTIES AS DEFINED IN

SECTION 128 OF THE COMPANIES ACT 71 OF 2008

Fourth Respondent

JUDGMENT

FABRICIUS J

- [1] In an undated Notice of Motion applicant seeks an order that first respondent be placed under business rescue proceedings in terms of the provisions of s 131 (4)(a) of the Companies Act 72 of 2008. The Founding Affidavit is dated 5 March 2020. Fourth respondent filed a notice of abide.
- [2] First respondent was provisionally wound-up by an order of the Middelburg High Court on 4 February 2020 with a return-date on 9 March 2020.
- [3] On 9 March 2020 first respondent served an Answering Affidavit on third respondent indicating the present business rescue application was in the process of being initiated. The *rule nisi* was accordingly extended. The said liquidation application remains in limbo, as it was put by third respondents' counsel.
- [4] Applicant alleges now that he is a 100% share holder of third respondent. Third respondent denied that. There is a dispute as to the true identity of the applicant raised in the answering affidavit.
- [5] Third respondent states that there is no business to rescue and that there are no employees in the employ of first respondent.
- [6] The present application was merely designed to frustrate the final determination of the liquidation application.
- [7] For present purposes, and in addition to the above the following is noted:
- 7.1 The business rescue proceedings have not progressed since March 2020;

7.2 Applicant has filed no replying affidavit dealing with at least his *locus standi* which was placed in issue;

7.3 Applicant filed no heads of argument nor were the papers indexed and paginated.

7.4 First Respondent has not been trading since at least 19 February 2020.

[8] In light of the above the present application cannot be said to be bona fide.

[9] The following order is therefore made:

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

H FABRICIUS

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 19 November 2020.

DATE OF HEARING: NO ORAL HEARING (The judgment was reserved on 16 November 2020)

DATE OF JUDGMENT: 19 NOVEMBER 2020

FOR THE APPLICANT:

McCABE ATTORNEYS

FOR THE THIRD RESPONDENT:

DONN E BRUWER ATTORNEY