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

DELETE WHICHEVER IS NOT APPLICABLE:

CASE NUMBER: 25067/2020

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES ~~YES~~/NO

(3) REVISED:

28 July 2021

DATE

SIGNATURE

In the matter between :

CLOETE MURRAY N.O.

Applicant

and

RAMPHELE, TSHEPISO DAVID

Respondent

([....])

JUDGMENT

Heard on:

28 July 2021

Judgment handed down: This judgment is handed down electronically by circulation to the parties or 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 28 July 2021.

VAN ZYL AJ

1. For the sake of convenience, I refer to the parties as cited in the main application.
2. The Respondent, Mr Ramphele, has applied for leave to appeal against my judgment and order of 14 June 2021 in terms of which I placed Mr Ramphele's estate under provisional sequestration, returnable on 2 August 2021.
3. Section 150(1) of the Insolvency Act (Act 24 of 1936)¹ provides that a person aggrieved by a final order of sequestration or by an order setting aside an order of provisional sequestration, may appeal against the order. The orders mentioned are the only two orders that are appealable in terms of the Act.²

¹ Section 150(1) provides as follows in relevant part:

"150. Appeal

(1) Any person aggrieved by a final order of sequestration or by an order setting aside an order of provisional sequestration may, subject to the provisions of section 20(4) and (5) of the Supreme Court, 1959 (Act No 59 of 1959), appeal against such order. [...]

(5) There shall be no appeal against any Order made by the court in terms of this Act, except as provided in this section"

(Section 20 of the Supreme Court Act of 1959 has been replaced by section 17 of the Superior Courts Act (Act 10 of 2013). This, however, does not alter the situation in any material way.)

² The Law of South Africa (LAWSA), Insolvency (Volume 11 – Second Edition), Jurisdiction, Appeals and Review, paragraph 371.

4. Section 150 of the Insolvency Act does not permit an appeal against a provisional order of sequestration.¹ It follows that a decision granting a provisional order of sequestration is not appealable.²
5. In the premises the application for leave to appeal cannot succeed.
6. In paragraph 10 of the application of the notice of application for leave to appeal, Mr Ramphele saw it fit to accuse the applicant, Mr Murray, of litigating in a dishonest fashion. The allegations do not constitute a ground for appeal, are irrelevant and inappropriate. Counsel for Mr Murray requested that I dismiss the application on a punitive scale given these allegations. However, since no prior notice had been given to Mr Ramphele that a punitive cost order would be sought, I am declining to make such an order.

ORDER:

In the premises I make the following order:

1. The application for leave to appeal is dismissed with costs.
2. The Respondent is ordered to pay the costs of the application for leave to appeal.

¹ Lawclaims (Pty) Ltd v Rea Shipping Co SA: Schiffskommerz Aussenhandelsbetrieb der VVB Schiffbau intervening 1979 (4) SA 745 (N).

² LAWSA *supra* paragraph 371; Moch v Nedtravel (Pty) Limited trading as American Express Travel Service 1996 (3) SA 1 (A) at 7.

DIRK R. VAN ZYL

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

For the Respondent:

Adv P. W. Makhambeni

Adv Shai

Instructed by:

Ramphele Attorneys

For the Applicant:

Adv Lourens

Instructed by:

Roestoff Attorneys