




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

Case Number: 43935/2019

(1)	REPORTABLE: NO /YES
(2)	OF INTEREST TO OTHER JUDGES: NO /YES
(3)	REVISED. NO /YES
<u>14</u> SEPTEMBER 2021	
DATE	 SIGNATURE

In the matter between:

RAINBOW FARMS (PTY) LIMITED

Applicant

And

THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent

DW PARKER CHICKEN FARMS (PTY) Ltd

(in liquidation)

(Registration No. 72/09234/07)

Second Respondent

WILANDA PRINSLOO N.O.

Third Respondent

THE LAND AND AGRICULTURAL

DEVELOPMENT BANK OF SOUTH AFRICA

LIMITED

Fourth Respondent

JUDGMENT

MAKHOB A J

1. This is a review application against the fourth liquidation and distribution account (hereinafter referred to as the fourth liquidation and distribution) drafted by the third respondent in her capacity as the final appointed liquidator in the insolvent estate of the second respondent.
2. The fourth liquidation and distribution was drafted and laid for inspection and was objected to and this objection, which was dismissed by the first respondent, forms the basis of this application.

THE FACTUAL BACKGROUND

3. The insolvent company conducted business as a producer of broiler chickens for slaughter and sale on two separate premises. The third respondent was appointed on the 6th May 2015 as the liquidator.
4. During 2002, the applicant instituted application proceedings against the insolvent company under case number 10423/02 for payment of money due to it for chicken feed supplied.
5. These proceedings were terminated in favour of the applicant for R131 82 498.19 together with interest at 15.5% from date of judgment to final payment thereof.
6. The applicant instituted another action against the insolvent company for monies owing for the period March 2002 until June 2002. This action is still pending.
7. From the third liquidation and distribution account applicant was awarded approximately R19 million instead of R60 million. Applicant applied to the master for a formal inquiry in terms of sections 417 and 418 of the Companies Act to carry out this investigation.

8. The reconciliation was finalised however the applicant applied for payment based on the third liquidation and distribution account.
9. The third respondent tried to amend the third liquidation and distribution. The applicant opposed on the basis that the third liquidation and distribution cannot be revisited.
10. The first respondent ruled that the mistakes must be rectified in a subsequent fourth liquidation and distribution account. The fourth liquidation and distribution account was lodged with the first respondent the applicant objected.

ISSUES

11. The applicant approached this court to review the fourth liquidation and distribution drafted by the third respondent in her capacity as the final appointed liquidator in the insolvent estate of the second respondent.
12. In a nutshell the applicant is of the view that the first respondent is wrong in dismissing its objection to the fourth liquidation and distribution which is purported to rectify mistakes in the third liquidation and distribution.
13. The applicant contends that the first respondent's ruling was incorrect and invalid because, based on the third respondent's repeated allegations of fraud and serious irregularities in the third liquidation and distribution it was not legally competent to simply prepare a further account to address the alleged irregularities.
14. According to the applicant the third respondent was required to apply to this court to have the third liquidation and distribution re-opened and or set aside.
15. In justification of the fourth liquidation and distribution respondents contend that any liquidation and distribution account, not yet titled the "Final Liquidation and Distribution Account" whether confirmed by the

master or not, is capable of amendment and revision up until the final liquidation and distribution account as contemplated in section 408 of the Companies Act.

16. Respondents submit further that until the final liquidation and distribution accounts declared final and up until dissolution of the company in terms of section 416, the liquidator can and must from time to time and as instructed by the master entitled to lodge a further account.

THE LAW

17. Throughout the proceedings and in the papers before more reference is made to sections 403, 407 and 408.

Section 403 (1) (b) reads as follow: -

“(b) If the final account lodged under paragraph (a) is not a final account, the liquidator shall from time to time and as the Master may direct, but at least once in every period of six months (unless he receives an extension of time), frame and lodge with the Master a further account and plan of distribution: Provided that the Master may at any time and in any case where the liquidator has funds in hand, which ought in the opinion of the Master to be distributed or applied towards the payment of debts, direct the liquidator, in writing to frame and lodge with him an account and plan of distribution in respect of such funds within a period specified.”

18. Section 408 reads as follows: -

“408 Confirmation of account

When an account has lain open for inspection as prescribed in section 406 and-

- (a) no objection has been lodged; or*
- (b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again lain open for inspection, if necessary, as in section 407 (4) (b) prescribed, and no application has been made to the Court within the prescribed time to set aside the Master’s decision; or*
- (c) an objection has been lodged but has been withdrawn or has not been sustained and the objector has not applied to the Court within the prescribed time,*

the Master shall confirm the account and his confirmation shall have the effect of a final judgment, save as against such persons as may be permitted by the Court to re-open the account after such confirmation but before the liquidator commences with the distribution. ”

19. In *First Rand Bank Limited and Others v Magistrate Germiston and others* (2004) 2 ALL SA 629 (W) at page 639 the court held as follows:

“(6.5) What this decision means is that if, at any time before payment is made in terms of a final liquidation and distribution account, facts can be placed before the Master that would decreased a proved creditors claim, it follows that his representative, the Magistrate can hold an inquiry if there are grounds to believe that there are such “additional facts”. It matters not that this may result in the proved creditor who has been paid part of its claim being reflected as a debtor in s subsequent account.’

(6.6) I accordingly find that the confirmation of the first liquidation and distribution account and the payment made in terms thereof (all of which happened in October 2002) does not preclude an inquiry into FirstRand Bank’s claim”

20. The law regarding interpretation has been stated by Wallis JA in *Natal Joint Municipal Pension v Endumeni Municipality* 2012 (4) SA 593 (SCA), par 18, as follows:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon this coming into existence. Whatever the nature of the document, consideration must be given to the language used in light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production, where more than one meaning is possible each possibility must be weighted in light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness-like results or undermines the apparent purpose of the document. Judges must be alert

to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used. To do so in regard to a statute or statutory instrument is to cross divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document".

21. In my view the proper interpretation of sections 403 and 408 of the Companies Act and the judgment in the First Bank Limited referred to above any liquidation and distribution account, not yet declared final liquidation and distribution account is capable of amendment and revision until the final account.
22. Thus therefore it is my view that there is nothing in law that precludes the liquidator from presenting the fourth liquidation and distribution accounts and correct mistakes in the previous accounts.
23. I make the following order
 - 23.1 The application is dismissed with costs, including costs of two counsel.



A handwritten signature in dark ink, consisting of a large, stylized 'D' followed by several vertical strokes and a horizontal line extending to the right. The signature is written over a horizontal line.

D MAKHOB

JUDGE OF THE GAUTENG DIVISION PRETORIA

APPEARANCES:

For the applicant: Advocate JE Smit
Advocate J Brewer
Instructed by: Evershields Sutherland
c/o Jacobson & Levy Inc

For the respondent:
(2nd and 3rd respondents) Advocate PJ Greyling
Advocate S Venter

Instructed by:
(2nd and 3rd respondents) Schabort Potgieter Attorneys Inc

Date heard: 11 August 2021

Date of Judgment: 14 September 2021