

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

**CASE NUMBER: 40873/20**

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED.

DATE: 28/06/2024

SIGNATURE

In the matter between:

**KABELO JOHN MATSEPE**

Applicant

And

**THE COMMISSIONER FOR THE SOUTH AFRICAN  
REVENUE SERVICES**

Respondent

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**JUDGMENT**

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**MBONGWE J:**

**INTRODUCTION**

[1] This is an application for leave to appeal against the orders of this court dated 25 April 2022 in terms of which the estate of the Applicant was declared insolvent pursuant to an application by the respondent who had earlier in August 2020 taken judgment in terms of section 172 of the Tax Administration Act 28 of 2011 against the Applicant for the assessed total amount of R61 531 311.27 in respect of both income tax and VAT liability which amount the Applicant had failed to pay or successfully objected to. The Applicant

subsequently requested reasons for the orders. The reasons were furnished in the judgment dated 26 October 2022.

- [2] The Applicant brought this application for leave to appeal on 22 November 2022 accompanied by an application for condonation of the late filing thereof. The application for condonation was granted.

### **ERRONEOUS GROUNDS FOR APPEAL**

- [3] In its grounds for seeking leave to appeal, the Applicant has listed facts that the Respondent had referred to at the initial hearing, and repeated in the judgment, which resulted in the section 172 judgment being taken against him. Poignantly yet erroneously, the Applicant perceived those facts as the basis for this court's sequestration order and premised its arguments heavily on that mistaken perception. A typical example was the Applicant's argument that certain amounts included in the 2020 section 172 judgment were disputed by the Applicant. What that argument missed was that before this court was the present Respondent's application for the sequestration of the present Applicant's estate pursuant to the section 172 judgment of 2020 and not the determination of the merits, or lack thereof, in the assessment of the Applicant's taxes.
- [4] The actual basis for this court's orders is contained in para [22] of the judgment, being that the Applicant in those proceedings (Respondent in this hearing), had presented a factual demonstration of the insolvency of the estate of the present Applicant warranting the granting of the impugned orders.
- [5] The Applicant's assertion that he has prospects of success on appeal in terms of section 17 of the Superior Courts Act 10 of 2013 is untenable. He has, in the first instance, to have the section 172 judgment against him successfully appealed against and overturned before he can embark on challenging this court's sequestration order. In terms of section 174, the judgment in terms of section 172 "*... must be treated as a civil judgment lawfully given in the relevant court in favour of SARS for a liquid debt for the amount specified in the statement*".

## **CONCLUSION**

[6] Stemming from what is stated in the preceding paragraph, the application for leave to appeal does not meet any of the requirements stated in section 17 for leave to appeal to be granted. The application must consequently fail.

## **ORDER**

[7] The following order is made:

1. The application for leave to appeal is dismissed with costs on scale A.

**MPN MBONGWE**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

## **APPEARANCES:**

For the Applicant: Adv H.A. Mpshe  
Instructed by: Maluks Attorneys & Corporate Advisors

For the Respondent: Adv C. Louw SC  
Instructed by: Geldenhuys-Malatji Attorneys

Date of hearing: 28 May 2024

Date of delivery: 28 June 2024

**THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 28 JUNE 2024.**

