



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 10 November 2016  
**STATUS** Immediate

***Please note that the media summary is for the benefit of the media and does not form part of the judgment.***

*Kruger v Joint Trustees of the insolvent Estate of Zulu* (1121/2015) [2016] ZASCA 163 (10 November 2016).

#### **MEDIA STATEMENT**

Today the Supreme Court of Appeal handed down a judgment overturning an order of the Natal Division of the High Court, dismissing an application by Mr Kruger, a repayment administrator appointed in terms of the Banks Act, to take possession of assets of Mr Paulos Bhekinkosi Zulu, subsequent to a finding, by the Registrar of Banks, that Mr Zulu had conducted the business of a bank without being registered or authorised to do so under the Banks Act.

Mr Zulu had been a 'distributor' for an entity known as Travel Venture Institute (TVI) or Travel Ventures Marketing Agency (Newcastle), which conducted the business of obtaining money by marketing and selling electronic travel vouchers. The vouchers purportedly entitled members to discounts for international travel and accommodation with 'travel partners' such as the Hilton Hotels, Lufthansa, Swissair, South African Airways and other reputable companies. The business was structured along the lines of a typical pyramid scheme. Members joined by paying an amount of USD250. On joining the business they became 'Associates' or 'Distributors'. Members had to traverse levels drawn on two boards, whilst recruiting new entrants. On exiting each board they received rewards (USD250 for the first board and

USD10 000 for the second) but had to sponsor two new entrants to qualify for the rewards.

TVI was declared an illegal scheme in many jurisdictions throughout the world. In South Africa it had brutally taken advantage of the informal communal savings structures (stokvels) through distributors, some of whom were ministers, politicians, and civil servants, including magistrates and prosecutors. The total investment in TVI within the country was estimated at R1.6billion. Mr Zulu, as one of the distributors, had opened a bank account in the name of TVI wherein he deposited moneys obtained by him from sales of the travel vouchers.

Following an investigation, the Registrar of Banks concluded that Mr Zulu had obtained money by conducting the business of a bank without being registered as such or authorised to do so under the Banks Acts. The Registrar issued a repayment direction in terms section 83 of the Banks Act, in terms of which moneys paid to Mr Zulu would be repaid to the persons from whom they had been obtained. The Registrar also appointed Mr Kruger as a repayment administrator to manage and control the repayment process. In terms of section 84(A)(b)(i) of the Banks Act part of Mr Kruger's duties, as a repayment administrator, was to take recover and take possession of all Mr Zulu's assets. Mr Kruger brought an urgent application in the KwaZuluNatal Division of the High Court seeking a declarator that he was empowered to take possession of certain assets and that Mr Zulu be ordered to declare the whereabouts of all his assets.

In opposing the application, Mr Zulu contended that Mr Kruger's powers to take possession of his assets were limited to assets which had been acquired through the conduct of the unlawful banking business. He argued that Mr Kruger had no authority to attach fixed property which he co-owned with his wife and six other persons. He also contended that there had been no reason for Mr Kruger to approach the High Court as a matter of urgency and without giving him notice of his intention to approach the court because the two of them had previously interacted on the matter and he had co-operated with Mr Kruger during the earlier interaction. He contended that there was no reason to fear that he would dissipate the assets. The

high court agreed with the argument based on previous interaction and dismissed Mr Kruger's application on the basis thereof.

In overturning the order of the high court the Supreme Court of Appeal held that a court considering urgency of a matter and whether notice should be given to the respondent must be mindful of the nature and purpose of the application. In this case, because Mr Kruger sought an anti-dissipation order and had explained the reasons why he anticipated resistance, the matter was urgent and notice to Mr Zulu would have defeated the purpose of the application. The court also found that Mr Kruger could have exercised his powers under section 84(A)(b)(i) of the Banks Act without obtaining a court order as his powers derived from legislation. Regarding the non-joinder of the co-owners of the fixed properties, the court found that because Mr and Mrs Zulu were married in community of property to each other their joint interest in the fixed assets was indivisible. Therefore it had been properly attached. But Mrs Zulu should have been joined as a respondent in the application. On the other hand, the interests of the other co-owners were divisible from that of Mr and Mrs Zulu and were not liable to attachment.

Further the court found no merit in Mr Zulu's argument that Mr Kruger's powers were limited to assets acquired through the conduct of the unlawful business as the wording of section 84(A)(b)(i) was clear in this regard.

Finally, the Supreme Court of Appeal found that because Mr Zulu's estate had since been sequestrated and the trustees were in control of the insolvent estate it was not open to the court to grant an order that Mr Kruger take possession of all Mr Zulu's assets. The court held that the powers of the trustees took precedence over those of the payment administrator.

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