

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2022/5554

***ABSA BANK LIMITED v 93 QUARTZ STREET HILLBROW CC***

**SUMMARY**

The applicant bank sought the final winding-up of the respondent close corporation in terms of the repealed section 68(c) and (d) read with 69(1)(a) of the Close Corporation Act 69 of 1984 (CC Act) on the grounds that the respondent was ‘unable to pay its debts’, as it failed to make payment of the outstanding indebtedness owed to the applicant.

An affected party also brought an application to intervene in terms of section 131 of the Companies Act 71 of 2008 but sought a postponement of the liquidation proceedings.

The respondent disputed the quantum of its indebtedness or that it was insolvent and challenged the basis of the application on the grounds that the applicant failed to plead the correct source of the court's competence and jurisdiction to liquidate it. It argued that the applicant did not plead reliance on section 66 of the Close Corporations Act nor any of the applicable provisions, namely: section 344, and section 345 of the Companies Act 61 of 1973.

The applicant contended on the other hand that courts have taken a unanimous view in allowing reliance on section 69(1)(a). It also sought to fall-back on the Insolvency Act 24 of 1936 by proving an 'act of insolvency' since the respondent was unable to pay.

*Held:* in so far as the postponement sought by the intervening party, section 131 of the Companies Act does not provide for the postponement, but permits an affected party to enter the merits of the application. A postponement in the current matter, which had not been sought in terms of the Uniform Rules would undermine the expedited nature of the proceedings in Chapter 6.

*Held* the applicant conflated jurisdictional factors with the actual source of the court's authority. Section 69(1)(a) only aids proof of insolvency and cannot provide jurisdiction following section 68’s repeal. The court has no inherent power to wind-up. That authority must come from statute, in this case, section 344(f) of the Old Companies Act, now applicable to close corporations via the amended section 66 of the CC Act. Section 69(1)(a) of the CC Act is merely an ancillary mechanism for proving insolvency.

*Further held:* the Insolvency Act 24 of 1936 also does not avail itself to the applicant as its remedies apply strictly to individual debtors and partnerships, excluding corporations such as the respondent. Equally, section 339 of the Old Companies Act applies after an order for winding up and in the winding up application.

*Further held*: Even if the respondent was commercially insolvent, the failure to plead the correct jurisdictional basis is fatal to the court being able to grant relief. Consequently, both the liquidation application and intervention application were dismissed with costs to the respondent.