REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2023 - 033874

Reportable: No
Of interest to other Judges: No
Revised: No

[redacted]__

SIGNATURE

Date: 23/10/2024

In the matter between:

LUVON INVESTMENTS (PTY) LTD	First Applicant
TWIN CITY TRADING (PTY) LTD	Second Applicant
and	
THABONG GOOD HEALTH PHARMACY CC	Respondent

JUDGEMENT - APPLICATION FOR LEAVE TO APPEAL

MOOKI J

1 The respondent was placed under provisional winding-up on 22 February 2024. The return date to consider whether the order be made final was set for 27 May 2024. The court granted a final winding-up order on 27 May 2024.

2 The respondent seeks leave to appeal the order of 27 May 2024. The application is made on the following grounds. The respondent contends that a final order ought not to have been granted because:

2.1 The applicants did not comply with section 346 (4A) (a) and (b) of the Companies Act, 61 of 1973; and

2.2 The applicants had failed to prove the respondent's indebtedness, or that amounts were due or payable, or show the respondent's inability to pay debts.

3 The respondent filed opposing papers in proceedings leading to the order on 22 February 2024. The respondent did not file papers in relation to the return date.

4 Counsel for the respondent accepted that the listed grounds for the application were not pleaded. Counsel for the applicants submitted that the

respondent is not permitted to make an application on new issues, because the applicants never had the opportunity to address the new issues.

5 I agree that the respondent may not seek leave on issues that were never raised.

6 I make the following order:

6.1 The application for leave to appeal is dismissed.

6.2 Costs are in the winding-up.

[redacted]

O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicant (leave to appeal):	Mr Tlokana
Instructed by:	Ngengebule Attorneys Inc.
Counsel for the respondents (leave to appeal)	Mr H P Wessels
Instructed by:	Van Der Merwe & Associates

Heard: 21 October 2024

Delivered: 23 October 2024