IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 000011/2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED: NO	
13 JANUARY 2025	[redacted]
DATE	SIGNATURE

In the matter between:

TIADOR 119 CC 1st Applicant

HERMANUS JOHANNES ROODT N.O.

(In his capacity as trustee of THE RED HOT TRUST) 2nd Applicant

LYNNETTE ROODT N.O.

(In her capacity as trustee of THE RED HOT TRUST) 3rd Applicant

DAVID NEWMAN N.O.

(In his capacity as trustee of THE RED HOT TRUST) 4th Applicant and

NEDBANK LIMITED	1st Respondent
KURT ROBERT KNOOP	2nd Respondent
DALLIE VAN DER MERWE	3rd Respondent
ABSA BANK LIMITED	4th Respondent
ANDREW JOHNSTON	5th Respondent
MIKE VAN DER VEEN	6th Respondent
MASTER OF THE MAKHANDA HIGH COURT	7th Respondent
CIPC SOUTH AFRICA	8th Respondent
CHARALAMBOS CHRISTODOULOU	9th Respondent
SHOPRITE HOLDINGS LIMITED	10th Respondent

JUDGMENT

Order:

1. **The application is struck from the role due to lack of urgency.**
2. **The applicants are ordered to pay, jointly and severally the one paying the other to be absolved, the costs of the respondents on an attorney and client scale.**

TOLMAY J

1. The applicants brought this application on an urgent basis. The application was so called *ex parte*, but no less than ten respondents were cited. There was no service on any of the respondents, according to the heads of argument filed by the second to fifth respondents they became aware of the application when the attorneys got sight of the urgent court roll for the week of 6 January 2025. They apparently informed the ninth respondent, who was also represented at the hearing. The founding affidavit did not explain why the application was not served on the respondents.The applicants seem to be under the mistaken belief that service on the respondents was not required.

2. The applicants seek in Part A, an order that the settlement that was made an order of court in the matter of *Lot 38 Bizana Properties cc v Tiador 119 CC (IN LIQUIDATION) & Others* under case number 2278/2022 in the Eastern Cape Division (Makhanda) pertaining to the lease held by the first applicant (Tiador) be suspended pending the determination of the validity of the liquidation orders. At this point the applicants also require certain documents to be provided to them by the respondents. In Part B the applicants seek an order declaring the liquidation orders, previously referred to, to be declared invalid, or alternatively that no liquidation order was granted. They also ask that the status quo ante of Tiador and Silver Falls Trading 178 CC be restored.

3. At this point I will only determine the question of urgency, but it must be noted that it is, to put it lightly, doubtful that this Court has jurisdiction to entertain the

matter. The order that the applicants are seeking to suspend is an order of another division of the High Court, and the documents the applicants seek to obtain relate to that order. Part B of the application requires of this Court to declare the order of another Division to be a nullity. On what legal basis this Court can do it is still a mystery to me. Then there is the question of locus standi, considering the liquidation of Tiador. This fact raises the question whether the applicants have locus standi to bring this application. The matter stood down for me to deliver a ruling on urgency, without obtaining permission of the Court, or informing their opponents an affidavit by the deponent Mr Roodt, a letter by an auditor and the CIPC (Companies and Intellectual Property Commission) document was uploaded. This document indicated that Tiador is in liquidation. The affidavit and letter questioned the authenticity and correctness of the CIPC document. If the applicants seek to persist with this application the court hearing the matter will have to determine these questions. It must also be noted that Lot 38 Bizana Properties Ltd, the applicant in the liquidation proceedings and a party to the settlement was not joined in the proceedings before me.

4. As far as urgency is concerned the following is relevant. The applicants say the matter is urgent, because the applicants only became aware of the contents of the agreement between the liquidators and Lot 38 Bizana on 14 November 2024, in which it was agreed that Tiador will continue collecting rent from Checkers Holdings based on the lease Tiador has with the previous owner of the property, until 28 February 2025. After this date Tiador' s rights to any rental in respect of the property shall be permanently terminated. The alleged nullity of the liquidation order, which was used to put Tiador in liquidation was only

confirmed to the applicants, on their version, from a reputable source, on 21 November 2024. If the matter was to be heard in the normal course a date would only be obtained after the settlement agreement stripping Tiador of its last income generating assets, comes into operation. This, the applicants say, will lead to irreparable harm, considering that the alleged forged/fraudulent nature of the Court order allows the liquidators to exercise powers they do not have. There is clear prejudice, the applicants say, which is serious of nature, which prejudice cannot be cured by some other remedy. The interim order will not affect the respondents save for those who now benefit from the asset(s) and income of Tiador.

5. The respondents say the matter is not urgent inter alia as the resolution to bring the urgent application was signed and dated 12 and 13 August 2024. The applicants on their own version became aware of the settlement on 14 November 2024, the founding affidavit was signed and commissioned on 6 December 2024. Despite all the above the application was only issued on 2 January 2025 on an extremely urgent basis to be heard on 7 January 2025. No explanation was provided for the way the application was brought. The respondents say this is clearly an abuse of process that justifies not only a striking from the roll due to lack of urgency, but also justifies a punitive costs order.

6. The law regarding urgent applications is trite. One should only deviate from the rules and procedures as far as is strictly necessary. In this instance the applicants were aware of the settlement and its consequences at the very latest

on 24 November 2024, despite that the application was only launched on 2 January 2025 and without service on the respondents. During argument, the court inquired why this time lapsed. The extraordinary response was that the court was "in deep recess". This is an astonishing claim as the urgent court in this division sits every single day of every single week of every year around the clock. The applicants took a leisurely approach and enrolled the matter at their convenience with an absolute disregard for the time-honoured principles in relation to urgent applications. No proper case was made out for urgency. The way this application was brought is a clear abuse of the court and its processes, and a punitive costs order is appropriate. If any urgency exists it was self-created.

The following order is made:

3. The application is struck from the role due to lack of urgency.
4. The applicants are ordered to pay the costs of the respondents jointly and severally, the one paying the other to be absolved, on an attorney and client scale.

[redacted]

R TOLMAY
JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

For Applicant: Adv H P Van Staden instructed by Riekie Erasmus Attorneys.

For 2nd – 5th Respondent: Adv J Eastes instructed by Schoerie & Sewgoolam Inc (2nd & 3rd Respondents) and Cassim Inc Attorneys (4th & 5th Respondents)

For 9th Respondent: Adv A R Whitaker instructed by Mason Incorporated.

Date of Hearing: 7 January 2025

Date of Judgment in Open Court: 10 January 2025

Date of Written Judgment: 13 January 2025