



Reportable:	Yes/No
Circulate to Judges:	Yes/No
Circulate to Magistrates:	Yes/No

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO.: 1094/2022
Date heard: 22-05-2024
Date delivered: 24-01-2025

In the matter between:

SHANIE TALJAARD

1st Applicant

CURRO CONSULTANCY (PTY) LIMITED

2nd Applicant

And

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA**

1st Respondent

MINISTER OF TRADE AND INDUSTRY

2nd Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

3rd Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)**

4th Respondent

JOCHEN ECKHOFF N.O.

5th Respondent

DEON MARIUS BOTHA N.O

6th Respondent

JOHANNES ZACHARIAS HUMAN MULLER N.O.

7th Respondent

REFILWE TLHABANYANE N.O

8th Respondent

VIMBI ANGELA TSOPOTSA N.O.

9th Respondent

ANGELINE POOLE N.O.

10th Respondent

PHILEMON MAWIRE N.O.

11th Respondent

AGRI SOUTH AFRICA NPC	12 th Respondent
MASTER OF THE HIGH COURT, KIMBERLEY	13 th Respondent
MASTER OF THE HIGH COURT, CAPE TOWN	14 th Respondent
AFFECTED PARTIES OF PROJECT MULTIPLY (PTY) LTD	15 th Respondent
AFFECTED PARTIES OF VELVETCREAM 15 (PTY) LTD	16 th Respondent
AFFECTED PARTIES OF THE MERWEDE TRUST AS PER	17 th Respondent
AFFECTED PARTIES OF CAREL ARON VAN DER MERWE	18 th Respondent
NATIONAL REAL ESTATE	19 TH Respondent
PIETER BURGER	20 th Respondent
PIET STEENKAMP	21 st Respondent
NARDUS SCHEEPERS	22 ND Respondent

IN RE:

CASE NO: 963/2021

In the matter between:

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA**

Applicant

And

JACQUES DU TOIT N.O.	1 st Respondent
PROJECT MULTIPLY (PTY) LIMITED	2 nd Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)	3 rd Respondent
ALL AFFECTED PARTIES	4 th Respondent

AND

CASE NO: 964/2021

In the matter between:

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA**

Applicant

And

JACQUES DU TOIT N.O.

1st Respondent

VELVET CREAM 15 (PTY) LTD (In Liquidation)

2nd Respondent

**THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)**

3rd Respondent

ALL AFFECTED PARTIES

4th Respondent

AND

**MAHIKENG CASE NUMBER: N557/2021
KIMBERLEY CASE NUMBER: 2436/2021**

In the matter between:

**THE LAND AND AGRICULTURAL DEVELOPMENT
BANK OF SOUTH AFRICA**

Applicant

AND

CAREL ARON VAN DER MERWE (SNR) N.O

1st Respondent

CATHARINA SUSANNA VAN DER MERWE N.O

2nd Respondent

CAREL ARON VAN DER MERWE (JNR)

3rd Respondent

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. This is an application for leave to appeal against the judgment and order of 1 December 2023 in which I dismissed the applicants' application to interdict the liquidation and sequestration proceedings

against Project Multiply 9Pty) Ltd (in liquidation), Velvet Cream 15 (Pty) Ltd (in liquidation) and the Merwede Trust, pending an application for the rescission of the liquidation and sequestration orders.

2. Various grounds of appeal have been raised which in the main can be summarized as follows:

- 2.1 That I erred in finding that the applicants lacked *locus standi* to bring the application; and

- 2.2 That my finding as to the validity of the cession of rights by Unigro to Land Bank is in conflict with two other judgments.

***Locus standi* of the applicants**

3. I have found that the applicants have failed to prove claims as creditors and by inference failed to establish *locus standi* as creditors. The liquidators in their answering affidavit have however not specifically denied that the applicants are creditors of the insolvent companies and as such a court of appeal could reasonably find that the applicants have established *locus standi* as creditors.
4. As far as the 1st applicant's *locus standi* as a result of alleged directorship of the insolvent companies is concerned, Mr Maritz SC who appeared with Mr Janse Van Rensburg for the applicants, argued that if directors of a company can appeal on behalf of the company against a winding-up order (see *O' Connell Manthe & Partners v Vryheid Minerale* 1979 (1) SA 553 (TPD)), there could be no bar against directors bringing an application for the rescission of a winding-up order. The difficulty with this argument, besides the

fact that the allegation of directorship was not made in the founding affidavit, is that such an application should be mounted by the company at the instance of **its board**, not as single director (*O'Connell Manthe supra* at 557 H). There is no merit in the argument that the 1st applicant's directorship of the insolvent companies clothes her with the necessary *locus standi*.

Validity of the cession of rights

5. I have found in paragraph 14 and 15 of the main judgment that the suite of agreements entered into between Unigro and Land Bank and the confirmation by the officials of Land Bank and Unigro of the transfer of rights, title and interest of Unigro to Land Bank of the loan agreements entered into between Unigro and the insolvent entities were admissible and sufficient to establish a valid cession of such rights to Land Bank.

6. In *Trakman N.O and Others v The Master of the High Court of South Africa and Others* 2020/12432 [2012] ZAGP JHC 168, where Land Bank relied for its *locus standi* on a similar suite of agreements and confirmation or recordal thereof, the Court rejected this argument and held at paragraph 43 thereof that:

"For reasons already provided, the mere ipse dixit of Land Bank and Grocap is insufficient to establish Land Bank's locus standi as creditor or the sale of the Trademark debt to Land Bank. A proper consideration of all the underpinning agreements is required to clarify what the agreements achieved, rather than simply accepting what the parties thought they achieved."

7. It is clear that my judgment in this regard is in direct contradiction to the judgment in *Trakman*. In *Waldeck NO and Others v Land and*

Agricultural Development Bank of South Africa, Mpumalanga Division, Middelburg, 4013/18, Land Bank failed to discover in terms of Rule 35(12) certain documents underpinning an alleged cession of rights on the basis of confidentiality and sought to rely solely on a recordal or confirmation between *inter alia* Unigro and Land Bank as proof of the existence of a cession and the validity thereof. The Court held *inter alia* that “*The recordal is no proof of the fact that valid cessions were entered into between Unigro (the applicant’s initial creditor) and the respondent*” (at paragraph 26).

8. It is in the public interest that legal certainty be obtained in circumstances where conflicting judgments exist. Leave to appeal should be granted on this basis as well.

In the circumstances the following orders are made:

- a) **Leave to appeal to the Supreme Court of Appeal is granted.**
- b) **The costs of this application are to be costs in the appeal.**



C C WILLIAMS
JUDGE

For Applicants:	Adv. NGD Maritz SC with Adv FG Janse Van Rensburg Schutte Attorneys c/o Haarhoffs Inc
For 1 st Respondent:	Adv. J G Cilliers SC Strydom & Bredendamp Inc c/o Van de Wall Inc
For 5 th to 11 th Respondents:	Adv HR Fourie SC J L Van Niekerk Inc c/o Majiedt Swart Attorneys Inc