IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION, BLOEMFONTEIN)

Reportable / Not Reportable
Case Number: **901/2025**

In the matter between:

LOUIS JONKER	First Applicant
JOHANNA JACOBA JONKER N.O.	Second Applicant
and	
MAGISTRATE BOTHAVILLE N.O. [In his capacity as presiding officer]	First Respondent
DEON MARIUS BOTHA N.O.	Second Respondent
JOHANNES ZACHARIAS HUMAN MULLER N.O.	Third Respondent
LOUISA SIBIYA N.O.	Fourth Respondent
THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA	Fifth Respondent
THE MASTER OF THE HIGH COURT, BLOEMFONTEIN	Sixth Respondent

Neutral citation: *Jonker and Another v Magistrate, Bothaville and Others, Case No. 901/2025*

Coram: **S. Grobler, AJ**

Heard on: **27 February 2025.**

Order: **27 February 2025.**

Reasons: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be at **10:45** on **11 March 2025**.

Summary: **Reasons for an order granted in urgent court. No right and no harm shown. Application dismissed**

ORDER

1. The normal rules pertaining to notice and service is dispensed with and the application is heard as one of urgency in terms of r6(12) of the uniform rules of court.
2. The application is dismissed with costs, in the case of the First- to Fourth Respondents including the costs of two counsel, in all instances on scale C.

JUDGMENT

INTRODUCTION:

[1] On 27 February 2025 I considered this matter urgent and ordered thus. I however dismissed the application immediately, and indicated that I would provide reasons for the order at a later date.

[2] On 19 February 2025, the Applicants (*'the Jonkers')* issued this application seeking relief [apart from the urgency prayer] that the Second- to Fourth Respondents (*'the Liquidators')* be interdicted from continuing with the liquidation process of Jonker Produkte CC (in liquidation), pending the

finalisation of the review application brought under case number 480/2025.

[3] Further and to my mind of no little significance, they also sought an order setting aside subpoenas issued by the First Respondent (*'the Magistrate'*) issued pursuant to the first and second meetings of creditors for October 2024, annexed as 'LJ10' to the Founding Affidavit. Those subpoenas sought to secure the presence of the Jonkers at an insolvency enquiry that was scheduled to take place on 28 February 2025. Hence the urgent application

[4] Punitive costs were also sought.

[5] The Liquidators and the Fifth Respondent (*'the Bank'*) opposed the application.

<u>THE FACTS:</u>

[6] The Founding Affidavit reveals that the present application is one of a series of litigation between the Jonkers, the Bank and the Liquidators dating back to 2020.

[7] Jonker Produkte CC was provisionally liquidated on 11 September 2020. The provisional order was confirmed on 29 October 2020.

[8] I do not deal with the litigious history as I do not deem it relevant. What is relevant however is that on 15 January 2025, the Sixth Respondent (*'the Master'*) notified the Liquidators that he has decided that they are no longer fit to continue with the liquidation of Jonker Produkte and he will remove them, absent a court order dictating the contrary, with effect from 17 February 2025. Once again, I do not traverse all the reasons for this apparent decision because of what I state below.

[9] Shortly thereafter and on 31 January 2025, the Liquidators approached the

court with an urgent application. It has two parts. The first seeks to temporarily suspend *'the decision'* of the Master pending the finalisation of part B. Part B of course then is a review. *En passant* I do mention that I had some difficulty with the wording of the Master's notification of the decision apparently taken. Mr Janse van Rensburg for the Jonkers, Mr Maritz (with Mr Griesel) for the Liquidators and Mr Tsangarakis for the Bank, all assured me that a final decision had been taken by 15 January 2025. For this reason, I do not venture beyond accepting that such a decision was made, and that it would stand and bind unless reviewed.

[10] The Jonkers opposed part A of the application and the matter initially served before Van Rhyn J on 13 February 2025. It is common cause that the matter was postponed to 6 March 2025 at the behest of the Master, who indicated that he did not receive timeous notification of the application and wanted to file an opposing affidavit. As an aside here as well, Mr Maritz argued that the Master doing thus was in execution of a contrived plan to seek the delay of that proceeding. There is merit in this argument, but I do not believe that the outcome of the application did of should centre upon any finding on this.

[11] On this day the parties agreed to an interim order, which Van Rhyn J granted. It is an example of a rare species of order; - an interim order regulating what happens in the interim, pending finalisation of the application seeking interim relief. Its wording is important:

> *'The decision by the Master of the High Court, Bloemfontein (First Respondent) dated 15 January 2025 is suspended pending final adjudication of part A of the Notice of Motion. (ad finem).'*

[12] On 28 February 2025, the Liquidators caused to be issued subpoenas for the postponed second meeting of creditors which was set down for 28 February 2025. It was so set down – as the Bank revealed in its affidavit –

approximately five months prior to February 2025. The Liquidators indicated that the issuing of the subpoenas was somewhat overboard, because at least Mr Jonker had been warned at the first meeting to attend the second and at the date set.

[13] The issuing of the subpoenas is what prompted the present application. Both the Liquidators and the Bank complained that the application is not urgent. I decided that - although there is merit in their complaint – to hear the matter on the merits nonetheless. That was primarily because striking the matter off the roll because of self-created urgency would effectively in the present case have meant the dismissal of the application. The harm complained of; - good or bad on the substance of the case – would have materialized had I not heard the matter. That is because the Jonkers stated two things:

13.1 firstly and under these stated circumstances, the Liquidators cannot continue with the administration of the insolvent estate and conduct the enquiry ... *'....by dissipating the funds (sic) to fuel their agenda to intimidate, victimise and harass us with yet another interrogation.';*

and

13.2 *'We will suffer irreparable harm if we are subjective to an unwarranted and vexatious interrogation under circumstances where the Master has already found that the Liquidators are not fit and proper to administer the insolvent estate of Jonker Produkte.'*

<u>THE ADVANCED RIGHT:</u>

[14] Mr Janse van Rensburg argued that the interdict application that is to serve before the court on 6 March 2025 (the part A) only sought to impugna part of the Master's decision(s). He submitted that the Master's notification of said decision evinces that the Liquidators were to be removed in terms of

s379(1)(b) of the Companies Act.[1] This was one part of the order according to him.

[15] He argued that Master had further [or also] decided the Liquidators are not fit and proper to attend to the affairs of the liquidated estate, on the back of a separate finding made to that extent and a further finding that the Liquidators should not be allowed to continue with the winding-up of Jonker Produkte CC.

[16] Mr Janse van Rensburg submitted that part A and part B of that application does not seek to impugn anything beyond the finding made in s379(1)(b) of the old Companies Act. And significantly, that van Rhyn J's order does not suspend the operation of the entire Master's decision.

[17] This section states that the Master may remove a liquidator from her office on the ground that she has failed to perform satisfactorily any duty imposed upon her by this Act, or to comply with a lawful demand of the Master. It is noteworthy to mention as well that s379(1)(e) states that the Master may occasion the same removal with the same effect if he is of the opinion that the liquidator is no longer suitable to be the liquidator of a company concerned.

[18] Mr Maritz answered this to state that at worst for the Liquidators, the Master had taken three decisions. The first is the removal action in terms of s379(1)(b), the second is that the Master had decided that the certificate of appointment of the Liquidators should be sent back to the Master's office, and thirdly, that the Liquidators would forfeit any fees due to them for their favour to perform their duties in a satisfactory manner. This interpretation is

[1] 67 of 1973, read with Item 9 of Schedule 5 of Act 71 of 2008 (read together with s66(1) of the Close Corporations Act, 69 of 1984.

borne out by the notification of the decision itself. Mr Maritz submitted that part B (i.e., the review) will seek to impugn *ex abundanti cautela* all three these decisions, but because the s379(1)(b) decision is impacted upon by the order Van Rhyn J gave on 13 February 2025, the Jonkers are nonsuited.

[19] To my mind the Master had truly taken only one decision, and that is the removal decision in terms of s379(1)(b). It seems to me that the second- and third contended decisions are sequalae flowing from the first primary decision. But I need not find as much, nor will I bind the review court in any way with this judgment through a final finding of fact on this. I make these remarks obiter.

[20] The point however is that I do not believe Mr Janse van Rensburg's argument can stand on this. Contextually interpreted, it seems to me that the Master had not taken separate decisions as he contended, because – as Mr Maritz and Mr Tsangarakis for the Bank I believe correctly argued – the apparent finding as to the suitability of the Liquidators and that they should not be allowed to continue with the winding-up of Jonker Produkte CC, seeks to serve as reasons for the decision taken. They do not appear to be self-standing decisions.

[21] This is unmistakeably plain from a proper reading of the notification itself.[2]

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[2] The interpretation exercise is now a unitary one. It involves as a starting point the words used. Any finder of fact is required to consider them in light of relevant context, and the former distinction between background and surrounding circumstances is no longer made.

See: **Bothma- Batho Transport (Edms) Beperk v S Bothma en Seun Transport (Edms) Beperk, 2014 (2) SA 429 (SCA).**

Importantly, the document interpreted must be considered as a whole.

Every word must be given a meaning, impractical or unbusiness-like and oppressive consequences or consequences that will stultify the broader operation of the document under consideration is not to be allowed.

See: **Natal Joint Municipal Pension Fund v Endumeni Municipality, 2012 (4) SA 593 (SCA) at para 25 and 26.**

[22] To my mind this means that Van Rhyn J's order suspended – by agreement – the operation of the entire Master's decision pending the finalisation of that review. It follows consequentially that the Jonkers have shown no clear or even *prima facie* right, and for that reason alone the application must fail.[3]

Harm:

[23] I also do not believe that the Jonkers had shown harm would befall them should the interrogation continue. It is noteworthy to mention here that Mr Tsangarakis emphasized approximately R17 Million worth of assets had apparently gone missing either before or even after the provisional liquidation orders of Jonker Produkte CC. As Mr Tsangarakis (and Mr Maritz) correctly submitted, the Jonkers do not deal with this in their Replying Affidavit at all.

[24] It appears to me evidently clear that the Jonkers simply do not want to testify at the interrogation. This entire application was motivated by that lack of a desire, and one need not be clairvoyant to realise that. Why exactly they do not wish to testify I am not going to find, but I find no merit in the contention that – on the facts of the present case as presented before me – they will be victimised, intimidated and harassed by being subjected to examinations at the interrogation. No substance, at all, was given to these sweeping statements

[25] Mr Janse van Rensburg also submitted that the interest of the liquidated estate would not be served through the conducting of the interrogations planned. He submitted that these would amount to a waste of money, under

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[3] In the context of seeking interim relief, it is trite that paramount consideration remains the *prima facie* right shown to the eventual relief in the main proceedings. This right may only be open to some doubt, for which serious doubt is cast upon the rights sought to be established, the interdict cannot be granted no matter how favourable the other requirements for the Applicants are. A clear right need to be shown in a final interdict application, before anything else

Spur Steak Ranches Ltd and Others v Saddles Steak Ranch Claremont and Another, 1996 (3) SA 706 (C).

circumstances where the Master has already taken a decision to remove the Liquidators and where there might be a possibility that – through some undisclosed, unplanned later application or happening - it might ultimately be found that the only creditor (the Bank) of Jonker Produkte CC had no *locus standi* to seek the liquidation of the close corporation five years ago.

[26] There was an attempt to argue the latter case, but on rather trite principles I am not going to deal with the application on that basis because that is not the case with the Liquidators and the Bank were called upon to meet. As to the first of these contentions, I fail to see how the conducting of an interrogation might lead to the incurring of unnecessary costs. Even if the Liquidators are ultimately removed (that is to say, if the review application against the Master's decision is dismissed), valuable information will be obtained as to what appears to be *prima facie* missing assets belonging to the estate. The close corporation will probably remain in liquidation, and in that event the newly appointed liquidators can simply act further upon information received through at such interrogations.

[27] Even if – by some good fortune for the Jonkers – the liquidation of Jonker Produkte CC is uplifted in the distant future because it is ultimately revealed that the Bank is not a creditor, the disadvantages of the interrogation will comparatively be miniscule, compared to the advantages to the liquidated estate should the interrogation proceed. Indeed, there is no comparison to be made.

[28] These are the reasons why I ordered as I did.

[redacted]

S. GROBLER, AJ

On behalf of the Applicants	Adv Fritz Janse van Rensburg
On behalf of the Second- to Fourth Respondents:	Adv. Maritz SC Adv Griesel
On behalf of the Fifth Respondent:	Adv. S Tsangarakis