

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-147172

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES
DATE: 8 May 2025
SIGNATURE OF JUDGE: 

In the matter between:

**HENNING PETRUS NICOLAAS PRETORIUS
HPN BESTUUR (PTY) LTD
STEPHAN PRETORIUS**

First Applicant
Second Applicant
Third Applicant

and

**KHUTSO NAKETSI COMMUNAL PROPERTY ASSOCIATION
KHUTSO NAKETSI AGRI (PTY) LTD**

First Respondent
Second Respondent

and

In the matter between:

**THE EMPLOYEES OF KHUTSO NAKETSI AGRI (PTY) LTD
AS PER ANNEXURE A TO THE APPLICATION**

Applicant

and

KHUTSO NAKETSI COMMUNAL PROPERTY ASSOCIATION
KHUTSO NAKETSI AGRI (PTY) LTD

First Respondent
 Second Respondent

In re

The matter between:

KHUTSO NAKETSI COMMUNAL PROPERTY ASSOCIATION

Applicant

and

KHUTSO NAKETSI AGRI (PTY) LTD

Respondent

JUDGMENT

HF OOSTHUIZEN AJ

- [1.] On 12 December 2024 Khutso Naketsi Communal Property Association ("the CPA"), a communal property association registered under the *Communal Property Association Act, 1996*,¹ applied on an urgent basis for the winding-up of Khutso Naketsi Agri (Pty) Ltd ("the company") on the basis that the company is unable to pay its debts, alternatively that it is just and equitable to wind-up the company under sections 344(f) and 344(h) of the Companies Act, 1973.²
- [2.] On 17 December 2024 a notice of intention to oppose was delivered by Langenhoven Pistorius Modihapula Attorneys ("LPM"), purportedly on behalf of the company.
- [3.] On 17 December 2024 Mr HPN Pretorius deposed to an opposing affidavit in which he stated that he deposed to the affidavit on behalf of the company and HPN Bestuur (Pty) Ltd, the 30% minority shareholder of the company ("the

¹ Act 28 of 1996

² Act 61 of 1973

minority shareholder”), in his capacity as director of the company and the minority shareholder and ostensibly also on behalf of the company’s employees. Neither Mr HPN Pretorius, the minority shareholder or the company’s employees applied for leave to intervene at that stage.

- [4.] On 18 December 2024 a notice of intention to oppose was delivered by LPM on behalf of the minority shareholder and Mr HPN Pretorius notwithstanding the fact that neither the minority shareholder nor Mr HPN Pretorius had been cited as a respondent in the winding-up application.

- [5.] On 18 December 2024 the CPA challenged the authority of LPM to act on behalf of the company in terms of rule 7(1). It is common cause that LPM has not satisfied the court that it is authorised to act on behalf of the company. The winding-up application is accordingly unopposed.

- [6.] On 23 December 2024, Minnaar AJ struck the winding-up application from the roll due to a lack of urgency. No costs order was granted by Minnaar AJ, in all probability due to the fact that there was no party in whose favour a costs order could have been granted.

- [7.] On 17 January 2025, LPM indicated in correspondence to the Deputy Judge President that it was in the process of preparing various intervention applications which it intended to file with in the next three weeks, which did not happen.

- [8.] On 24 February 2025, LPM indicated in correspondence to the CPA’s attorneys that the intervention applications would be delivered later that week, which again did not happen.

- [9.] On 4 March 2025, the CPA’s attorneys informed LPM that the winding up application had been set down on the opposed motion roll for 5 May 2025.

- [10.] On 10 March 2025, intervention applications were instituted on behalf of Mr HPN Pretorius, the minority shareholder, Mr S Pretorius and the company’s employees (collectively “the intervening parties”). HPN has failed to upload the intervention applications on CaseLines or place it before me.

- [11.] On 9 April 2025, LPM indicated that the intervention applications had been enrolled on the unopposed motion roll of 12 August 2025 and that opposing affidavits would only be delivered once leave to intervene had been granted.
- [12.] On 22 April 2025 (i.e. six court days before the hearing of the winding-up application), the intervening parties applied for the postponement of the winding-up application, in which applications the intervening parties sought a punitive costs order against the CPA.
- [13.] The CPA and the intervening parties delivered answering and replying affidavits in the postponement applications.
- [14.] During argument, the intervening parties were unable to explain why the intervention applications had not been uploaded to CaseLines and enrolled for hearing on the date of the hearing of the winding-up application, which was clearly the appropriate procedure to follow.
- [15.] Notwithstanding the fact that the intervention applications were not before me, the intervening parties sought an order that they be joined as respondents in the winding-up application and afforded an opportunity to file opposing affidavits, if any, within ten days.
- [16.] I was not prepared to grant such relief in view of the fact that:
- [16.1.] I could not establish whether the intervening parties had demonstrated that they have a direct and substantial legal interest in the winding-up of the company which could be prejudicially affected by such order and that they had made allegation which, if proven, would entitle it to relief;³
- [16.2.] I was unable to give a direction as to further procedure in the winding-up application (as provided for in rule 12), including whether there was actually a need to file further opposing affidavits and whether the existing

³ *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (1) SA 1 (CC) para [9]

opposing affidavit should simply stand as the intervening parties' opposing affidavit.

[17.] The intervening parties merely alleged in the founding affidavit in the postponement applications that they "*have a material interest in the matter and will be severely prejudiced should the [company] be liquidated*". I am not convinced that the directors of the company and the minority shareholder have a sufficient direct and substantial legal interest in the winding-up of the company but I expressly do not make any finding in that regard.

[18.] The only indication in the founding affidavit in the postponement applications of the need to deliver additional opposing affidavits is the vague reference to alleged contradictions between allegations in the founding affidavit in the winding-up application and allegations in affidavits in a subsequent application for interdictory relief against the company's employees.

[19.] The intervening parties moreover failed to deal with any possible prejudice which they may suffer if the postponement is refused and a provisional winding-up order is granted with a return date after the hearing of the intervention applications to enable the intervening parties to oppose the grant of a final winding-up order on the return date.

[20.] After hearing argument, the CPA and the intervening parties agreed to an order that the winding up application be postponed for hearing on the opposed motion roll on 25 August 2025; that the intervening parties are ordered to deliver their answering affidavits in the winding-up application within ten days (i.e. before the hearing of the intervention applications); and that I should decide on the costs of the postponement applications and the hearing on 5 May 2025.

[21.] I accordingly made a draft order which was prepared by the parties an order of court.

[22.] During argument the intervening parties abandoned the punitive costs order which they had previously sought against the CPA and argued that the reserved

costs should be costs in the winding-up application. The CPA on the other hand sought a costs order against the intervening parties.

[23.] I am of the view that Mr HPN Pretorius, the minority shareholder and Mr S Pretorius are the sole reason why the winding-up application was postponed and that they should for the following reasons pay the reserved costs:

[23.1.] The intervening parties should have sought leave to intervene at the time of the hearing of the winding-up application before Minnaar AJ. Mr Brand, who appeared on behalf of the intervening parties, but who did not appear before Minnaar AJ, conceded that the intervening parties erred in this regard.

[23.2.] If the intervening parties had enrolled the intervention applications for hearing on 5 May 2025, I would have been able to grant relief in terms thereof and consider whether there was a need to deliver additional opposing affidavits and there would, importantly, not have been any need for formal applications for postponement, which have substantial cost implications.

[23.3.] The intervening parties have moreover not furnished a full and satisfactory explanation of the circumstances that gave rise to the postponement application and the postponement was not sought timeously.⁴

[23.4.] In view of their intervening parties' failures, as set out in paragraphs [23.1] and [23.2] above, they should have tendered the intervening parties' wasted costs. The CPA was clearly entitled to apply for a hearing date on the opposed motion roll and to enrol the winding-up application accordingly.

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National Police Service Union v Minister of Safety and Security 2000 (4) SA 1110 (CC) para [4]

[23.5.] The intervening parties have failed to convince me that the postponement applications were *bona fide* and not used simply as a tactical manoeuvre for the purposes of delay, as argued by the CPA.

[23.6.] There is no reason why the costs pursuant to the postponement application should be paid by the company if it is wound up. Such order will prejudice the creditors of the company by reducing their potential dividends.

[23.7.] I am however not prepared to grant any costs order against the companies' employees, whose application for postponement was almost identical to the application of the other intervening parties.

ORDER

[24.] I accordingly grant the following order:

Henning Petrus Nicolaas Pretorius, HPN Bestuur (Pty) Ltd and Stepan Pretorius are ordered to jointly and severally, the one paying, the other to be absolved, pay the costs of the application for postponement, including the costs of the hearing on 5 May 2025, which costs are to include the costs of counsel on scale B.


HF OOSTHUIZEN AJ

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 8 May 2025.

Appearances

Counsel for Henning Petrus Nicolaas Pretorius, HPN Bestuur (Pty) Ltd and Stepan Pretorius and the employees of Khutso Naketsi Agri (Pty) Ltd: **Johan Brand SC** and **Danelo de Kock** instructed by Langenhoven Pistorius & Modihapula

Counsel for Khutso Naketsi Communal Property Association: **Mark Costa**, instructed by Cox Yeats

Date of Hearing: 5 May 2025

Date of Judgment: 8 May 2025