REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 2750/2025

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 9 June 2025

SIGNATURE:

In the matter between:

NICOLAS PETRUS MAREE	**1ST APPLICANT**
JOHANNES PETRUS WILHELMUS MAREE	**2ND APPLICANT**
ELSIE SOPHIA DE BEER	**3RD APPLICANT**
CORPRENT LEASING PROPRIETARY LIMITED	**4TH APPLICANT**
JOHANNES CORNELIUS GEORGE BENJAMIN MCLEOD	**5TH APPLICANT**

JOHANNES STEPHANUS MCLEOD	**6TH APPLICANT**
PETRONELLA ESABELLA WILLEMSE N.O.	**7TH APPLICANT**
NICOLAS PETRUS MAREE N.O.	**8TH APPLICANT**
MADELÉ FREWEN N.O.	**9TH APPLICANT**
TALITA-KOEMI FABER N.O.	**10TH APPLICANT**

-and-

HANALINE BOERDERY PROPRIETARY LIMITED **(Registration number: 1995/010321/07)**	**RESPONDENT**

Delivered : 9 June 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **9 June 2025.**

Date heard : 27 May 2025

Coram : Bresler AJ

JUDGMENT

<u>BRESLER AJ:</u>

<u>Introduction:</u>

[1] This matter came before Court as an urgent application enrolled for hearing on the 27th of May 2025. Due to the limited court time available on the said date, the Court requested both parties to address both urgency and merits, whereafter judgment was reserved to enable the parties to file supplementary Heads with specific reference to the enrolment of the unopposed Application for the Liquidation of the Respondent on the same date and in the same proceedings.

[2] The Respondent applies for an extension of the time specified in the order granted by the Honourable Madam Justice Naude-Odendaal on the 1st of April 2025, and a suspension of Part B of the order, in terms whereof *inter alia*:

2.1 The Applicants are authorized to perfect the security which they hold by virtue of the special notarial bond no. B[...], which was registered on 13 December 2023 ("the bond");

2.2 The Respondent and its representative are ordered to hand over to the Applicants and / or the Applicants' authorised representative all the movable property bound in terms of the bond and as more fully set forth in Annexure "A" ("the movable assets"), situate on the farm known as the Remaining Extent of the Farm Alyth 837, Weipe District Musina, Limpopo ("the farm");

2.3 The Applicants are authorised forthwith to enter upon the farm and / or any other premises where the movable assets, or some of the movable assets, be found and to take possession of such movable assets.

2.4 The Applicants are to dispose thereof as they deem fit by way of a properly advertised public auction, including notice in the Government Gazette, as contemplated in Section 82(1) of the Insolvency Act, Act 24 of 1936.

2.5 The Applicants' right to dispose of the movable assets, forming the subject matter to this special notarial bond no. B[...] is suspended to the 1st of June 2025, including the removal of the assets.

2.6 The Applicants' application for liquidation s per part B hereof, is case management (sic) as follows:

2.6.1 The Respondent, and the Intervening Party, will serve and file any further affidavits, dealing with Part B of this application, the liquidation application, on or before the 22nd of April 2025.

2.6.2 The parties will then enrol the matter for hearing as soon as possible on the urgent roll.

[3] The Respondent specifically applies for:

3.1 The suspension of the execution of Part A of the order to be extended up to 15 July 2025; and

3.2 That the provisions of Part B of the order, relating to liquidation, be suspended to 15 July 2025.

[4] The parties are *ad idem* as to the factual synopsis of the matter insofar as those facts are relevant to a determination of the issues currently before court. More specifically, it is common cause that the Respondent did not oppose the Liquidation application, that the debt remains unpaid and that the Applicants have not executed Part A of the order to date hereof.

[5] It is furthermore common cause that the initial order was granted by agreement between the parties and after it came to light that there is a possibility of selling one of the immovable assets of a sister company of the Respondent, the proceeds which will be utilised to pay the Applicants and the Intervening Creditor. The Applicants' attorneys were informed on the 14^{th} of April 2025 that the auction of this property was successful.

[6] The Respondent's attorneys were informed in return that a request for extension would only be considered once the transaction has been confirmed.

Issues that require determination:

[7] In this Court's view, only the following issues stands to be determined:

7.1 Is the Respondent entitled to an extension of time and a suspension of Part B of the order; and

7.2 Is the Applicants entitled to a liquidation order (either provisionally or final) in lieu of the absence of a formal notice of set down.

<u>The Applicable Legal Principles:</u>

Urgency:

[8] It is trite law that an Applicant needs to show that he will not be afforded substantial redress should the matter be heard in due course. The Applicants raised the issue that there was an unreasonable delay in launching the proceedings.

[9] As held in ***East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others***[1], a delay in bringing the application is not in itself a reason for refusing to regard the matter as urgent. A court is obliged to consider the circumstances and the explanation provided. The crucial question that must be answered is whether the applicant would be afforded substantial redress if the matter were heard in the ordinary course.

[10] In ***Stock and Another v Minister of Housing and Others***[2] it was held that an applicant cannot be held to have been dilatory in bringing the application if he/she first sought compliance from the respondent before resorting to litigation.

[11] After considering the circumstances, the undisputed facts and the explanation provided, I am of the view that the applicants would not be afforded substantial redress if the matter was to be heard in the ordinary course, and that it cannot be said that they were dilatory in instituting the application. Therefore, the applicants' non-compliance with the time periods, service, forms, and procedures prescribed by the Uniform Rules of Court are condoned, and the application will be entertained in terms of rule 6(12).

Merits:

[1] [2011] ZAGPJHC 196 (2011 JDR 1832)
[2] 2007 (2) SA 9 (C)

[12] The Applicants opposition is premised on the basis that no case has been made out for the rescission or variation of the order granted on the 1st of April 2025. The order has, after all, been obtained by consent.

[13] Mr. Morton, appearing for the Respondent in the matter, stated during argument that they are not applying for a rescission or variation of the order. The Respondent is applying for an extension of time as contemplated in Rule 27(1) which states:

> *'(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.'*

[14] It must be noted from the onset that it appears that the first part of the Respondent's relief is premised on the provisions of Uniform Rule 27(1). The suspension of the liquidation proceedings is however not contemplated by the provisions of Rule 27(1).

[15] To succeed with an application for the extension of any time frame, the Applicant must show 'good cause.' There is no exhaustive definition of 'good cause' and a Court has a very wide discretion in this regard. Two principal requirements for the favourable exercise of the court's discretion have however been identified as the following:

15.1 The applicant must have a satisfactory explanation for his delay; and

15.2 The applicant must convince the Court that it has a *bona fide* defence.

[16] *In casu*, the Respondent states that its attorney informed the Applicants' attorneys as early April 2025 about the sale of the immovable property of the

Respondent's sister company. The Applicants reiterated that an extension of time will only be considered once the transaction has been confirmed. The sole reason for the current proceedings before court is because the purchaser in that transaction has not delivered guarantees to date. It is not relevant to these proceedings why the guarantees have not been delivered. Suffice to state that the Respondent has no evidence that this alleged transaction will come to fruition. Since it is subject to the delivery of the guarantees by the purchaser evidencing the availability of funding, the transaction has no force and effect until the suspensive condition has been complied with.

[17] In this Court's mind, it presupposes that the Respondent knew, or reasonably should have known, as early as 15 April 2025 that the Applicants required some form of confirmation that the purchaser is <u>willing and able</u> to perform. The purchaser being merely willing to perform is not adequate.

[18] The Respondent stated in the Founding affidavit that the Applicants have delayed in delivering their guarantee requirements. This is of no relevance to the issue at hand since the Applicants merely required some form of confirmation that the transaction will indeed realise.

[19] In this Court's view, the explanation for the delay in launching the proceedings, and then only launching it on extreme truncated time frames, is less than satisfactory. The Court is however obliged to consider this explanation against the backdrop of the '*bona fide defence'*.

[20] It is trite that a debtor's willingness to make payment does not constitute a defence. In these circumstances, a too pedantic approach to the term 'defence' should be avoided. It is after all common cause that the liquidation proceedings are unopposed as no opposed papers had been filed as directed in the order of 1 April 2025. I am therefore of the view that the position of the *concursus creditorum* should also be considered.

[21] At this stage, there is no evidence before court that the transaction alluded to will be perfected. No evidence whatsoever has been provided that the purchaser is

indeed able to purchase the property and that it has the necessary funding at hand. The Respondent in fact stated that obtaining funding for such large amount takes a considerable time. If the suspensive condition has not been met, no enforceable agreement is deemed to exist between the seller and the purchaser.

[22] This court cannot suspend the execution of an admitted debt indefinitely on the premise of a sale agreement that may or may not come into effect in the near future on an undetermined date. It is unreasonable to expect from the Applicants to simply remain stationary until the immovable property is effectively sold and the sale agreement comes into effect.

[23] On this basis, this court finds that good cause has not been shown to exists at this stage for the extension of the time period stipulated in part A of the order of 1 April 2025.

[24] As to the suspension of the liquidation proceedings, it has already been stated herein above that this relief is not contemplated in Uniform Rule 27. Uniform Rule 45A however gives the court the power, upon application, to suspend the operation and execution of any order for such period as it may deem fit. The discretion to suspend an order must be exercised judicially but is not otherwise limited. The Court must determine if such stay will be in the interest of justice.

[25] As stated herein before, the application for the liquidation of the Respondent is pending and remains unopposed. This Court is not able to determine on a balance of probabilities that the Respondent is, in fact, commercially and factually solvent.

[26] Determining a just and reasonable order that is in the interest of justice, does not mean that the Court must only consider the position of either the Applicants or the Respondents. There is no injustice towards the Respondent in continuing with proceedings that are aimed at securing a just and equitable division of its assets in favour of its creditors. That is after all the aim of liquidation proceedings.

[27] The inherent urgency in insolvent proceedings has formed the subject of several decisions. In ***Ex parte: Nell N.O. and Others***[3] the Court, with reference to ***Absa Bank Ltd v De Klerk and Related cases***[4] restated the principal that there is often a large body of creditors whose rights are affected by insolvency proceedings. If a case has therefore been made out, a removal of the property from the control of the Respondent, a suspension of the enforcement of creditor's rights of action and execution in the ordinary course should therefore occur as soon as possible.

[28] On this basis, this Court finds that a further suspension of the liquidation proceedings will not be to the benefit of all parties concerned and no case is therefore made out for the court to exercise its discretion in favour of granting the relief.

The enrolment of the liquidation:

[29] The Applicants submitted in their further Heads of Argument that 'all parties who have made their intention known, or elected to partake in the proceedings, were fully aware thereof that the Applicants were of the intention to seek an order for the winding-up of the Respondent on the 27th of May 2025. The order of 1 April 2025 pertinently provides that the application for liquidation will be enrolled as soon as possible. The Respondent was represented during the hearing and was forewarned that the Applicants intends to apply for its liquidation.

[30] It is common cause that no actual formal notice of set down was delivered. The Respondent objected that the matter is not properly before court.

[31] Extensive reference was made by the Applicants to the case of ***Ngassam v MTN Group Management Services (Pty) Ltd***[5] wherein the Court restated the well-known maxim that 'the rules are made for the court, and courts are not established for rules'.[6]

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[3] 2014 (6) SA 545 (GP) at par 55
[4] 1999 (4) SA 835 (E) at 838J – 839A
[5] 2024 JDR 1115 (GJ)
[6] As referred to in Mukaddam v Pioneer Foods (Pty) Ltd and Others 2013 (5) SA 89 (CC)

[32] The liquidation proceedings were not heard in the absence of the Respondent, nor was their presence precluded in any way as contemplated in ***Zuma v Secretary of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State***[7]. The Respondent wilfully failed to file any Answering affidavit notwithstanding a court order directing it to do so.

[33] Counsel for the Applicants correctly referred to **Afgri Operations Ltd v Hambs Fleet Management (Pty) Ltd**[8] (the citation of the reported case refers to 'Hambs' although the word 'Hamba' might have been intended) where the Supreme Court of Appeal stated:

> *'... generally speaking, an unpaid creditor has a right, ex debito justitiae, to a winding up order against the respondent company that has not discharged that debt. ... the discretion of a court to refuse to grant a winding-up order where an unpaid creditor applies therefor is a "very narrow" one that is rarely exercised and then in special or unusual circumstances only.'*

[34] This Court is satisfied that the Respondent stands to be wound up on the basis that it is deemed to be unable to pay its debts as contemplated in Section 345(1)(a) of the Companies Act, Act 61 of 1973.

[35] The Respondent remains adamant that it can secure the funds to pay the Applicants from a third party in the form of the proceeds of the sale of an immovable property. The Court is not privy to any information pertaining to Creditors or Debtors of the Respondent as the Respondent had dismally failed to present proof of its alleged solvency. As a consequence, and *ex abudante cautela*, the Court is not inclined to grant a final order. Evidence may well be placed before the Court that, by virtue of the funds from the third party, the Respondent is able to pay its creditors in full. A provisional order is more appropriate as it would entitle Creditors and Debtors alike to present information to Court to either confirm or rebut the assumption of insolvency.

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[7] 2021 (11) BCLR 1263 (CC)
[8] 2022 (1) SA 19 (SCA) at para 12

Costs:

[36] There is no reason why the cost order should not follow the outcome of the proceedings. Having regard to inter alia the nature of the proceedings and the importance thereof to the parties, costs are awarded to counsel on Scale B. Insofar as the Respondent is hereby placed under provisional liquidation, the cost order will be costs in the winding-up process.

Order:

[37] **In the result the following order is made:**

37.1 The Respondent's urgent application, set down for hearing on 27 May 2025, is dismissed with costs on a party and party scale, including costs to counsel on Scale B.

37.2 Part A of the order granted on the 1st of April 2025 is hereby made final insofar as same constituted an interim order.

37.2 The Respondent is hereby placed under provisional liquidation in the hands of the Master of the High Court;

37.3 A *rule nisi* is hereby issued calling upon all concerned persons to appear and show cause, if any, to this Court at 10:00 on 09 SEPTEMBER 2025 why the Respondent should not be placed under final winding-up order;

37.4 Service of the *rule nisi* must be affected on the Respondent at its registered address and the address of its attorneys, and by publication forthwith once in each of the Government Gazette and in a local newspaper circulating in the area where the Respondent conducts business and service must otherwise take place in accordance with the

statutory provisions including service on SARS, the Master and the employees insofar as same may be found at the registered address.

37.5 The costs of the application are costs in the winding-up of the Respondent and includes the costs to counsel on Scale B.

M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

<u>APPEARANCES:</u>

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