



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 21411/21

1)	REPORTABLE: <u>NO</u>
2)	OF INTEREST TO OTHER JUDGES: <u>NO</u>
3)	REVISED.
.....	26 June 2025
SIGNATURE	DATE

In the matter between:

AU AGGREGATE (PTY) LTD

Applicant

and

JUGGERNAUT TRUCKING CC
MARTHINUS JACOBUS BEKKER
RICHARD MASOANGANYE
THE MASTER OF THE HIGH COURT, PRETORIA

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

In re:

JUGGERNAUT TRUCKING CC

Applicant

and

AU AGGREGATE (PTY) LTD

Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 10:00 on 26 June 2025.

MOJAPELO AJ

INTRODUCTION:

1. Pursuant to a notice in terms of section 345(1)(a) of the Companies Act 61 of 1973, Juggernaut Trucking CC launched an application for the liquidation of AU Aggregate (Pty) Ltd during March 2021. The said application for liquidation was not opposed, and on 05 November 2021, Juggernaut Trucking CC obtained an order for the liquidation of AU Aggregate (Pty) Ltd. Mr. van As, who was the sole director of AU Aggregate (Pty) Ltd until August 2021, was then summoned to testify in the liquidation hearings, which were scheduled for 06 December 2022, which hearings were later postponed to the following year. Mr. van As alleges that he first obtained conclusive proof of the order that was granted against AU Aggregate (Pty) Ltd on 12 May 2023. On 26 June 2023, this application for recession was then launched.
2. This application for rescission is opposed by Juggernaut Trucking CC. The other respondents, that is, the liquidators and the Master of the High Court, do not participate in this application for rescission. For the sake of convenience, the parties will be referred to by their appellations in this application for rescission or their shortened names.

BACKGROUND:

3. It is apposite to set out the background facts of this matter, in particular, the timeline.
4. On 01 February 2021, Juggernaut Trucking, through its attorney, issued a notice in terms of section 345(1)(a) of the Companies Act to AU Aggregate, where it was alleged that AU Aggregate and Juggernaut Trucking entered into an oral

agreement for the provision of screening services. It is alleged in the same notice that Juggernaut Trucking provided the services as agreed and as a result, AU Aggregate is indebted to Juggernaut Trucking in the amount of R8 148 412.75. The said notice required AU Aggregate to pay the said amount within 3 weeks after the service thereof, failing which Juggernaut Trucking was going to proceed with the application for the liquidation of AU Aggregate.

5. It does not appear that there was any response to the section 345(1)(a) notice, as Juggernaut Trucking, during March 2021, launched proceedings for the liquidation of AU Aggregate. The said application for liquidation was served on AU Aggregate's Ms. Basden on 12 May 2021. AU Aggregate then served its notice of intention to oppose the liquidation application on 19 May 2021. At the time of the service of the notice of intention to oppose, AU Aggregate was represented by Scheepers and Aucamp Attorneys, their current attorneys in this rescission application.
6. AU Aggregate's attorneys wrote an email on 10 June 2021 wherein they undertook to deliver their client's answering affidavit the following week. In that regard, Juggernaut Trucking's attorneys, Donn E Bruwer Attorneys, indicated that they were prepared to grant AU Aggregate condonation so that the answering affidavit could be delivered the following week.
7. Instead of delivering the answering affidavit as promised, AU Aggregate's attorneys withdrew as attorneys of record on behalf of AU Aggregate on 18 June 2021.
8. During August 2021, a resolution which is relevant to this matter was recorded as follows:

"6. Mr. F. Devenier acknowledges that an application was launched against AU Aggregate (Pty) Ltd in the High Court of South Africa, Gauteng Division, Pretoria under case number 21411/2021, under circumstances where the applicant Juggernaut Trucking CC (registration number: 1998/052058/23) alleges that it contracted

with AU Aggregate (Pty) Ltd, which is incorrect as the agreement was with Little Creek Trading 368 (Pty) Ltd (registration number: 2017/313617/07).

7. *Accordingly, Mr. F Devenier authorises Scheepers and Aucamp Attorneys to utilize the proceeds of his 50% portion of the amount of R 1 800 000.00, to be received from DMR., to settle the case with Juggernaut Trucking CC, under the aforementioned case number."*
9. There were no papers coming from AU Aggregate's side. The matter was then set down for hearing by default on 05 November 2021. A notice of set down in that regard was served on AU Aggregate by the Sheriff on 04 August 2021. Despite the service of the notice of set down, the matter was heard unopposed. The judgement was thus granted by default for the liquidation of AU Aggregate on 05 November 2021.
10. Mr. van As was then contacted telephonically on 07 February 2022 by one of the joint provisional liquidators of AU Aggregate, who then requested certain financial information in respect of the company. The liquidators did not receive the requested information from Mr. van As. The insolvency inquiry was then convened to be heard on 06 December 2022. In that regard, a subpoena was served on 09 November 2022 on the receptionist at the premises of AU Aggregate. The said subpoena was addressed to Mr. van As and he was informed that he was summoned in terms of sections 414 and 415 of the Companies Act, amongst others, to appear before the Master of the High Court to testify to matters within his knowledge in respect of his dealings and associations with the business, trade and property and affairs of AU Aggregate (in liquidation). The date for the hearing was 06 December 2022. The liquidation hearing scheduled for 06 December 2022 was postponed to 07 February 2023. On that date, the matter was further postponed to the week of 04 April 2024.
11. Despite receiving summons during November 2021, which clearly invited Mr. van As to a liquidation hearing of AU Aggregate, Mr. van As, in the founding affidavit for the application for rescission, states that he obtained conclusive proof that an

order for liquidation was granted against AU Aggregate on 12 May 2023. The date of 12 May 2023 is one of the dates on which the liquidation hearing was to be heard.

12. The application for the rescission of the default liquidation order was then launched on or about 26 June 2023. The application for rescission was made more than 19 months after the winding-up order was granted. As alluded to hereinabove, this application for rescission is opposed by Juggernaut Trucking.

LEGAL PRINCIPLES:

13. AU Aggregate states that this application for rescission is brought in terms of the common law and section 354 of the Companies Act. Section 354 of the Companies Act provides as follows:

(1) *The Court may at any time after the commencement of a winding-up, on the application of any liquidator, creditor or member, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed or set aside, make an order staying or setting aside the proceedings or for the continuance of any voluntary winding-up on such terms and conditions as the Court may deem fit.*

(2) *The Court may, as to all matters relating to a winding-up, have regard to the wishes of the creditors or members as proved to it by any sufficient evidence.*

14. The application for a rescission of a winding-up order ought to be based on section 354 of the Companies Act and not the common law. The Supreme Court of Appeal in ***Ward v Smit & Others: In re Gurr v Zambia Corporation Ltd 1998(3) SA 175 SCA***, held as follows:

*"In order to have the final winding-up order set aside the appellants were obliged to invoke the provisions of s354(1) of the Act. ... The language of the section is wide enough to afford the Court a discretion to set aside a winding-up order both on the basis that it ought not to have been granted at all and on the basis that it falls to be set aside by reason of subsequent events."*¹

15. In the matter of **Ragavan and another v Kal Mining Services 2019 JDR 1739 (GP)** this Court rejected the proposition that a winding-up order can be rescinded under rule 42 and held that the legislated basis for rescinding a winding-up orders is found in section 354 of the Companies Act, and that includes orders that are alleged to have been erroneously made or granted.²

16. The SCA in **Ward v Smit** (supra) went on to state that:

*"It follows that an applicant under the section must not only show that there are special or exceptional circumstances which justify the setting aside of the winding-up order; he or she is ordinarily required to furnish, in addition, a satisfactory explanation for not having opposed the granting of the final order or appealed against the order. Other relevant considerations would include the delay in bringing the application and the extent to which the winding-up had progressed."*³

17. The Court has a wide discretion in this regard. In the matter of **Klass v Contract Interiors CC (In Liquidation) and Others 2010 (5) SA 40 (W)**, it was held that in exercising its discretion, the following principles apply:

- 17.1. The Court's discretion is practically unlimited, although it must take into account surrounding circumstances and the wishes of parties in interest, such as the liquidator, creditors, and members.

¹ Ward v Smit (Supra) at page 180.

² Ragavan v Kal (Supra) at paragraph 14.

³ Ward v Smit (Supra) at page 181.

- 17.2. The Court should ordinarily not set aside a winding-up where creditors or the liquidators remain unpaid or inadequate provision has been made for the payment of their claims.
- 17.3. Where the claims of the liquidator and all creditors have been satisfied, the Court should have regard to the wishes of the members, unless those members have bound themselves not to object to the setting aside order, or the member concerned will receive no less as a result of the order sought than would be the case if the company remained in liquidation.
- 17.4. In deciding whether or not to grant a setting aside order, the Court should, where appropriate, have regard to issues of "*commercial morality*", "*the public interest*" and whether the continuation of the winding-up proceedings would be a "*contrivance*" or render the winding-up "*the instrument of injustice*."⁴

EXPLANATION FOR THE DEFAULT:

18. One of the considerations in this application for rescission is the explanation for the default by the applicant. As held in the matter of **Ward v Smit**, an applicant seeking rescission is ordinarily required to provide a satisfactory explanation for the failure to oppose the granting of the final order.⁵ This requirement is grounded in the principle that once a final order has been granted, it should not be lightly set aside, and litigants are expected to conduct litigation with diligence and accountability.
19. In this matter, the applicant was served with an application for the winding-up of the company on 12 May 2021. The applicant's attorneys at the time undertook to file the applicant's answering affidavit to oppose the liquidation application during the third week of June 2021. Such an affidavit was not filed as the attorneys withdrew as attorneys of record. The applicant did not file an opposing affidavit to oppose the application. The application was eventually heard on an

⁴ Klass v Contract Interiors CC (Supra) at paragraph 65.

⁵ Ward v Smit (Supra), page 181.

unopposed basis on 05 November 2021. There was a period of 177 days between the service of the application and the granting of the order.

20. The applicant's explanation for not opposing the matter can be summarized as follows; (1) Mr. van As was facing numerous legal issues at the time, (2) Mr. van As was suffering from ill health, (3) Mr. van As did not have enough finances, and (4) Mr. van As took the attitude that the application for winding-up is without merits.
21. While Mr. van As submitted documentary evidence that he was medically indisposed during 2021, that is the period wherein the papers to oppose the application for the winding-up of AU Aggregate were to be made, he, on the other hand, states that he was busy in various Courts with litigation. During that time, the applicant was able to instruct the attorneys Scheepers and Aucamp Attorneys to file a notice to oppose the winding-up application and even made an undertaking to file an answering affidavit. He further states that during that period, his brother laid criminal charges against him, and he had to attend Court on 26 August 2021, 09 September 2021, 12 October 2021 and 27 October 2021. It therefore presupposes that during this period, he was medically fit to attend to Court and therefore there is no reasonable explanation why the winding-up application was not attended to.
22. He was further able to attend Court for his personal matter, wherein the Court on 04 November 2021 granted custody of his minor children in his favour.
23. What is more startling is that he states that he was attending to more important issues than the winding-up application. He states as follows:

"33.4 I was also simply occupied with issues I regard as more important than the application launched by Juggernaut, which I regarded as ill-advised and misplaced. In short, I was busy with litigation concerning not only my livelihood, but also the well-being of my children, compounded by my own well-being and the physical and mental challenges due to my medical condition. With these limits

placed upon me, I was not able to attend to Juggernaut's application."

24. Mr. van As further states that he resigned as the director of AU Aggregate at the end of August 2021 and Mr. Devenier took over the position as the Director of AU Aggregate. Since Mr. van As is no longer the Director from September 2021, there is no reason afforded in the founding papers as to why Mr. Devenier did not issue instructions to oppose the winding-up application. Mr. Devenier filed a confirmatory affidavit, where he does not offer any reason as to why the winding-up application was not opposed.
25. In fact, Mr. Devenier states in paragraph 4 of his supporting affidavit that he was not aware of the winding-up application brought against AU Aggregate and only became aware of it during 2023. This allegation cannot be correct because on 12 August 2021, Mr. Devenier, who was also a Director of the company called Little Creek Trading 368 (Pty) Ltd acknowledged in writing the application that was brought against AU Aggregate and further authorized Scheepers and Aucamp Attorneys to utilize the proceeds of his 50% portion of the amount of R1 800 000.00 received from DMR to settle the case with Juggernaut Trucking. It is therefore not correct for Mr. Devenier to state under oath that he became aware of the winding-up application in 2023 when, in truth, he was aware of the application on or before 12 August 2021.
26. Cumulatively, the above demonstrates that the applicant, through Mr. van As and Mr. Devenier, has failed to give a reasonable explanation for not having opposed the winding-up order.

DELAY IN BRINGING THE APPLICATION:

27. An application of this nature must be brought within a reasonable period. For the applicant to succeed with the application for rescission, the applicant must show good cause or sufficient cause by giving a reasonable explanation for the delay. The applicant must further show that the application for rescission is *bona fide*

and that the applicant has a *bona fide* defence to the claim with a *prima facie* prospect of success.

28. The order that is sought to be rescinded was granted on 05 November 2021. The summons in terms of sections 414 and 415 of the Companies Act were issued and service was effected and Mr. van As was aware of such. In terms of the said summons, Mr. van As was requested to appear before the master of the High Court in order to testify to matters within his knowledge in respect of his dealings and association with the business, trade, property and affairs of AU Aggregate (In Liquidation). In the same summons, he was requested to produce books or papers in his custody or under his control relating to the company's liquidation. He was summoned to appear on 06 December 2022. It is clear from the summons that he was appearing in relation to the liquidation proceedings of AU Aggregate. The initial hearing was postponed to 07 February 2023 by Mr. van As's then attorney, Mr. A. Quass.
29. In considering the explanation proffered by Mr. van As, it is necessary to assess the role and conduct of his legal representative. It cannot reasonably be accepted that the attorney was unaware of the nature of the proceedings in which he appeared on behalf of his client. As an officer of the Court, the attorney has a duty to act with diligence and to ensure that his client is properly informed. It is therefore to be inferred that the attorney would have duly advised Mr. van As of the nature and implications of the matter. In the absence of any cogent evidence to the contrary, the Court must proceed on the assumption that Mr. van As was adequately apprised of the proceedings and their potential consequences.
30. Mr. van As states that he appeared on 7 February 2023, and the liquidators failed to appear, and the matter was once again postponed to 12 May 2023. Mr. van As further states that he was operating under the impression that he would be able to explain to the Court that the application was ill-founded and that the Court should not grant any relief. He does not state that he was in possession of an application or a notice of motion. He attended on the strength of the summons mentioned above. He states that he only became aware on 12 May 2023 when

conclusive proof of the order being granted against AU Aggregate was obtained by him from the liquidators.

31. It should be noted that even though Mr. van As states that the application was without merit, he did not take any steps to file an opposing affidavit.
32. Mr. van As participated in the liquidation hearing of AU Aggregate, which is the execution of the very same order that AU Aggregate now seeks to challenge. Mr. Devenier, who was the director of AU Aggregate during the period of the impugned Court order and the liquidation hearing, does not offer any explanation for the failure to defend the winding-up order and the delay.
33. By attending the liquidation hearings on several occasions either personally or through an attorney, Mr. van As must surely have acquiesced in the judgment that is now sought to be set aside. He knew all along about legal proceedings and relief sought and judgment against AU Aggregate, but did nothing, and is only taking steps at this very late stage of the execution process.
34. In **Schmidlin v Multisound (Pty) Ltd 1991(2) SA 151 (C)**, the Court, in dealing with the issue of undue delay, held:

"Delay is however relevant in this case, not per se, but because that judgment was not a mere paper tiger but was being executed albeit in minuscule monthly instalments via the s 65 proceedings in the magistrate's court. Acquiescence in the execution of a judgment must surely in logic normally bar success in an application to rescind on the same basis as acquiescence in the very granting of the judgment itself would."

35. AU Aggregate's position is further weakened by the fact that the application for rescission was brought only after Mr. van As, either personally or through legal representation, had participated in several of the liquidation proceedings. By doing so, he engaged in the process that gave effect to the very order he now seeks to set aside. It must accordingly be concluded that Mr. van As acquiesced in both the existence and execution of the winding-up order. As held in **Ward v Smit 1998 (3) SA 175 (SCA)** at 181, a party seeking rescission must provide a

satisfactory explanation for their inaction.⁶ Furthermore, in ***Hlatswayo v Mare and Deas 1912 AD 242*** at 253, the Court emphasized that once a party has acquiesced in a judgment, the right to have it rescinded may be lost.⁷ In the present matter, the applicant's prolonged inaction, coupled with participation in the liquidation process, demonstrates a clear acceptance of the order. In these circumstances, the application for rescission must fail.

APPLICANTS LACK OF LOCUS STANDI:

36. It was submitted on behalf of Juggernaut Trucking that the applicant, AU Aggregate, or Mr. van As, does not have the necessary *locus standi* to bring this application, taking into account the provisions of section 354(1) of the Companies Act.
37. The deponent on behalf of the applicant is Mr. van As, who identifies himself as the previous director of the applicant. He states that he is fully authorized to depose to the founding affidavit on behalf of the applicant by virtue of the fact that he is a trustee of the Frikkie van As Familie Trust, which holds the entire shareholding in the applicant. He states that this renders the Trust a member of the applicant for the purpose of the provision of section 354(1) of the Companies Act. However, the Trust is not the applicant in this matter. The only applicant in this matter is the company, AU Aggregate, which was liquidated by the order of this Court on 05 November 2021.
38. In terms of section 354(1) of the Companies Act, a specific class of people possesses the requisite *locus standi* to bring an application for rescission before a Court. The provisions of section 354(1) of the Companies Act are worth repeating:

"The Court may at any time after the commencement of a winding-up, on the application of any liquidator, creditor or member, and on proof to the satisfaction of the Court that all proceedings in relation to the

⁶ Ward v Smit (Supra).

⁷ Hlatswayo v Mare and Deas 1912 AD 242.

winding-up ought to be stayed or set aside, make an order staying or setting aside the proceedings or for the continuance of any voluntary winding-up on such terms and conditions as the Court may deem fit."

39. In the matter of **Matlhatse Trading Enterprise CC v Body Corporate of Bateleu rand Others 2025 JDR 2203 (GP)**, this Court, after analyzing, amongst others, the authority in **Storti v Nugent 2001 (3) SA 783 (W)**, held that:

*"The wording of the section makes it clear that the only persons which has the necessary locus standi to launch an application in terms of section 354 is a creditor, liquidator or a member of the company. The section makes it clear that the company itself does not have locus standi to launch this application."*⁸

40. In this matter, there is only one applicant, AU Aggregate. Although Mr. van As states that he has been authorised by the Frikkie van As Trust to depose to the founding affidavit, the Trust itself is not the applicant. It therefore follows that AU Aggregate lacks the necessary *locus standi* to have launched these proceedings. This application should therefore fail.

THE COSTS:

41. It was argued by Counsel on behalf of the Juggernaut Trucking that the deponents on behalf of the company, Mr. van As and Mr. Devenier, the previous directors of the company in liquidation, should be ordered to pay the costs of this application for rescission in their personal capacities. The reason advanced by Mr. van Rooyen on behalf of Juggernaut was that the creditors should not be burdened with legal costs in this matter. The conduct of both Mr. van As and Mr. Devenier in this matter needs to be considered closely for consideration of the costs.

⁸ **Matlhatse Trading Enterprise CC v Body Corporate of Bateleu Rand Others 2025 JDR 2203 (GP)**, at paragraph 23.

42. The principle of awarding costs has been reiterated in the matter of ***Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others 1996 (2) SA 621 (CC)***⁹ where it was held as follows:

"The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. I mention these examples to indicate that the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation."

43. The consideration behind punitive costs is to punish a litigant who is in the wrong due to the manner in which he or she approached litigation or to deter would-be inflexible and unreasonable litigants from engaging in such inappropriate conduct in the future. It has generally been said in several cases that the Court will issue a cost award on an attorney and client scale as a matter of showing its displeasure against a litigant's objectionable conduct. In determining whether the behaviour of a litigant is objectionable, the Court will have regard to the nature of the litigant's conduct.¹⁰

⁹ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others 1996 (2) SA 621 (CC)* at paragraph 3.
¹⁰ *Maribatsi v Minister of Police 2020 JDR 1324 (GJ)*.

44. The conduct of the parties is not the only consideration when it comes to awarding punitive costs. In other words, the ground for awarding these costs is not limited to punishing the offending party but includes ensuring that the successful party will not be out of pocket in respect of the expenses caused to him or her by the approach to litigation by the losing party. In the matter of **Vehicle Delivery Services a division of Onelogix (Pty) Ltd v Key Group and Another**¹¹ it was held as follows:

“The primary underlying purpose of any costs award is to minimise the extent to which a successful litigant will be out of pocket as a result of litigation that he or she should not have had to endure. Costs orders often do not even achieve that objective, and fall short of assisting the successful litigant in fully recovering his or her expenses. It will at times be just and equitable to award costs on a punitive scale, not just to punish vexatious litigation, but also to assist the successful litigant in recouping their often substantial expenses. Generally, punitive costs orders are not frequently made. Exceptional circumstances must exist before they are warranted.”

45. In awarding punitive costs this Court held in the matter of **Maribatsi v Minister of Police 2020 JDR 1324 (GJ)** that, ... *the Court will look at whether there exists evidence of intentional, outrageous, reckless or conscious disregard of the rights of others created by the statute. The existence of such evidence will in general be deemed sufficiently flagrant to warrant the granting of punitive costs.*

46. The following factors in relation to Mr. van As are taken into consideration:

- 46.1. The reasons for the failure to oppose this application as given by Mr. van As, who was the director when the application for liquidation was launched and served. Although he submitted medical evidence to support his allegation that he was medically unable to attend to this matter, his

¹¹ Vehicle Delivery Services a division of Onelogix (Pty) Ltd v Key Group and Another (4655/2021) [2023] ZAFSHC 141 (11 May 2023) at paragraph 4

activities during that period show that he was capable of defending this matter if he chose to. He was able to attend Court on several occasions to deal with the dispute of custody of his children. He also attended the criminal court on various occasions during the same period.

46.2. After the winding-up order was granted, he participated in the liquidation hearings after being summoned to appear. Although the hearings were postponed several times, it is this Court's view that Mr. van As was, during that time, aware of the purpose of the hearings. He was well aware that the Company was liquidated when he either appeared himself at the liquidation hearing or was represented by an attorney.

46.3. His attitude to the winding-up application can be summarised by his assertion in the founding affidavit, where he states that he was occupied with the issues he regarded as more important than the application launched by Juggernaut, which he regarded as ill-advised and misplaced. He states that he was busy with litigation that concerned not only his livelihood, but also the wellbeing of his children, compounded by his own well-being and the physical and mental challenges due to his medical conditions.

46.4. With this attitude that Mr. van As displayed towards the winding-up application, there is no reason why he should not bear the costs of this application for rescission. There is no reason why the respondent or the creditors of AU Aggregate should be out of pocket as a result of this application. Therefore, punitive costs are justifiable.

47. In relation to Mr. Devenier, the following facts are relevant:

47.1. Mr. Devenier took over the position as the director of AU Aggregate during the end of August 2021. He has attested to a supporting affidavit in this application for rescission but does not offer any explanation for failing to oppose the winding-up application and for the delay in bringing the rescission application.

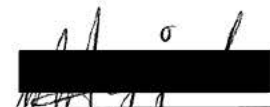
47.2. Mr. Devenier acknowledged in writing on 12 August 2021 that an application was launched against AU Aggregate by Juggernaut Trucking. However, in his supporting affidavit in this rescission application, he states under oath that he was never aware that an application for the winding-up of the AU Aggregate was made. Mr. Devenier deliberately misrepresented the true facts about his knowledge and involvement in this matter.

48. It is therefore my view that both Mr. van As and Mr. Devenier should bear the cost of this rescission application in their personal capacities on a punitive scale.

49. Under the circumstances, I make the following order:

49.1. This application for rescission of the winding-up order of this Court of 05 November 2021 is dismissed.

49.2. Mr. Fredrik Johannes van As and Mr. Ferdinand Smartenryk Devenier are ordered to pay the costs of this application in their personal capacities, the paying on an attorney and client scale.



MM MOJAPELO
ACTING JUDGE

HIGH COURT GAUTENG DIVISION, PRETORIA

Counsel for the Applicant : Adv DC du Plessis

Attorney for the Applicant : Scheepers and Aucamp Attorneys

Counsel for the Respondent : Jaco van Rooyen

Attorneys for the Respondent : Donn E Bruwer Attorneys

Date heard : 07 February 2025

Date of the Judgement : 26 June 2025