

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2024-26563**

- | | |
|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED: YES/NO |

10 July 2025

DATE

JRG

SIGNATURE

In the matter between:

Morwell Plant Hire (Pty) Ltd.

APPLICANT

and

Tseke Construction CC

RESPONDENT

JUDGMENT

Johann Gautschi AJ

- [1] This is an opposed application for the final winding up of the Respondent in which the Applicant relies on the inability of the Respondent to pay its debts in terms of section 344 (f) and 345 (1) (c) of the Companies Act 61 of 1973 read with sections 69 (1) (c) and 69 (2) of the Close Corporation Act 69 of 1984.

- [2] The Applicant's case is based upon the Respondent's inability to pay its debts in terms of Section 344 (f) of the Companies Act 1973 pursuant to a demand for payment in terms of section 345 of the Companies Act 1973 made by letter dated 8 January 2024 and a notice in terms of section 69 of the Close Corporations Act 1984 served at the registered address of the Respondent on 15 January 2024.
- [3] The Respondent raises only two issues in its answering affidavit.
- [4] Firstly, that it does not *"entirely disagree that the Respondent is indebted to the Applicant"* because it disagrees with the correctness of two of the items in the Applicant's statement of account for reflecting a balance of R357,322 owed by the Respondent pursuant to plant hired by it from the Applicant. However, the Respondent only disputes amounts totalling R63,889.75 in two of the invoices by reason of which the Respondent alleged that *"the invoice amounts are exaggerated"*. Consequently, there is an amount exceeding R290,000 which remains undisputed. Furthermore, the Respondent's answering affidavit responds as follows to the Applicant's allegation that the Respondent is hopelessly insolvent and that it has been granted ample time to make a payment but, despite several promises that never materialised: *"The contents herein are noted safe to state that the Respondent is hopelessly insolvent and must be subject to a liquidation process. The Applicant is currently appropriately pursuing Sayiyeni on the basis of cession agreement"*.
- [5] The second issue raised by the Respondent relates to the above-mentioned cession agreement (the cession defence). Respondent's counsel submits as follows in his heads of argument: *"– – the application of the Applicant to put the Respondent on the final liquidation is not justifiable since the Respondent admits only to the debt that was ceded to Sayiyeni and the Applicant is aware of this fact and agreed to the debt being ceded to Sayiyeni. This is evident in that similar proceedings have been instituted by the Applicant in the Limpopo Polokwane High Court against Sayiyeni for the same date – –. It is therefore the Respondent's admission that its defence is bona fide, reasonable and justifiable and the Court should not grant the order winding up the Respondent. – – – The parties entered into a second agreement, which is a cession agreement between the Applicant, Respondent and Sayiyeni in terms of which the Respondent ceded*

all the debts emanating from the plant hire agreement to Sayiyeni. The Applicant was at all material times aware of the fact Sayiyeni was not responsible for the debts owing by the Respondent hence the Applicant instituted a similar application Polokwane division of the Limpopo High Court. The Respondent acknowledges that it was indebted to the Applicant but denies the amounts as reflected by the Applicant in this application and secondly denies that currently it is indebted to the Applicant since the debt was ceded to Sayiyeni. Therefore the Applicant has a right of recourse against Sayiyeni as it has rightfully done so and not against the Respondent."

- [6] The cession defence is misconceived. The terms of the written cession attached to the founding affidavit are not in dispute. As pointed out by the Applicants in its replying affidavit, *"the cession agreement between the Applicant and the Respondent only made provision for the Applicant to recover its funds from the Sayiyeni Communications (Pty) Ltd as a result of the fact that the Respondent alleged that Sayiyeni Communications bracket Ltd is indebted to itself. – – – It has further transpired that Sayiyeni Communications (Pty) Ltd is not indebted to the Respondent whatsoever as per annexure "RA1". Hence, the aforementioned entails that the Respondent is commercially insolvent and there is no security for its debt against the Applicant."* Annexure RA1 referred to is a statement of the Respondent issued to Sayiyeni Communications (Pty) Ltd dated 30 December 2023 which reflects a nil balance owing to the Respondent.
- [7] The mere fact that the Respondent ceded to the Applicant a debt allegedly owed to it by Sayiyeni does not serve to extinguish the aforementioned balance of not less than R290,000 admittedly owed by the Respondent to the Applicant. It is trite that the onus is on the debtor to prove a defence of payment, but the Respondent's answering affidavit went no further than to allege a cession to the Applicant of its alleged rights to claim from Sayiyeni. Besides this misconceived cession defence, there is the Respondent's admission that it is hopelessly insolvent.
- [8] In the circumstances I am of the view that the Applicant should be granted an order for the provisional winding up of the Respondent. At my request the

Applicant provided further addresses for service as shown in the order below so as not to limit service to the registered address of the Respondent.

IT IS ORDERED THAT:

1. The abovementioned Respondent is hereby placed in provisional liquidation with return dated 11 August 2025.
2. The Respondent and all interested parties are called upon to show cause on **11 AUGUST 2025** why, if any, this order should not be made final:
3. This provisional order is to be served by the Sheriff upon the Respondent and upon the employees of the Respondent at its registered address and at the following addresses:
 - 3.1. 54 Lyndhurst Estates, Corlett Drive, Lyndhurst;
 - 3.2. 999 Bergrivier Drive, Chloorkop;
 - 3.3. 112 Johannesburg Road, Lyndhurst;
 - 3.4. 321 Commercial Street, Wadeville.
4. This provisional order be served upon the Master of the High Court and the South African Revenue Service by way of filing notice, by hand and/or electronically;
5. This provisional order be published in one each of the Government Gazette and "*The Star*" newspaper.
6. The costs of this application be cost in liquidation.

Johann Gautschi AJ

**ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant: ADV E NEL
Instructed by: WYNAND DU PLESSIS ATTORNEYS
(011 7601058)

For the F Respondent: ADV TE MOREMI
Instructed by: MAUBANE INC. ATTORNEYS
(066 5621647)