



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

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:

Date: 12 August 2025

Signature: 

CASE NO: 21/41489

In the matter between:

ESKOM ROTTEK INDUSTRIES SOC LTD

Applicant

and

GEO-X (PTY) LTD

Respondent

JUDGMENT

M VAN NIEUWENHUIZEN, AJ:

- [1] This is an application in terms of Rule 47 of the Uniform Rules of Court to compel the respondent to provide security for costs in an amount of R750 000,00, or in such amount to be determined by the Registrar, within ten days of the order being granted.

SYNOPSIS

- [2] The respondent was placed under supervision and into business rescue on 28 February 2024 (*“the business rescue judgment”*). The application was made in terms of section 131 of the Companies Act No. 71 of 2008 (as amended) (*“the Act”*).
- [3] The applicant argues that the Court has thus determined that the respondent is financially distressed as determined in section 128(1)(f) of the Act.
- [4] On the 29th of April 2024, the applicant served a Rule 47(1) notice on the respondent, demanding that the respondent furnish security for the applicant’s costs of the main action, which the respondent has failed and/or refused to furnish. Accordingly, ten days have lapsed since the demand was made and the applicant thus launched the present application in terms of Rule 47(3).
- [5] The applicant seeks an order directing the respondent to furnish security for the applicant’s costs in the main action instituted by the respondent under the abovementioned case number, including the applicant’s separated first special plea, in the amount of R750 000,00 (seven hundred and fifty thousand rand), or in such amount as the Registrar is to determine. In addition, that the action is stayed pending the security for costs being furnished by the respondent.
- [6] The applicant contends that the respondent is impecunious and the action is vexatious, reckless and an abuse of process. The respondent is unable to satisfy a costs order, when granted against it.
- [7] The respondent opposes the application and alleges the application is without basis/merit.

[8] The respondent submits that:

- [8.1] The applicant's special plea was separated on the 11th of October 2023 but not set down. Instead, the above Rule 47(3) application was issued.
- [8.2] The respondent is of the view that Rule 47 proceedings are legal proceedings.
- [8.3] The respondent was placed under business rescue on 28 February 2024 and the applicant argues that the moratorium in terms of section 133 of the Companies Act 71 of 2008 is not applicable because Rule 47 is not legal proceedings.
- [8.4] Various other issues have been raised. The Court will however deal with the point *in limine* as if this application is however legal proceedings and subject to the section 133 moratorium, as the respondent submits it is, then this point will be dispositive of the application.

IN LIMINE

[9] The respondent was placed under business rescue on 28 February 2024 and the applicant argues that the moratorium in terms of section 133 of the Act is not applicable. Section 133 of the Act reads as follows:

"133(1) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except –

- (a) *with the written consent of the practitioner;*
- (b) *with the leave of the court and in accordance with any terms the court considers suitable;*
- (c) *as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings began;*
- (d) *criminal proceedings against the company or any of its directors or officers;*
- (e) *proceedings concerning any property or right over which the company exercises the powers of a trustee; or*
- (f) *proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner.*

...

- (3) *If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit, the measurement of that time must be suspended during the company's business rescue proceedings."*

[10] The applicant does not have leave of the business rescue practitioner or of the Honourable Court for this Rule 47(3) application and it is not the applicant's case that one of the exceptions listed above applies.

[11] The applicant argues that this Rule 47(3) application is not legal proceedings and therefore that this Court may make an order.

[12] If this application is however legal proceedings, as the respondent submits it is, then this point will be dispositive of the application.

The applicant's argument

[13] In **Chetty v Hart NO**,¹ the Supreme Court of Appeal held that the provision must be broadly interpreted to include arbitration proceedings.

[14] When ascribing meaning to the respective words in legislation, the point of departure is the meaning of the language itself.²

[15] The applicant contends that in *casu*, the claim for security is not proceedings of its own right, but is “*collateral to and not directly affecting the main dispute between the litigants ... This relief to be effective if at all only after judgment ...*”.³

[16] The applicant argues that as such, the application for security cannot be “*legal proceedings*” against the respondent. It is simply incidental to the main proceedings, as contemplated in Rule 6(11) of the Uniform Rules of Court,⁴ which proceedings are instituted by the respondent against the applicant. The proceedings are certainly not arbitration proceedings which **Chetty**⁵ decided is struck by section 133 of the Act.

[17] Enforcement action is contemplated within what legal proceedings are.

¹ 2015 JDR 1823 SCA at para 35

² **Natal Joint Municipal Pension Fund v Endumeni Municipality** 2012 (4) SA 593 (SCA) at para 18; **Novartis v Maphil** 2016 (1) SA 518 (SCA); **University of Johannesburg v Auckland Park Theological Seminary and Another** 2021 (6) SA 1 (CC) at para 64 and 65

³ **Shepstone & Wylie and Others v Geyser NO** 1998 (3) SA 1036 (SCA)

⁴ With reference to the case of **Antares (Pty) Ltd v Hammond** 1977 (4) SA 29 (W) at 30D

⁵ **Chetty** *supra*

The applicant argues that since the application for security is not legal proceedings, it also cannot be an enforcement action – the larger (legal proceedings) encompasses the smaller (enforcement action). Furthermore, in an application for security for costs, nothing is enforced.

- [18] The applicant argues that what a security for costs application entails, is the respondent, if ordered to do so, is to put up security, which may be in any form that may be determined appropriate. Security may be given in the form of a bank, institutional or personal guarantee and may also be in the form of a guarantee over an immovable property.⁶

The respondent's argument

- [19] The respondent argues that the application is on notice with three sets of affidavits and this Court is asked to make a ruling. The respondent argued that it is difficult to understand the applicant's argument.

- [20] The respondent argues that the point of departure is that the respondent is under business rescue as envisaged in section 128(1)(b) of the Act that defines "*business rescue*" as proceedings to facilitate the rehabilitation of a company that is financially distressed by providing as follows:

"(i) the temporary supervision of the company, and of the management of its affairs, business and property;

(ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

(iii) the development and implementation, if approved, of a plan to

⁶ Erasmus, The Superior Court Practice, RS22, 2023, D1, Rule 47-19

rescue the company ...”

[21] The respondent submits that the temporary moratorium envisaged in section 128(1)(b)(ii) has been enacted by means of section 133 of the Act. In support of its contentions the respondent has referred to case law set out hereunder.

[22] The meaning of “*legal proceedings*” was considered in ***Murray NO and Another v Firstrand Bank Ltd t/a Wesbank***.⁷

“[30] *In Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) para 18, this court reiterated that the inevitable point of departure in interpreting a statute is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document. It should, however, be borne in mind that, if the words of the relevant provision are unable to bear the meaning contended for, then that meaning is impermissible. See Firstrand Bank Ltd v Land and Agricultural Development Bank of South Africa 2015 (1) SA 38 (SCA) para 27. It is also important to note that s 39(2) of the Constitution, which compels an interpretation of legislative provisions in the light of the values enshrined in the Bill of Rights, applies only where the language of the statute is not unduly strained. See South African Airways (Pty) Ltd v Aviation Union of South Africa & others 2011 (3) SA 148 (SCA) paras 25-26.*

[31] *Section 133(1) of the Act places a moratorium on ‘legal proceeding, including enforcement action’. In the Afrikaans text the reference is to ‘geregtelike stappe, insluitende afdwingingsaksie’. The Act does not contain a definition of these*

⁷ 2015 (3) SA 438 (SCA)

terms. However, the term ‘legal proceeding’ is well-known in South African legal parlance and usually bears the meaning of a lawsuit or ‘hofsaak’. ...”

[23] In ***Timasani (Pty) Ltd (in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd***.⁸

“[25] Section 133 must be read as a whole: the different subsections of a provision dealing with the same subject matter must not be considered in isolation but read together so as to ascertain the meaning of the provision.

Section 133(1) is a general moratorium provision that applies in relation to the assets and liabilities of the company at the stage when business rescue comes into effect. It protects the company against legal action in respect of claims in general, save with the written consent of the business rescue practitioner and failing such consent, with the leave of the court. This Court has stated the purpose of s 133(1) as follows:

‘It is generally accepted that a moratorium on legal proceedings against a company under business rescue is of cardinal importance since it provides the crucial breathing space or a period of respite to enable the company to restructure its affairs. This allows the practitioner, in conjunction with the creditors and other affected parties, to formulate a business rescue plan designed to achieve the purpose of the process.’”

[24] The Supreme Court of Appeal in ***Ergomode (Pty) Ltd v Jordaan NO and Others***⁹ found that “to perfect security is legal proceedings” as mentioned

⁸ (91/2020) [2021] ZASCA 43; [2021] 3 All SA 843 (SCA) (13 April 2021)

⁹ (643/2022) [2024] ZASCA 10 (29 January 2024)

in the Act quoted herein.

“[33] Accordingly, s 133 is meant to grant a company placed in business rescue a moratorium to provide it, in popular parlance, with breathing space whilst every attempt is made to rescue the company in financial distress, by designing and implementing a business rescue plan.[¹⁰] The term ‘legal proceedings’ in s 133 include claims in general, but also claims instituted, as in this instance, to perfect security. Consequently, Ergomode was, as a matter of law, obliged, as a preliminary step, to seek leave of the BRPs or of the court to commence proceedings against Sakhile (in business rescue). This, it failed to do. Instead, it heedlessly embarked on legal proceedings against Sakhile in the face of the unequivocal prohibition contained in s 133(1) of the Act.”

[25] The applicant subsequently submits that this application is legal proceedings, and section 133(1) of the Act applies and accordingly that the application should be dismissed with costs.

EVALUATION

[26] Section 133 makes provision for a general moratorium (in some jurisdictions a moratorium is known as a “stay” or “staying of proceedings”) on legal proceedings commenced or proceeded with, including any enforcement action, against a company or in relation to any property belonging to the company, or lawfully in its possession, while the company is subject to business rescue proceedings.¹¹

¹⁰ *Cloete Murray and Another NNO v Firstrand Bank Ltd t/a Wesbank supra* para 14

¹¹ *African Bank Corporation of Botswana v Kariba Furniture Manufacturers (Pty) Ltd and Others* 2013 (6) SA 471 (GNP), para 6 (reversed on appeal on other grounds); *African Bank Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd and Others* 2015 (5) SA 192 (SCA)

- [27] The moratorium granted by this section is designed to provide the company with a breathing space while the business rescue practitioner attempts to rescue the company by designing and implementing a business rescue plan.¹² This is a crucial element of any corporate rescue mechanism, as it allows the company sufficient breathing space to be able to find a solution to the financial problems it is experiencing at that time. It is a personal, temporary benefit in favour of a company undergoing business rescue that cannot be utilised indefinitely to delay the claims of creditors or result in the extinction of their claims.¹³
- [28] It is clear that the general moratorium created by this section is temporary and applies only for the duration of the company's business rescue proceedings.¹⁴
- [29] In *Investec Bank Ltd v Bruyns*¹⁵ the Court described the moratorium granted by subsection (1) as a general provision that affords the company protection against legal action on claims in general. Although no definition of the terms “*legal proceeding*” or “*enforcement action*” is provided in Chapter 6, it is clear that the intention of the provision is to cast the net as wide as possible in order to include any conceivable type of action against a company such as liquidation proceedings.¹⁶
- [30] The *Chetty* (a quo) case¹⁷ was reversed on appeal in *Chetty t/a Nationwide Electrical v Hart NO and Another*¹⁸ on the basis that the

¹² *Cloete Murray and Another NNO v Firststrand Bank Ltd t/a Wesbank supra* para 14; *Southern Value Consortium v Tresso Trading 102 (Pty) Ltd and Others* 2016 (6) SA 501 (WCC); *2001 Management Services (Pty) Ltd and Another v Anappa* (88079/14) [2016] ZAGPPHC 353 (20 May 2016), para 33; *Business Partners Ltd v Tsakiroglou and Others* 2016 (4) SA 390 (WCC), para 20

¹³ *Timasani (Pty) Ltd (in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd* [2021] JOL 5006 3 (SCA); [2001] 3 All SA 843 (SCA), para 28

¹⁴ *Capitec Bank Ltd v Ubuntu Family Health Centre Grayston (Pty) Ltd* (2023/127918) [2025] ZAGPJHC 126 (10 February 2025)

¹⁵ 2012 (5) SA 430 (WCC)

¹⁶ *Blue Star Holdings (Pty) Ltd v Anappa* (88079/14) [2016] ZAGPPHC 353 (20 May 2016), paras 40-41; *Chetty t/a Nationwide Electrical v Hart NO and Another* 2015 (4) All SA 401 (SCA), para 35 (with reference to arbitration proceedings) and *Capitec Bank Ltd v Ubuntu Family Health Centre Grayston (Pty) Ltd* (2023/127918) [2025] ZAGPJHC 126 (10 February 2025), para 23

¹⁷ 2014 JDR 0585 KZD

¹⁸ 2015 (4) All SA 401 (SCA)

phrase “*legal proceeding*” may, depending on the context within which it is used, be interpreted restrictively, to mean Court proceedings or more broadly, to include proceedings before other tribunals including arbitral tribunals.¹⁹ In the **Chetty** SCA case it was *inter alia* stated that the language employed in subsection (1) itself suggests that a broader interpretation commends itself, an approach with which academic commentators concur.²⁰

[35] *To conclude this analysis, the phrase legal proceeding may, depending on the context within which it is used, be interpreted restrictively, to mean court proceedings or more broadly, to include proceedings before other tribunals including arbitral tribunals. The language employed in s 133(1) itself suggests that a broader interpretation commends itself, an approach with which academic commentators concur. Contextual indications in s 142(3)(b), and the importance of reading these provisions consistently, also support this interpretation. And finally, the purpose of the provision, which is to give breathing space to the practitioner to get the company’s financial affairs in order, also requires it to be construed widely because arbitrations, like court proceedings also involve diversion of resources – both time and money – that may hinder the effectiveness of business rescue proceedings. To construe it narrowly, as the court a quo did, and as the respondent contends we should, would be at odds with its language, defeat its purpose and lead to insensible and impractical consequences.”*

[31] The purpose of a moratorium is to protect the company (and its assets) and to give it breathing space.

¹⁹ Also see **Cloete Murray and Another NNO v Firststrand Bank Ltd t/a Wesbank** *supra* para 40 in respect of tribunal

²⁰ **Chetty t/a Nationwide Electrical v Hart NO and Another** *supra* para 35; **Panamo Properties (Pty) Ltd and Another v Nel NO and Others** (35/2014) [2015] ZASCA 76 (27 May 2015), para 14

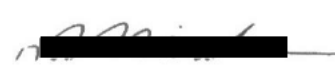
- [32] I therefore conclude that given the purpose of the moratorium designed at providing “*breathing space for the company in business rescue*” to restructure is subject to the moratorium as it significantly impacts the company’s financial position (or property). The moratorium aims to provide the company in business rescue with temporary protection from legal proceedings, allowing it to focus on restructuring and potentially avoiding liquidation.
- [33] I further conclude that Rule 47 proceedings are indeed legal proceedings. It requires service on the other party/party’s attorneys of record and this Court (the High Court) is asked to make a ruling. This in itself creates the incurrence of legal fees necessitated in the disposal of the matter, something which cannot but be construed as something which is undesirable in the context of section 133. It involves diversion of resources – both time and money – that may hinder the effectiveness of business rescue proceedings.
- [34] Accordingly, I find that the applicant should fail regarding the point *in limine*.

ORDER

- [35] Accordingly, I make the following order:

[35.1] The application is dismissed.

[35.2] The applicant is ordered to pay the costs of the application.



Van Nieuwenhuizen AJ
Acting Judge of the High Court
Johannesburg, Gauteng

Delivered: This judgment was prepared and authored by the Presiding Officer whose names are reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 12 August 2025.

HEARD ON:	14 May 2025
DATE OF JUDGMENT:	12 August 2025
FOR APPLICANT:	Advocate M Desai instructed by LnP Beyond Legal
FOR RESPONDENT:	Advocate R F De Villiers instructed by Deneys Zeederberg Attorneys Inc