IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 3085/2025

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA	**First Applicant**
SB GUARANTEE COMPANY (RF) (PTY) LTD	**Second Applicant**
(Registration number: 2006/021576/07)	
and	
SETSHABELO TRADING 647 (PTY) LTD	**First Respondent**
CHARLES PHIRI N.O.	
[In his capacity as appointed business rescue practitioner of Setshabelo Trading 647 (Pty) Ltd]	**Second Respondent**

Neutral citation: *Standard Bank of South Africa and Another v Setshabelo Trading 647 (Pty) Ltd and Another* (3085/2025) [2025] ZAFSHC 208 (7 July 2025)

Coram: Reinders J

Heard: 26 June 2025

Delivered: 7 July 2025

Summary: Company law – Section 129(2)*(a)* of the Companies Act 71 of 2008 – business rescue proceedings – resolution adopted to be declared void *ab initio*

ORDER

1 Leave is granted to the applicants to institute this application in terms of s 133 of the Companies Act 71 of 2008.

2 A rule *nisi* is issued, returnable 6 August 2025 at 09h30, calling upon all interested and affected parties or persons to furnish reasons, if any, why the following order should not be made final:

'2.1 That the resolution adopted, placing the first respondent under supervision by a business rescue practitioner, be declared void *ab initio*, invalid and in contravention of s 129(2)*(a)* of the Companies Act 71 of 2008 Act and be set aside.'

3 The costs of this application to be costs in the cause.

JUDGMENT

Reinders J

[1] The application came before me as an urgent matter and, having heard counsel for the applicants and first respondent, I directed it to be taken on the court roll.

[2] The relief sought is a declarator that the resolution adopted placing first respondent (Setshabelo Trading 647 (Pty) Ltd, hereafter 'Setshabelo') under supervision by a business rescue practitioner (the second respondent), be declared void ab initio and in contravention of s 129(2)*(a)* of the Companies Act 71 of 2008[1] (the 'Act'). The aforementioned order is to

[1] The relevant parts of Section 129 of the Companies Act read:
'(1) Subject to subsection (2) (a), the board of a company may resolve that the company voluntarily begin business rescue proceedings and place the company under supervision, if the board has reasonable grounds to believe that-
(a) the company is financially distressed; and
(b) there appears to be a reasonable prospect of rescuing the company.
(2) A resolution contemplated in subsection (1)–
(a) may not be adopted if liquidation proceedings have been initiated by or against the company; and
(b) has no force or effect until it has been filed.'

operate as an interim order pending a return date. The first respondent opposes the application.

[3] According to the applicants (hereafter, for ease of clarity, referred to as 'Standard Bank'), under case no 1151/2025, an entity known as Chando Civil Construction t/a Chando Civils CC ('Chando') launched an application wherein liquidation of the first respondent was sought. It came to the knowledge of applicants that Chando might not proceed with the liquidation application against Setshabelo, wherefore the applicants on an urgent basis approached court to intervene in the said liquidation proceedings. Leave to intervene was granted on 22 May 2025. According to Standard Bank, it came to its knowledge that Setshabelo thereafter, and contrary to the provisions of the mentioned s 129(2)*(a)* of the Act, commenced with business rescue proceedings on 30 May 2025. It is these proceedings that Standard Bank wishes to set aside.

[4] Setshabelo denies that, when the order to intervene was granted, there were pending liquidation proceedings. On the contrary, it avers that it had entered into a settlement agreement with Chando before 22 May 2025, and in terms thereof, all outstanding debt to Chando was paid a day prior on 21 May 2025. Chando's attorney withdrew the application against Setshabelo before the hearing of the urgent application for Standard Bank's intervention. Chando therefore withdrew the pending application before any orders were granted therein.

[5] From a reading of the record of the proceedings on 22 May 2025, it would appear that Mr Zietsman SC appeared on behalf of Chando. Counsel informed court at the commencement of the proceedings that they had been 'joined' by Standard Bank, whereafter counsel for Standard Bank, Mr Els, informed court that it was urgently seeking an order to intervene in the liquidation application. Counsel for Standard Bank addressed this Court on the application for intervention. Mr Zietsman SC informed the court that he had originally filed heads of argument to move for the liquidation of Setshabelo, however, his instructions changed that morning and that 'the original applicant wishes to withdraw his application'. He thereafter handed up a notice of withdrawal and informed court that Standard Bank ostensibly does not consent to the withdrawal as is required by Uniform Rule 41. Mr Blair (appearing for Setshabelo) then addressed the court and, amongst others, informed Deane AJ that the matter was moot as Setshabelo and Chando had settled the matter. The court then adjourned and later the same day, granted leave to Standard Bank

to intervene in the application and ordered the costs thereof to be in application no 1151/2025.

[6] No orders (apart from granting leave to the current applicants to intervene) were, however, made in case no 1151/2025. The notice of withdrawal that was handed to court was dated 22 May 2025 and was served upon Setshabelo at 09h30. It did not bear any stamp of the registrar and, as was stated, was handed up to court to deal therewith.

[7] Application no 1151/2025 constitutes an application for the liquidation of Setshabelo. I cannot assume that the learned judge erred in granting the order for intervention and I must, accordingly, give practical effect to the order. From a reading of the aforementioned record, and in particular bearing in mind that it is liquidation proceedings where the interests of the creditors are at stake, I am satisfied, at least prima facie, that the said application (even though Standard Bank is the applicant), is still pending. Having come to that conclusion, it bears no argument that the resolution to enter into business rescue proceedings thereafter, is in contravention of s 129(2)*(a)* of the Act and ought to be set aside for that reason.

[8] This is, however, not the end of the matter. From the papers it would appear that on 26 May 2025, Setshabelo filed an application for leave to appeal against the order granting Standard Bank leave to intervene. I do not express any final views thereon, but I doubt whether the order is appealable as it is not a final order. It may or may not have the effect of suspending the operation of the said order. I do not know whether the application for leave to appeal has been entertained or dealt with in the meantime. As such, these uncertainties convince me that it will be improper to order interim operation of the order I intend to make. As mentioned, the applicants moved for a provisional order with a return date.

[9] In respect of costs, I likewise intend to direct that costs be costs in the cause. An order in terms of rule 6(12) was already granted at the commencement of the application and is thus not repeated in the order to follow herein below.

[10] The following order will therefore issue:

1 Leave is granted to the applicants to institute this application in terms of s 133 of the Companies Act 71 of 2008.

2 A rule *nisi* is issued, returnable 6 August 2025 at 09h30, calling upon all interested and affected parties or persons to furnish reasons, if any, why the following order should not be made final:

2.1 'That the resolution adopted, placing the first respondent under supervision by a business rescue practitioner, be declared *void ab initio*, invalid and in contravention of s129(2)(a) of the Companies Act 71 of 2008 Act and be set aside.'

3 The costs of this application to be costs in the cause.

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C REINDERS, J

Appearances:

On behalf of the Applicants:	J Els
Instructed by:	Phatshoane Henney Attorneys
	Bloemfontein
On behalf of the First Respondent	CD Pienaar SC
Instructed by:	Blair Attorneys
	Bloemfontein