



**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE: 25 August 2025 ~

SIGNATURE:..

**Case No. 128616/2024**

In the matter between:

**SUMMERS, BYRON JOHN**

**APPLICANT**

And

**ADAS CALIBRATION (PTY) LTD**

**FIRST RESPONDENT**

**VAN RENSBURG, ARTHUR**

**SECOND RESPONDENT**

**VAN RENSBURG, INGRID**

**THIRD RESPONDENT**

**GOVENDER, NIVASHNI**

**FOURTH RESPONDENT**

*Coram:*

Millar J

**Heard on:** 20 August 2025

**Delivered:** 25 August 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12H00 on 25 August 2025.

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### ORDER

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**It is Ordered:**

- [1] The application is dismissed.
- [2] The applicant is ordered to pay the costs of the second and third respondents on the scale as between attorney and client.

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### JUDGMENT

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**MILLAR J**

- [1] This is an application brought in terms of section 81(1)(d) of the Companies Act<sup>1</sup> for the winding up of the first respondent (Adas). It is common cause that Adas is solvent. The application is opposed.

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<sup>1</sup> 71 of 2008.

- [2] The applicant, Mr. Summers, is a director of Adas. The second and third respondents, Mr. and Mrs Van Rensburg respectively, are a director and shareholder. They oppose the application. The fourth respondent, Ms Govender, is a shareholder who does not oppose the application. The status of each of the parties is reflected as such in the CIPC records for Adas. Despite this, Mr. Summers contends that *"The company is effectively run as a domestic company of which the second respondent and I are, in practical terms 'partners'"*.
- [3] Section 81(1)(d)(iii) provides that a solvent company may be wound up if *"it is otherwise just and equitable for the company to be wound up."*
- [4] The circumstances giving rise to the present application find their genesis in disciplinary proceedings brought against Mr. van Rensburg by Adas. Mr. Summers and Mr. van Rensburg are the two directors of Adas.
- [5] In his founding affidavit, Mr. Summers describes the way in which the business of Adas was conducted as follows:

*"[5.1] The company is a company in the business of calibration to the advanced safety system of a motor vehicle.*

*[5.2] The management of the company is conducted by the second respondent and me on the basis that decisions on important matters are taken by consensus between the second respondent and me.*

*[5.3] The day to day management of the company was conducted as follows:*

*[5.3.1] Both the second respondent and I agreed that the second respondent will act as the manager and he will manage the day-to-day operations and growth of the company.*

[5.3.2] *The second respondent will receive a monthly salary of R. . . to carry out all responsibilities and ensure that all requests are fulfilled.*

[5.3.3] *Both the second respondent and I agree to discussed (sic) the acquisition of two ADAS units essential for business operation, as well as two vehicles from Glass Group to facilitate the calibration process.*

[5.3.4] *Both the second respondent and I agreed on the pricing for calibration services to be charged to clients.*

[5.3.5] *Both the second respondent and I agreed to hire one individual to oversee all calibrations in Johannesburg, while the second vehicle and ADAS unit will be allocated to Cape Town to support the business expansion."*

[6] A dispute arose during June 2024 about the way in which the second respondent had been discharging his functions. He was called to a disciplinary hearing. It is not relevant for purposes of the present application to deal with what transpired during those proceedings save in respect of two elements.

[7] The first is that the Chair of the disciplinary enquiry in relying on *Whitcutt v Computer Diagnostics and Engineering (Pty) Ltd*,<sup>2</sup> found that Mr. van Rensburg's roles as director and as an employee could be separated. This reliance resulted in ultimately a finding that Mr. van Rensburg, only in his capacity as an employee and not as a director, should be summarily dismissed from his employment with Adas.

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<sup>2</sup> (1987) 8 ILJ 356 (IC).



- [8] The situation created an impasse. Mr. van Rensburg was not removed as a director and remains listed as an active director on the CIPC records of Adas. Mr. Summers has much to say regarding the breakdown in the relationship between himself and Mr. van Rensburg.
- [9] Throughout the founding papers Mr. Summers asserts on several occasions that he is unable to trust Mr. van Rensburg and that *"since the continued co-operation between the second respondent and I is vital to the proper function of the company and co-operation is not forthcoming from the second respondent, the only realistic course to be adopted is that the company should be wound up."* The assertions are all made in consequence of the findings made at the disciplinary hearing. There is no assertion made about any substantive incidence where Mr. van Rensburg failed or refused to co-operate in his capacity as a director.
- [10] What is clear is that the highwater mark of the case of Mr. Summers is that he no longer feels able to work with Mr. van Rensburg. Mr. van Rensburg is the husband of Mrs van Rensburg who owns 50% of the shares in Adas.
- [11] It is however not unreasonable to infer that Ms van Rensburg as a shareholder appointed Mr. van Rensburg as a director and that Ms Govender, appointed Mr. Summers. In this regard, Mr. van Rensburg specifically denies that there is any partnership or that it is a domestic company. In this regard he says of Adas that it *"is not a mere domestic partnership company and the applicant and I are not simply 'partners'". In fact, the first respondent is a limited liability company with two directors and two equal shareholders, being four different persons and no two persons share the same role/responsibilities within the first respondent."*
- [12] Mr. Summers' founding affidavit, excluding annexures, comprises ten pages of sparse allegations.

- [13] In answer, Mr. van Rensburg delivered a comprehensive response. He provided proof of the fact that Adas is in fact solvent and possessed of over R850 000.00 in cash in its bank account. Furthermore, Mr. van Rensburg asserted that the findings of the disciplinary enquiry have been referred to the Motor Industry Bargaining Council Ombudsman in view of what he contends was a procedurally and substantively unfair dismissal of himself as an employee of Adas.
- [14] Mr. van Rensburg asserts that this application followed hot on the heels of his referral to the Ombudsman and was brought for an ulterior purpose. He pertinently denies that there is *"no prospect of future co-operation"* and that *"I remain willing to engage in mediation or other dispute resolution mechanisms to attempt to resolve any dispute that there may be."*
- [15] The reply filed by Mr. Summers sought to make up for the shortcomings in his founding affidavit. It is almost double the length. In reply for the first time, Mr. Summers says that there is a deadlock between the shareholders. Attached was an email trail reflecting correspondence between Ms van Rensburg and Ms Govender over the period 6 September 2024 to 11 September 2024 – some five emails in total. From the contents of the emails, it cannot be inferred that there was any true deadlock reached between the shareholders.
- [16] Had there been such a deadlock, it would have no doubt been set out in the founding affidavit which was deposed to on 11 November 2024. Similarly, had there been a true deadlock, Ms Govender would have been a co-applicant and would have deposed to a confirmatory affidavit at that stage. Instead, she was cited as a respondent and only in reply furnished a confirmatory affidavit, belatedly confirming what Mr. Summers claimed was a deadlock.



- [17] In *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others*,<sup>3</sup> it was held:

*"It lies, of course, in the discretion of the Court in each particular case to decide whether the applicant's founding affidavit contains sufficient allegations for the establishment of his case. Courts do not normally countenance a mere skeleton of a case in the founding affidavit, which skeleton is then sought to be covered in flesh in the replying affidavit."*

- [18] Section 81(1)(d) of the Companies Act, requires that if directors of a company are deadlocked in the management of the company, and that the shareholders are unable to break the deadlock<sup>4</sup>, that there is or may be irreparable harm<sup>5</sup> to the company as a result of the deadlock and that its business cannot be conducted to the advantage of shareholders generally as a result.<sup>6</sup> Furthermore the shareholders are not deadlocked in their voting.<sup>7</sup> Only if these are established can the question of whether or not it is just and equitable to wind up the company be considered.

- [19] Mr. Summers has failed to make out a case of any deadlock between himself and Mr. van Rensburg as directors. He has also not made out a case of any deadlock between Ms van Rensburg and Ms Govender as shareholders. Simply put, this Court's jurisdiction is not engaged absent a proper case having been made out in terms of section 81(1)(d)(i)<sup>8</sup> and for that reason, the application must fail.

- [20] Regarding costs, it was argued for Mr. and Ms van Rensburg that the present application was brought frivolously. They have been put to unnecessary and

<sup>3</sup> 1974 (4) SA 362 (T) at 369A-C. See also *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A) at 635H-636B.

<sup>4</sup> Section 81(1)(d)(i).

<sup>5</sup> Section 81(1)(d)(i)(aa).

<sup>6</sup> Section 81(1)(d)(i)(bb).

<sup>7</sup> Section 81(1)(d)(ii).

<sup>8</sup> *Paarwater v South Sahara Investments (Pty) Ltd* 2005 JDR 0363 (SCA) at paras [14] and [15].

entirely avoidable legal costs and ought not to be mulcted with costs.<sup>9</sup> It was argued that an appropriate costs order would be one on the scale as attorney and client. I agree. I therefore make the order for costs that I do.

[21] For the assistance of the taxing master, it is recorded that although I have not made an order in respect of the application to strike out, the costs relating to that application are to be costs in the cause of this matter. Furthermore, had I decided against a punitive order for costs and made an order as between party and party, I would have ordered that the costs of counsel be awarded on scale B.

[22] In the circumstances, it is ordered-

[22.1] The application is dismissed.

[22.2] The applicant is ordered to pay the costs of the second and third respondents on the scale as between attorney and client.

  
A MILLAR

JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

HEARD ON: 20 AUGUST 2025  
JUDGMENT DELIVERED ON: 25 AUGUST 2025

COUNSEL FOR THE APPLICANT: ADV. WJ SAAIMAN  
INSTRUCTED BY: CAVR ATTORNEYS

<sup>9</sup> *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at paras [219] to [226].



REFERENCE:

MR. J DE BEER

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COUNSEL FOR THE SECOND AND

THIRD RESPONDENTS:

ADV. R SMITH

INSTRUCTED BY:

WRIGHT ATTORNEYS INC.

REFERENCE:

MR. D WRIGHT

NO APPEARANCE FOR THE FIRST AND FOURTH RESPONDENTS