



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

Case no: 2025-132324

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

Date: 21 August 2025

In the matter between:

IMBANI MINERALS PROPRIETARY LIMITED

Applicant

and

STANDARD BANK OF SOUTH AFRICA LIMITED

First Respondent

KILKEN PLATINUM PROPRIETARY LIMITED

Second Respondent

NEW SALT ROCK CITY PROPRIETARY LIMITED

Third Respondent

JOHANNES CHRISTIAN COETZEE

Fourth Respondent

DAVID GAVIN WILLOUGHBY

Fifth Respondent

NEWSHELF 1005 PROPRIETARY LIMITED

Sixth Respondent

FREDERICK WILHEM AUGUST LUTZKIE

Seventh Respondent

KILKEN-IMBANI JOINT VENTURE

Eighth Respondent

KILKEN HOLDINGS PROPRIETARY LIMITED

Ninth Respondent

KILKEN ENTERPRISES PROPRIETARY LIMITED

Tenth Respondent

KILKEN INVESTMENTS PROPRIETARY LIMITED

Eleventh Respondent

CSHELL 80 PROPRIETARY LIMITED

Twelfth Respondent

ZAMIEN INVESTMENTS 102 (PTY) LTD

Thirteenth Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an urgent application brought by the applicant, Imbani Minerals (Pty) Ltd ("Imbani"), principally against the first respondent, Standard Bank of South Africa Limited ("Standard Bank"), involving several associated parties cited as further respondents.

[2] The dispute arises from the operation of a joint venture bank account held with Standard Bank in the name of the eighth respondent, the Kilken-Imbani Joint Venture ("the JV"). Control over this account has become contested between rival shareholder groupings, namely Imbani on the one hand, and a consortium referred to in these proceedings as the NSRC Group (comprising the third, fourth, seventh, thirteenth and fourteenth respondents) on the other.

[3] Imbani contends that, pursuant to a resolution of the second respondent, Kilken Platinum (Pty) Ltd, adopted on 17 January 2022, the fifth respondent, Mr Willoughby, was duly appointed as Kilken Platinum's representative on the JV's management committee and authorised signatory to the JV's bank accounts, together with a representative of Imbani, Mr Sebastian Tshikare.

[4] Standard Bank accordingly placed restrictions on the JV's bank accounts, in consequence of the conflicting instructions and competing claims of authority advanced by the different shareholder factions.

[5] Imbani initially sought declaratory relief to secure recognition of Mr Willoughby's authority as signatory, and an order directing Standard Bank to lift the restrictions so that the JV's operations may proceed. After the urgent application was launched, Mr Graves SC was appointed as the seventh director of Kilken. This appointment may assist in resolving the deadlock and some of the difficulties experienced in the joint venture. This changed the relief that was sought.

[6] This changing of the scene also impacted the NSRC Group's counter application, based on the ongoing disputes among the shareholders, which they argued necessitated that an additional signatory, Mr Odendaal, should be appointed alongside Mr Willoughby and Mr Tshikare, pending the resolution of related litigation presently before the High Court in Pretoria.

[7] Other respondents, notably the Kilken and Newshelf respondents (2nd, 5th, 6th, 9th, 10th and 11th respondents), have adopted a neutral stance in the main application, abiding by the court's decision but opposing the counter-application.

Background

[8] Imbani (represented by Mr Tshikare) and the second respondent, Kilken Platinum Proprietary Limited ("Kilken"), are involved in an unincorporated joint venture ("JV", the eighth respondent) for the purchase and processing of mining tailings. In terms of the JV agreement, Kilken is a 70% partner, and Imbani is a 30% partner. It provides for a management committee to oversee its affairs. Mr Tshikare from Imbani and Mr Willoughby from Kilken comprise the management committee.

[9] The JV agreement regulates the relationship between Imbani and Kilken. It provides for a management committee and prescribes how the signatories to the JV bank accounts must be appointed.

[10] The third and sixth respondents are shareholders in Kilken. The fourth and fifth respondents (Mr Coetzee and Mr Willoughby) are directors of Kilken. Mr Willoughby, together with Mr Tshikare, was appointed by Kilken as the joint signatories on the JV bank accounts, a position they have held for the past 10 years.

[11] There are two opposing shareholder groups within Kilken: the NSRC group (third, fourth, seventh, thirteenth and fourteenth respondents) and the Kilken–Newshelf group (second, fifth, sixth, ninth, tenth, and eleventh respondents). Their disputes include allegations of fraud and have already led to s 162 and s 163 proceedings, which resulted in Bam J's first order in May 2024. That order restructured the board but entrenched the deadlock, leading ultimately to Bam J's second order in March 2025.

[12] A court order granted by Bam J on 13 March 2025 ordered the appointment of an independent director on the board of Kilken to resolve the deadlock in Kilken. The internal strife of Kilken, however, has a direct effect on the workings of the JV, which has left the JV unable to agree whether Mr Willoughby remains a signatory on the JV accounts.

[13] The clause of the JV agreement of importance is clause 5.6.5, which states:

"5.6.5 Joint Venture shall open and maintain two banking accounts, namely an Investec call account and a Standard Bank current account on the basis that:

5.6.5.1 two signatories (being the respective appointees of the parties) and/or authorisations will be required to operate these accounts;

5.6.5.2 all the revenue receipts of the joint venture and business are to be deposited into the Investec call account;

5.6.5.3 all amounts required to be paid by the Joint Venture to discharge day to day liabilities of the business are to be transferred from the Investec call account to the Standard Bank current account and paid out of the latter account."

[14] The JV operates two accounts on this basis at the first respondent, Standard Bank ("the bank"). The bank has restricted access to these accounts as it says there is non-compliance with its Know Your Client ("KYC") requirements. Imbani contends it complies with all the requirements because it signed all the necessary documents as required by the bank. The bank's failure to lift the restriction, they say, prejudices the business of the JV because the JV is unable to pay salaries and discharge its liability to third parties for operational expenses.

[15] The NSRC group seeks to have two joint signatories on behalf of Kilken to transact on the JV bank account, which is not in line with the JV agreement. Imbani states that if the NSRC group wants to replace Mr Willoughby, they must do so by way of resolution or special shareholders meeting, which, until the launching of this urgent application, was seemingly impossible because of the internal turmoil in Kilken. The appointment of Mr Graves SC as the seventh director has sparked hope that some of the deadlocked issues will be resolved soon. Still, there is the issue of the blocked account that needs to be determined.

[16] The bank had concerns regarding the validity of a 2022 resolution of Kilken, which authorises Mr Willoughby to act as a signatory to the bank account. Concerned about the resolution, Ms Smith, an employee of the bank, sent an email on 30 May 2025 to inquire whether all directors can sign a mandate indicating who will sign on the account. If so, the bank can remove the block on the account. Imbani states that this was all done and that the block must now be removed. They rely heavily on a digitally signed resolution dated 30 May 2025.

[17] It is evident that the third respondent, a shareholder of Kilken, is not comfortable with Mr Willoughby having signature rights, due to the disagreement among Kilken's shareholders over who should have the signature rights. This was communicated to the bank, along with the insistence that new resolutions need to be filed for the restrictions to be lifted. They rely on Bam J's order for that contention. Thereafter, a flurry of communications followed between the attorneys of Imbani and the Kilken-Newshelf group regarding whether the Bam J order includes the bank account of the JV.

[18] Bam J's order provided, amongst other things, for two directors of Kilken to be nominated by companies (1) and individuals (1) aligned with the NSRC group as a signatory to Kilken's accounts. The other signatories (i.e. Mr Willoughby), in terms of this order, are not signatories to Kilken. The JV was not cited in those proceedings, only Imbani and Kilken in their respective capacities.

[19] The NSRC Group states that, because the JV is not a legal entity, the second order also applies to the JV accounts. They fear that there is now an opportunity for the Moti group to divert millions of Kilken's money if Mr Willoughby is the only signatory.

[20] It is also necessary to comment on the "Application to open a Business Account" form signed on 30 May 2025. The form states that the business name is "Kilken Imbani Joint Venture". Section C of the form deals with "related parties", and sets out first who "natural persons" are, a section that states that these persons listed on the form under C consent to a credit and fraud check, and then lists the details of related natural persons, nine in total that include directors of the various companies that has an interest directly or indirectly in the JV. In the last column on the form, it states "signatory on account (Yes or No)". Next to Mr Willoughby and Mr Tshikane, it says "yes"; the other seven are "no". The page is signed by all nine individuals on the list.

[21] Section D deals with "Signing arrangements" and states "Please make sure that all authorised persons' details are included under Section C", followed by "[a]s shown in Section C of this document by means of Y or N under column 'signatory on account', we confirm that the instruction to sign ... is as follows:". Inserted there is the instruction "two to sign jointly" followed by (Dave and Sebastian) – to sign jointly. This then refers to Mr Willoughby and Mr Tshikane. Again, the page is signed by all nine people listed under section C.

[22] Section E – General deals with "Resolution". It states

"At a meeting of the directors/members/trustees/committee or partners of Kilken Imbani JV held at Johannesburg on date 2025-05-30 it was resolved that the Business [illegible, but presumably will open a] BCA/Money Market Call Account with The Standard Bank of South Africa Limited.

The authorised persons specified in Section C of this application form dated 2025-05-30 by means of Y or Yes noted under column "Signatory on account" are authorised in terms of this resolution to act [as] signatories on the Account in accordance with the instructions in Section D."

[23] The applicant states that by signing this form, the signatories agreed that Mr Willoughby and Mr Thsikare will have the right to sign, and that the bank has no other choice but to lift the restriction, as there is now a resolution.

[24] The NSRC Group disagrees. They narrowly interpret the section C list of names as people who consent to the credit and fraud check.

[25] The NSRC Group also launched a counter-application for the appointment of a co-signatory. They concede that the appointment of Mr Graves SC largely resolved that concern and the need for a co-signatory, but still disagree about the interim relief. They advocate for the counter-application relief as a safeguard until the board meeting of Kilken. This is opposed by Kilken-Newshelf respondents, mainly on the issue of urgency, but also because the appointment of Mr Graves SC is evidence of substantial relief in due course. They also submit that considering the counter application will lead to this court traversing issues that are properly before another court in pending litigation.

[26] Again, since the appointment of Mr Graves SC changed the landscape, including the relief sought in the counter-application, this also impacts the opposition to the counter-application.

Urgency

[27] The applicant demonstrates that the restrictions imposed by Standard Bank have paralysed the JV's banking facilities. The ongoing inability to operate the JV threatens commercial prejudice. Although disputes over control have existed for some time, the immediate impact of the bank freeze creates fresh urgency. The main application is accordingly urgent. There was not much disagreement about this amongst the parties.

[28] Mr Botha SC, who appeared for the NSRC group, stated in his heads of argument that there is now a remedy available to the parties, rendering the matter not urgent. Mr Botha SC submitted that the matter should stand down until a resolution

could be passed, but given the history of the deadlock, I am not persuaded that such agreement could reasonably be expected within days.

[29] I am satisfied that the applicant has made out a case of urgency in that the JV must pay its suppliers, and more importantly, its employees, and that it needs the restrictions to be lifted from the JV bank account to do so. I am satisfied that the requirements for urgency have been satisfied.

[30] The counter-application anticipates that if these restrictions are lifted, their urgency will arise in that the protections of the second order might not be adhered to. I accept that counter-applications are not automatically urgent because an application is urgent, but in this instance the two applications are intertwined, and the counter-application will become urgent if the main application is successful.

The nature of the joint venture and the second order

[31] A joint venture of the kind in issue here is an unincorporated contractual arrangement between its members. Unlike an incorporated entity, it does not have a separate legal personality. The consequence is that rights and obligations arising under the JV vest directly in its members, Kilken and Imbani. Because the JV lacks an independent personality, Kilken's internal disputes inevitably spill into its JV affairs, including the operation of its bank accounts, but only to the extent that it concerns Kilken.

[32] Although the JV was not itself cited as a party to the second order, Kilken and Imbani were cited and are the constituent members of the unincorporated joint venture and the holders of the joint bank account in question. The second order, which required that each faction within Kilken appoint a representative as co-signatory to all Kilken's bank accounts, applies equally to Kilken's signing rights to the JV's accounts. To hold otherwise would permit the circumvention of the safeguards deliberately built into the second order, allowing one faction to control Kilken's interest in the JV accounts unilaterally, thereby defeating the very purpose of the joint authorisation ordered.

[33] In terms of the second order, each faction within Kilken was required to appoint a representative as a co-signatory. Read with the JV agreement, and to safeguard against unilateral control, the practical effect is that the JV accounts require three signatories: one representing Imbani, and one each representing the two factions within Kilken. This ensures parity until a duly authorised board resolution of Kilken is adopted, to ensure compliance with the JV agreement.

[34] The next question is whether the purported resolution on the KYC form is such a resolution.

The Standard Bank Know Your Client (KYC) form

[35] The Standard Bank form, which was the basis for the applicant's reliance on the relief it seeks, was completed to comply with the bank's KYC compliance purposes. I agree with Kilken's interpretation of the form. Section C indicates the parties, and in conjunction with section D, the signatories intended that Mr Willoughby and Mr Tshikare would be co-signatories. Section E indeed is some form of resolution. This resolution, however, did not comply with the second order, which requires a signatory form from each camp for Kilken's bank account. Because the JV is unincorporated and not a separate entity, the JV account is also a Kilken company account that falls within the parameters of the order.

[36] Thus, in a sense, but for the second order, the applicant would have been entitled to the relief it seeks. However, the KYC bank form cannot override the stipulations of the second order, unless a resolution was taken in compliance with the second order. This did not happen.

[37] The KYC form that suggests that Mr Willoughby may act alone as a signatory for Kilken, being inconsistent with the second order, cannot prevail. What is needed is a duly authorised board resolution of Kilken, which can hopefully take place now that Mr Graves SC has been appointed. Until such a resolution resolves matters, the JV accounts are subject to the same dual-signatory regime as Kilken's other accounts.

[38] Accordingly, the bank may only uplift the restrictions once a nominee elected by the Kilken-Newshelf (Moti) group and one by the NSRC group are appointed, in addition to Mr Tshikare for Imbani.

The appointment of Mr Graves SC

[39] The appointment of Mr Graves SC as an independent director is intended to resolve most of the disputes affecting Kilken, and by extension, the JV. His appointment means that the court is also just required to provide for a "holding position" until Mr Graves SC has obtained enough knowledge of the company to call a meeting of the board of directors to deal with the various issues. This was already provided for in the second order, and the parties, as well as this court, are bound by that order. Mr Graves SC can also break any deadlock between the co-signatories of Kilken in the interim, should the need arise.

[40] The new resolution to appoint a signatory for Kilken in line with the JV agreement can be made at any time. The court does not want to be prescriptive with a timeline. Still, to avoid a proliferation of applications, the proposed date of 3 October 2025 is a sensible beacon as the latest date to provide an updated resolution.

Conclusion

[41] The amended relief now sought by the applicant cannot be granted in light of Bam J's second order, which already regulates the signatory regime, and the subsequent appointment of Mr Graves SC to assist in resolving the Kilken deadlock. The main application is thus dismissed, and costs should follow the result.

[42] The appointment of Mr Graves SC also means that the relief sought in the counter-application should also be dismissed. The suggestion made in the heads of argument, after the appointment of Mr Graves SC, namely that the mechanisms provided for in the second order should be followed, until such time as a board meeting is called for Kilken to appoint a single signatory, is sensible. In that sense, the counter-application is partially successful, and I make an order as to costs.

[43] Considering the complexity of the matter and the amounts involved, taxation on scale B is warranted.

Order

[44] The following order is made:

1. The applicants' non-compliance with the Uniform Rules of Court relating to forms, service and time periods is condoned, and the applicants are permitted to bring the application and counter-application as one of urgency in terms of Rule 6(12)(a).
2. The application is dismissed, with costs, to be taxed on scale B.
3. The order made by Bam J on 13 March 2025 in case number 2025/023988 remains in force, pending an updated resolution of the second respondent appointing a signatory who is a director of the second respondent to all bank accounts of the eighth respondent.
4. The resolution referred to in (3) must be made no later than 3 October 2025.
5. The counter-application is dismissed, with no order as to costs.


WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	19 August 2025
Date of judgment:	22 August 2025
For the applicant:	I Miltz SC and S Mahlangu, instructed by Fluxmans Inc.
For the 3 rd , 4 th , 7 th , 13 th respondents:	A Botha SC instructed by Schickerling Incorporated
For the 2 nd , 5 th , 6 th , 9 th , 10 th and 11 th respondents:	K Prehmid instructed by Knowles Husain Lindsay Inc