

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2025/113264

DELETE WHICHEVER IS NOT APPLICABLE

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

SIGNATURE

DATE 28 August 2025

In the matter between:

TOP VENDING (PTY) LIMITED
DIRK KENNETH TUCKER
STEWART BERIC BROWN

First Applicant
Second Applicant
Third Applicant

and

PHEZULU ILANGA VENDING (PTY) LIMITED
ROYAL TRADING ENTERPRISE (PTY)
LIMITED
RICHARD ZAMILE MAXEGWANA
XOLANE MAXIM MAXEGWANA

First Respondent
Second Respondent

Third Respondent
Fourth Respondent

JUDGMENT

THERON AJ:

- [1] The First Applicant in this application is Top Vending (Pty) Limited (“Top Vending”), which is a 49% shareholder in the First Respondent, Phezulu Ilanga Vending (Pty) Limited (“PIV”).
- [2] The Second Applicant is Dirk Kenneth Tucker (“Tucker”), a director of both Top Vending and PIV. The Third Applicant is Stewart Beric Brown (“Brown”), who is also a director of both Top Vending and PIV.
- [3] The Second Respondent is Royal Trading Enterprise (Pty) Limited (“Royal Trading”), a 51% shareholder of PIV.
- [4] The Third Respondent is Richard Zamile Maxegwana (“Richard”), whose current directorship of PIV is in dispute, and who is also the director of Royal Trading.
- [5] The Fourth Respondent is Xolane Maxim Maxegwana (“Xolane”). My use of the first names of the Third and Fourth Respondent means no disrespect but follows the convention of the affidavits filed and the

correspondence between the parties.

- [6] Xolane is Richard's son.
- [7] The Applicants seek the winding-up of PIV on the basis that it would be just and equitable to do so.
- [8] The application is explicitly brought in terms of the provisions of Section 81(1)(d)(iii) of the Companies Act 71 of 2008 ("the Act").
- [9] The application is brought by Top Vending, qua shareholder of PIV, and by Tucker and Brown in their capacity as directors of PIV.
- [10] The application is also brought in the alternative based on Section 344(h) of the Companies Act 61 of 1973 ("the old Companies Act") as read with the provisions of Section 346(1)(c) of the old Companies Act, which provisions remain applicable in terms of item 9(1) of Schedule 5 of the Act.
- [11] Top Vending, as a 49% shareholder of PIV, has the necessary *locus standi* to seek the winding-up of PIV in terms of Section 344(h) of the old Companies Act.
- [12] The Applicants contend that PIV is solvent, a contention that the

Respondents do not gainsay.

[13] I therefore decided this application on the basis that PIV is a solvent company and considered the matter in terms of Section 81(1)(d)(iii) of the Act.

[14] PIV operates in the vending machine industry and provides turnkey vending machine services, including, without limitation, the provision and maintenance of hot beverage machines (coffee, tea, hot chocolate, etc.), convenience item vending machines, snack machines, cold-drink machines, and water coolers.

[15] PIV holds (or has in the past held) contracts with large South African corporate and governmental entities, including Discovery Health, FNB, MTN, Tsogo Sun, the South African Reserve Bank and others.

[16] Xolane deposed to the answering affidavit on behalf of all the Respondents. He also appeared on behalf of the Respondents to argue the application, including PIV and Royal Trading, both of whom are corporate entities.

[17] Xolane clearly had the right to represent himself as a Respondent. In the circumstances of the case and purely as an occasional expedient, I

allowed him to represent all the Respondents during the hearing of the application.¹

[18] I did so after enquiring from the Applicants' counsel whether there was any objection to me following this course. Mr Hollander indicated that there was no objection.

[19] It was expedient to do so in this matter, where Richard clearly controls Royal Trading and Xolane, his son, was at all times mandated to act on his behalf during the run-up to this application being launched.

[20] The internecine conflict between Tucker, Richard, and Xolane, as the nominated directors of PIV's two shareholders, Top Vending and Royal Trading, is documented in annexures to the founding affidavit, which exceeds a thousand pages.

[21] Richard and Xolane (collectively referred to as the "Respondent directors") primarily, through Xolane, attempted to convene several shareholder and/or board meetings for PIV.

[22] The attempts, it seems to me, did not comply with the PIV memorandum of understanding ("MOU"). These meetings were

¹ *Manong & Associates (Pty) Limited v Minister of Public Works and Another* 2010 (2) SA 167 (SCA)

primarily aimed at removing Tucker as a director of PIV.

[23] These attempts were eventually met with an urgent application to interdict the Respondent directors from convening any meeting to remove Tucker as a director.

[24] Raubenheimer AJ granted an interdict on 20 June 2024 interdicting the Respondent directors from convening or holding a meeting of the board of PIV on 24 June 2024 and pending the outcome of Part B of the same application, an interdict restraining the Respondent directors from convening a meeting of the board of PIV without Tucker's written consent and further interdicting and restraining them from attempting to remove Tucker as a director of PIV.

[25] This interdict is still extant.

[26] Undeterred by the order of Raubenheimer AJ, the Respondent directors purported to convene a meeting of the PIV board for 6 August 2024.

[27] An urgent contempt application by Tucker and Top Vending led to an order by Noko J interdicting the meeting.

- [28] During February 2024, Richard lodged an application with the Companies Tribunal to have Tucker removed as a director.
- [29] Most of the central allegations contained in the criminal complaint, which I will address later, were also included in the complaint to the commission.
- [30] On 29 April 2024, the Companies Tribunal dismissed the complaint in a reasoned judgment by Judge Davis.
- [31] The Respondent directors laid criminal charges against Tucker, Brown and two others, Messrs Marais and Swart. They were arrested on 24 June 2025, despite giving extensive warning statements explaining their position and co-operating with the investigating officer. They only appeared on 25 June 2025 and were granted bail.
- [32] The Respondent directors attended the offices of PIV unannounced and occupied Tucker's office in his absence, while he was making his first appearance in the criminal court.
- [33] An application for a protection order in terms of Section 2(1) of the Protection from Harassment Act 17 of 2011 ("the Harassment Act") brought against the Respondent directors was successful despite their

opposition.

- [34] The Respondent directors make various and serious allegations against Top Vending and its nominated directors. These charges include fraud and theft.
- [35] The foundation of these charges and complaints is an allegation that Top Vending, through Tucker and others, has been padding expenses in PIV in favour of Top Vending to the detriment of Royal Trading.
- [36] The “*padding expenses*” are alleged to be hidden in management fees charged by Top Vending for services to PIV. I do not deem it necessary to make factual findings on the relative merits and demerits of the allegations made by the Applicants and the Respondents in this regard.
- [37] The only comment I would make at this stage, in order not to prejudice possible future proceedings, is that the management fees are clearly disclosed in the annual financial statements and management accounts. Additionally, the annual financial statements annexed to the founding affidavit were audited and signed by both Tucker and Richard.

[38] The answering affidavit does not deal specifically with any of the paragraphs in the founding affidavit, making it very difficult to discern what is genuinely in dispute.

[39] In a letter dated 12 December 2024, Richard comments on a WhatsApp message or messages received from Tucker², the following portion of which bears repeating:

“3. ADD WhatsApp text: ***‘There will never be an RTE-TV working relationship again, that ended the day when Xolane laid charges against me without bothering to get any accounting records independently audited.’***

I accept that RTE and TV will not work together again. How does Kenneth propose this separation?”

[40] There can be no more explicit statement by one shareholder to another that continued co-operation is impossible.

[41] A winding-up on the basis that it is just and equitable to do so postulates not facts but only a broad conclusion of law, justice and

² 004-741 to 004-744

equity.³

- [42] A complaint by the Respondent directors led to PIV's bankers freezing its accounts pending resolution of the disputes between the directors and/or shareholders.

- [43] On 1 July 2025, Top Vending terminated the lease agreements between it and PIV in relation to the Johannesburg and Durban offices of PIV, as well as the rental agreement regarding the equipment that Top Vending claimed to own and lease to PIV, and the management agreement under which Top Vending provided services to PIV.

- [44] There are further disputes regarding the ownership of the equipment and the validity of the management agreement.

- [45] The cancellation, however, evidences a further breakdown in the relationship between shareholders.

- [46] PIV was formed for a specific purpose. The internal disputes, mutual disillusionment, and distrust, along with the consequent breakdown of the relationship between the shareholders and directors of the

³ *Moosa NO v Mavjee Bhawan (Pty) Limited and Another* 1967 (3) SA 131 (T) at 136 H-I and *Thunder Cats Investments 92 (Pty) Limited and Another v Nkonjane Economic Prospecting & Investment (Pty) Limited and Others* 2014 (5) SA 1 (SCA) at paragraph [5]

company, have paralysed it.⁴

[47] The business atmosphere between the parties was replaced by one of litigation and confrontation.⁵

[48] The Respondents allege that the current situation is solely attributable to the actions of the Applicants and that they were legally obligated to report criminal wrongdoing, which they did.

[49] The papers, however, disclose that Richard was prepared to have the charges withdrawn in exchange for certain financial information.

[50] This may amount to compounding, but even if it isn't, it evidences an ulterior motive in laying the charges.

[51] I am unable to determine all the factual disputes that ascribe blame to one faction or the other. I am of the view that the complete paralysis of PIV requires that it be wound-up and that the relative fault of either of the factions does not outweigh this consideration.⁶

⁴ *Apco Africa (Pty) Limited v Apco Worldwide Inc* 2008 (5) SA 615 (SCA) at paragraph [20]

⁵ *Thunder Cats Investments 92 (Pty) Limited and Another v Nkonjane Economic Prospecting & Investment (Pty) Limited and Others* 2014 (5) SA 1 (SCA) at paragraph [26]

⁶ *Thunder Cats Investments 92 (Pty) Limited and Another v Nkonjane Economic Prospecting & Investment (Pty) Limited and Others* 2014 (5) SA 1 (SCA) at paragraph [28]

- [52] There is a counter-application to place PIV under supervision, and that business rescue commences.
- [53] The Applicants contend that the Respondents do not have the necessary *locus standi* to bring a business rescue application.
- [54] There is much to be said for this contention, but I need not make a finding.
- [55] The application has not been “made” as there are no allegations regarding the identity of the affected persons or any proof of service on them as required.⁷

In the premises, I make the following order:

1. The First Respondent is placed under final winding-up in the hands of the Master of the Court.
2. The Applicants’ costs of the application are costs in the winding-up of the First Respondent.
3. The costs of the opposition to the application are excluded from the

⁷ *Lutchman NO and Others v African Global Holdings and Others* 2022 (4) SA 529 (SCA)

winding-up costs and the Second, Third and Fourth Respondents are to pay the Applicants' costs incurred in respect of the opposition to the application and the counter-application on Scale C.



THERON AJ
Acting Judge of the High Court

Date of hearing: 19 August 2025

Date of judgment: 28 August 2025

Appearances:

Counsel for Applicants : Advocate L Hollander
Advocate L Makhoba
Attorneys for Applicants : Swartz Weil van der Merwe Greenberg Inc
Counsel for Respondents : Xolane Maxim Maxegwana (on behalf of all the Respondents with leave of the court)