



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

CASE NO: 148479/2024

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 08 August 2025

Signature: [REDACTED]

In the matter between:

MAHLOPI METALS GROUP (PTY) LTD

Applicant

(Registration No. 2019/443992/02)

And

STANDARD BANK OF SOUTH AFRICA LIMITED

First Respondent

FIRST NATIONAL BANK LTD

Second Respondent

INDALO BUSINESS RESCUE & INSOLVENCY

Third Respondent

PRACTITIONERS (PTY) LTD

ICON INSOLVENCY PRACTITIONERS (PTY) LTD

Fourth Respondent

XIRIMELE TRUSTEES

Fifth Respondent

THE MASTER OF THE HIGH COURT IN PRETORIA

Sixth Respondent

GRADCO SOUTH AFRICA (PTY) LTD

Seventh Respondent

(Registration No. 1999/026872/07)

THE SHERIFF OF THE HIGH COURT

Eighth Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This matter came before me as an urgent application to interdict the first and second respondents from continuing the restrictions they had placed on the bank accounts of the applicant. The two respondents had placed the restrictions pursuant to a provisional winding up order of this Court dated 18 June 2025 and returnable on 2 September 2025.

[2] The applicant further seeks an order interdicting all the respondents from interfering with the applicant's bank accounts aforementioned. The specifics of the bank accounts are stated in the papers and are not necessary for current purposes.

[3] The first and seventh respondents opposed the application.

B. BACKGROUND

- [4] The applicant grounds its contentions on the fact that on the 18 June 2025, the date of the order, it filed an application for leave to appeal the provisional winding-up order. According to submissions made on its behalf, the order became suspended pending the appeal.
- [5] It is worth noting that the applicant had filed two rule 30 applications which had not been opposed by the seventh respondent at the time the order was made. The applicant therefore contended that the provisional winding-up order ought not to have been granted in light of the rule 30 applications.
- [6] The initial area of contention is the matter of urgency. Whilst the applicant contends that the application was urgent, the respondents submitted that the urgency was self-created on the applicant's part.
- [7] With the order being made on 18 June 2025, the applicant took 20 days to bring these proceedings to court. The applicant contends that it was triggered by the events of 9 July 2025 when the banks refused applicant access to its accounts.
- [8] Being aware of the consequences of a provisional winding-up order, the applicant's explanation and reasoning is devoid of any sense. The application is liable for dismissal on this basis alone.
- [9] Regarding the merits, the applicant insisted that absent any application by the respondents to enforce the provisional winding-up order of Nobanda AJ in terms of section 18(3) of the Superior Courts Act 10 of 2013, it is legally impermissible for the respondents to implement the impugned provisional winding-up order concerned.

Effect of the Insolvency Act

- [10] A consequence of the granting of the provisional winding-up order is that the powers of the applicant's board of directors cease to exist, save for special residual powers.¹ The residual powers are limited and include (a) the right to anticipate a provisional order in terms of Section 11(3) of the Insolvency Act, 24 of 1936, (b) the right to appeal and the right to launch a rescission application.
- [11] Regard being had to the applicant's founding affidavit, it is indubitable that the applicant is a company ostensibly represented by its Chief Executive Officer, a director.
- [12] The board no longer has the requisite authority to initiate these proceedings or to bring an application for leave to appeal the provisional winding-up.
- [13] A further problem for the applicant is Section 150(5) of the Insolvency Act, 24 of 1936. It provides that there shall be no appeal against any order made by the Court in terms of the Insolvency Act except as provided for in said section. The Insolvency Act does not provide for the appeal of a provisional order of winding-up. It contemplates an appeal against the final winding-up order.
- [14] Section 339 of the Companies Act, 61 of 1973 made applicable by the transitional arrangements of the Companies Act 71 of 2008 provides that the law of insolvency is to apply *mutatis mutandis* in respect of any matter not specifically provided for by the 1973 Companies Act. The latter Act does not provide for the appeal of a provisional order of winding-up.
- [15] It was submitted on behalf of seventh respondent that to the extent relevant, section 18 of the Superior Courts Act, 10 of 2013, in particular section 18(2) provides that unless a court under exceptional circumstances orders otherwise

¹ ABSA Bank Limited v Rhebokskloof (Pty) Ltd and Others 1993 (4) SA 436 (C) at 439A-440E.

the operation and execution of a decision which is an interlocutory order not having the effect of a final judgment which is the subject of an application for leave to appeal is not suspended pending the decision of the appeal. It is a requisite that the Court would have to so order on proof on a balance of probabilities or irreparable harm on the part of the applicant and that the other party will not suffer irreparable harm if not so ordered.

C. DISCUSSION

[16] It is trite that on the granting of the provisional winding-up order, a *concurso creditorum* comes into existence. The order sought by the applicant to “unfreeze” its bank accounts would result in the joint provisional liquidators being unable to fulfil their obligations by giving the applicant free rein of its bank accounts to the direct prejudice of the *concurso*. This position could never have been contemplated by the legislature in the various statutory provisions traversed so far.

[17] The provisional winding-up order has a return date of 2 September 2025. This provision covers either party to assert its interests whether the order should be discharged or confirmed. This also underlines the fact that the order is interlocutory in nature, and not finally disposes the issues as contemplated in *Zweni v Minister of Law and Order*.²

[18] This matter is at this stage not ripe for an appeal having regard to the provisions of section 150 of the Insolvency Act. Talk of the order being suspended by virtue of the filing of an application for leave to appeal is thus premature. Under different circumstances, even if an order does not meet the *Zweni* test, a matter may be appealable if it is in the interests of justice that it should be regarded as such.

² 1993 (1) SA 523 (A).

In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*,³ the Constitutional Court made it clear that the ‘interests of justice approach’ is not limited to the Constitutional Court but applies equally to this Court.⁴

D. CONCLUSION

[19] In view of the above considerations, the application stands to fail.

[20] It was submitted on behalf of the respondents that a punitive order *de bonis propriis* was justified. I am of the considered view in the exercise of my discretion, that such a drastic decision would be unwarranted at this stage.

[21] The following order is made:

(a) The application is dismissed.

(b) The applicant is ordered to pay the opposing respondents’ costs on a scale as between attorney and client.



J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

³ [2022] ZACC 34; 2023 (1) SA 353 (CC); 2022 (12) BCLR 1521 (CC) para 45.

⁴ Smith J in *MEC for Economic Development, Gauteng and Another v Sibongile Vilakazi and Others* (783/2023) [\[2024\] ZASCA 126](#) (17 September 2024) at para [22].

Date of hearing: 22/07/2025

Date of Judgment: 08 August 2025

On behalf of the Applicant: Mr. E Mokutu SC with Mr. Ndamase and Ms. Ledwaba
Instructed by: Vezi & De Beer Inc, Pretoria

On behalf of the First Respondent: Mr. C.G.V.O. Sevenster
Seventh Respondent: Mr. Jan G. Smit
Instructed by: Gothe Attorneys

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 08 August 2025.