



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: 2 September 2025

SIGNATURE: [REDACTED]

Case No. 130746/2025

In the matter between:

TAYOB, MOHAMED MAHIER N.O

1ST APPLICANT

**NORTHWEST TRANSPORT INVESTMENTS
(SOC) LTD (IN BUSINESS RESCUE)**

2ND APPLICANT

**NORTHWEST STAR (SOC) LTD
(IN BUSINESS RESCUE)**

3RD APPLICANT

**ATTERIDGEVILLE BUS SERVICES (SOC) LTD
(IN BUSINESS RESCUE)**

4TH APPLICANT

And

SAMONS, THOMAS HENDRICK N.O

1ST RESPONDENT

MEC FOR THE DEPARTMENT OF COMMUNITY
SAFETY & TRANSPORT MANAGEMENT,
NORTH WEST PROVINCIAL GOVERNMENT

2ND RESPONDENT

MEC FOR THE DEPARTMENT OF PROVINCIAL
TREASURY OF THE NORTH WEST
PROVINCIAL GOVERNMENT

3RD RESPONDENT

MEC FOR THE DEPARTMENT OF ROADS &
TRANSPORT GAUTENG PROVINCE

4TH RESPONDENT

ABSA BANK LTD

5TH RESPONDENT

TANSNAT COACHLINES (PTY) LTD

6TH RESPONDENT

TRIPONZA TRADING 548 CC

7TH RESPONDENT

ALL AFFECTED PERSONS LISTED IN
ANNEXURE X

8TH RESPONDENT

Coram: Millar J

Heard on: 27 August 2025

Delivered: 2 September 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 13H00 on 2 September 2025.

JUDGMENT

MILLAR J

- [1] The main protagonists in this urgent application, Mr. Tayob (the first applicant) and Mr. Samons (the first respondent) are both highly experienced business rescue practitioners. At stake in this case, is the privilege to act as the business rescue practitioner for the NTI companies (second respondent), NWS (third respondent) and ABS (fourth respondent). None of these entities are insignificant in terms of their business.
- [2] This application was brought by Mr. Tayob to resolve two urgent issues. The first, was what was described as a *“severe and immediate humanitarian crisis arising from the non-payment of salaries to hundreds of employees of the state-owned NTI companies”*. The second, was a *“crisis of legality precipitated by the first respondent (Mr. Samons) unilateral establishment and continued operation of an unlawful escrow bank account.”*
- [3] The application was brought in two parts and predicated upon Mr. Tayob having *locus standi* to bring it. Part A was for interim orders and part B for final orders. The orders sought in both parts, besides regarding the payment of salaries, in their essence boil down to whether Mr. Tayob is a joint business rescue practitioner with Mr. Samons in the NTI, NWS or ABS companies or not.
- [4] When the matter was called, the parties indicated that there was an agreement in principle with regards to the payment of the salaries and other expenses pending the outcome of these proceedings. On this aspect, there is no dispute that the application is urgent and hence it was heard. This agreement was

subsequently reduced to writing in the form of an order of court and was made an order before I reserved judgment.

[5] The humanitarian crisis averted, it was agreed that the court should decide whether Mr. Tayob is in fact a joint rescue practitioner with Mr. Samons or not. In other words, does Mr. Tayob have *locus standi*? The answer to this question in the positive will mean that the further relief sought in both parts A and B of the notice of motion may require further consideration. If, however, the answer is in the negative, then that is the end of the matter.

[6] It is not in dispute that Mr. Samons is a duly appointed business rescue practitioner of the NTI companies, NWS or ABS. In this regard:

[6.1] For the NTI companies, on 20 July 2022, the board of directors resolved to commence voluntary business rescue proceedings as provided for in section 129 of the Companies Act¹ (the Act). The next day the resolution was filed with the Companies and Intellectual Properties Commission Office (CIPC) and on the same day, Mr. Samons was appointed.

[6.2] For ABS, on 1 August 2022, the board of directors resolved to commence voluntary business rescue proceedings in terms of section 129 of the Act. On 3 August 2022, the resolution was filed with CIPC and the next day, 4 August 2022, Mr. Samons was appointed.

[6.3] For NWS, on 13 September 2022, the board of directors resolved to commence voluntary business rescue proceedings in terms of section

¹ 71 of 2008.

129 of the Act. On 16 September 2022, the resolution was filed with CIPC and on the same day, Mr. Samons was appointed.

- [7] After a meeting of creditors and with 96% of the independent voting creditors voting in favour of the proposed business rescue plan in respect of all the entities, it was adopted. The business rescue proceeded. On 10 April 2024, an application was launched to remove Mr. Samons as the business rescue practitioner of NTI companies, NWS and ABS.
- [8] The application was opposed, and the litigation followed its course and the case was heard. On 21 November 2024, judgment was delivered ordering the removal of Mr. Samons as the business rescue practitioner. On 6 December 2024, an application for leave to appeal was delivered by him and on 20 December 2024, the applicant in that matter delivered an application in terms of section 18(3) of the Superior Courts Act.²
- [9] The application for leave to appeal and the application in terms of section 18(3) were heard on 12 February 2025 and on 27 March 2025, judgment was delivered. The application for leave to appeal by Mr. Samons was dismissed and the application in terms of section 18(3) ordering the immediate implementation of the order granted on 21 November 2024 ie the removal of Mr. Samons was granted.
- [10] On 7 April 2025, Mr. Samons lodged an application for leave to appeal with the Supreme Court of Appeal as well as a notice of appeal in terms of section 18(4) of the Superior Courts Act. The effect of the delivery of these is that the order of 21 November 2024 removing Mr. Samons, as well as the Section 18(3) order for

² 10 of 2013.

its immediate implementation, were both suspended.³ Subsequently, the Supreme Court of Appeal on 2 July 2025, granted Mr. Samons leave to appeal to the full court of this division. Both the appeal in respect of the main application as well as the section 18(4) appeal are thus extant and yet to be heard.

- [11] Meanwhile, on 10 April 2025, the boards of the NTI companies, NWS and ABS, met and resolved to appoint Mr. Tayob as the business rescue practitioner for each of the companies. Each of the resolutions is titled "Resolution of the Directors" and contains the following clauses:

"A. Mr. Mohamed Mahier Tayob is hereby appointed as the Business Rescue Practitioner of the company; and

B. The appointment is effected from 10 April 2025."

- [12] The day after this resolution was passed, Mr. Tayob wrote to Mr. Samons. Mr. Samons described the letter that he received in the following terms:

"On Friday, 11 April 2025 at 17h34, I received a letter from Tayob's offices, informing me that he has been appointed as the BRP of the Companies. In this letter, . . . , Tayob made various demands of, and concerning, the affairs of the Companies. This amounted to some 54 items and required that I collate and/or make available such documents by 13h00 on Monday, 14 April 2025."

- [13] The enthusiasm of Mr. Tayob is readily apparent. It explains, without going into any detail, how subsequently because of the conflict between Mr. Tayob and Mr. Samons that arose, that the business rescue process was subverted and those most vulnerable and dependent upon the process, were unnecessarily placed in

³ *Knoop NO and Another v Gupta (Execution)* 2021 (3) SA 135 (SCA) at para [22] in dealing with both the suspension of the main order as well as the section 18(3) order.

harm's way. It does not reflect well upon either Mr. Tayob or Mr. Samons that this occurred.

- [14] Was Mr. Tayob in fact appointed as a business rescue practitioner for the entities concerned by virtue of the resolutions passed on 10 April 2025?
- [15] Mr. Tayob asserts that he is a joint business rescue practitioner. Two different arguments were advanced in this regard.
- [16] Firstly, in terms of section 128(1)(d) of the Act, more than one person may be appointed as a business rescue practitioner. However, for this to occur in the case of voluntary business rescue, this must take place in terms of section 129(3). The appointment must be made within 5 business days after the adoption and filing of the resolution putting the company into voluntary business rescue.
- [17] In the present case, since the resolutions putting the companies into voluntary business rescue were passed in July, August and September 2022, Mr. Tayob's appointment in April 2025 does not pass muster.
- [18] Secondly, it was argued that the board retained a residual right upon either the death, resignation or removal of a business rescue practitioner to appoint a new practitioner. For this argument, I was referred to section 139(3)⁴ of the Act.
- [19] This argument is predicated on the fact that Mr. Samons was actually "removed" as the business rescue practitioner. It was argued for Mr. Tayob that since the Supreme Court of Appeal in its court order of 2 July 2025 had referred to the application for leave to appeal only having been lodged with it on 14 April 2025,

⁴ *"The company, or the creditor who nominated the practitioner, as the case may be, must appoint a new practitioner if a practitioner dies, resigns or is removed from office, subject to the right of an affected person to bring a fresh application in terms of section 130(1)(b) to set aside that new appointment."* [My underlining].

there was an interregnum being the period between 27 March 2025 and 14 April 2025. It was in this interregnum of just over two weeks that the board, on the assumption that Mr. Samons was removed, was permitted in terms of section 139(3) of the Act to meet and to resolve to appoint Mr. Tayob.

- [20] Besides the fact that this does not accord with what actually occurred, I am not persuaded that there is any merit to this argument. There are two reasons for this. The first is that as a matter of fact, the applications for leave to appeal and hence the suspension of both orders, were delivered on 7 April 2025. The legal effect of this, is that Mr. Samons remained as the business rescue practitioner.
- [21] None of the resolutions passed on 10 April 2025 foreshadow the reason for the meeting of the board or the passing of those resolutions. Section 137(2)(a) provides that during business rescue proceedings, each director of the company must "*continue to exercise the functions of director, subject to the authority of the practitioner.*" The directors were all subject to the authority⁵ of Mr. Samons from the time of his appointment in 2022.
- [22] It is inexplicable how, without informing him or ascertaining from him whether he intended to appeal the judgments, that they nonetheless proceeded to call a board meeting and vote on the appointment of a new business rescue practitioner.⁶ It is not in issue that Mr. Samons neither knew of nor authorised any meeting of the directors and for that reason, the meeting and the decisions taken at it are void.⁷
- [23] Since Mr. Tayob was neither appointed in terms of section 129(3) nor appointed by any valid resolution of the board of directors, it follows that he does not hold

⁵ *Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others* 2025 JDR 2927 (SCA) at paras [14]-[17].

⁶ *Islandsite Investments 180 (Pty) Ltd v National Director of Public Prosecutions and Others* 2024 (5) SA 20 (SCA).

⁷ *Knoop and Others v Tegeta Exploration and Resources (Pty) Ltd and Others* *ibid* at para [17].

office as a business rescue practitioner of the NTI companies, NWI or ABS. He has no *locus standi*.

- [24] The costs will follow the result. In view of the situation brought about by Mr. Tayob's attempt to assert that he was a business rescue practitioner for the entities, the "*severe and immediate humanitarian crisis arising from the non-payment of salaries to hundreds of employees of the state-owned NTI companies*" arose. This in and of itself rendered this matter urgent and warranted on the part of the respondents the engagement of more than one counsel. Furthermore, the respondents engaged both senior and junior counsel and it is thus apposite that the costs should be on the scale C.

- [25] In the circumstances, I make the following order:

[25.1] The application is dismissed.

[25.2] The applicant is ordered to pay the costs of the respondents who opposed the application on the scale as between party and party, such costs to include the costs consequent upon the engagement of two counsel. The scale of counsel's costs is scale C.


A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

27 AUGUST 2025

JUDGMENT DELIVERED ON:

2 SEPTEMBER 2025

COUNSEL FOR THE APPLICANT: ADV. G HULLEY SC

INSTRUCTED BY: MAYET INC.

REFERENCE: MR. A MAYET

COUNSEL FOR THE 1ST RESPONDENT: ADV. AJ DANIELS SC
ADV. C DE VILLIERS-GOLDING

INSTRUCTED BY: RICHTER ATTORNEYS

REFERENCE: MR. B RICHTER

COUNSEL FOR THE 6TH, 7TH AND
ONE OF THE 8TH RESPONDENTS: ADV. A GOVENDER SC
ADV. M DAFEL

INSTRUCTED BY: CUZEN RANDEREE DYASI INC.

REFERENCE: MR. Z RANDEREE

NO APPEARANCE FOR THE 2ND, 3RD, 4TH AND 5TH RESPONDENTS