



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

Case Number: 2024-008136

- | | |
|-----|----------------------------------|
| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: YES |
| (3) | REVISED |

30/9/2025
DATE


SIGNATURE

In the matter between:

SIYANDA SABELO TRADING (PTY) LTD

Applicant

and

**TWIN RIVERS HOMEOWNERS ASSOCIATION
NPC**

Respondent

JUDGMENT

VIVIAN AJ

Introduction

- [1] On 28 August 2025, I handed down judgment in which I placed the present applicant, Siyanda Sabelo Trading (Pty) Ltd, in provisional winding-up. The applicant now applies for leave to appeal.
- [2] Mr Davis, who appeared for the respondent, raised a point *in limine* that a provisional winding-up order is not appealable. I agree. The application for leave to appeal accordingly must be dismissed. My reasons for this conclusion are set out below.

The test for appealability

- [3] Traditionally, the question as to whether an order is appealable is considered using the attributes referred to in **Zweni**.¹ The **Zweni** attributes are whether the order is (1) final in effect and not susceptible to alteration by the court of first instance; (2) definitive of the rights of the parties, that is, the order must grant definitive and distinct relief; and (3) has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.² This is not a checklist. An order may be appealable even if it does not possess all three attributes.³
- [4] Mr Moela, who appeared for the applicant, submitted that the test as to whether to grant leave to appeal is whether it is in the interests of justice to do so. He

¹ *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A)

² Paraphrasing *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* 2023 (5) SA 163 (SCA) at para 12; *City of Tshwane Metropolitan Municipality v Afriforum and Another* 2016 (6) SA 279 (CC), at para 41

³ *Government of the Republic of South Africa and Others v Von Abo* 2011 (5) SA 262 (SCA) at para 17

referred me to the Constitutional Court (“ConCourt”) decisions in **City of Tshwane v Afriforum**⁴ and **OUTA**.⁵ I referred Mr Moela to the Supreme Court of Appeal (“SCA”) decision in **TWK Agriculture**,⁶ in which Unterhalter JA expressed reservations in respect of the applicability of the interests of justice test.

[5] However, as Mr Moela correctly pointed out, **TWK Agriculture** overlooked the ConCourt decision in **Lebashe**, in which Madondo AJ held: *“Under the common-law principle as laid down in Zweni, if none of the requirements set out therein were met, it was the end of the matter. But now the test of appealability is the interests of justice, and no longer the common-law test as set out in Zweni.”*⁷

[6] Koen AJA (as he then was) explained the test for appealability as follows:

“The Zweni triad of attributes for an order to be an appealable order, is therefore no longer cast in stone, nor exhaustive. But those attributes have also not become irrelevant or supplanted by the development in our jurisprudence. This court has remarked that, ‘the interests of justice should now be approached with the gravitational pull of Zweni’. If one of the attributes in Zweni is lacking, an order will probably not be appealable, unless there are circumstances which in the interests of justice, render it appealable. The emphasis has moved from an enquiry focused on the nature of the order, to one more as to the nature and effect of the order, having regard to what is in the interests of justice. What the

⁴ City of Tshwane Metropolitan Municipality v Afriforum, *supra* at para 40

⁵ National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 (CC) at para 25

⁶ TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others 2023 (5) SA 163 (SCA)

⁷ United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others 2023 (1) SA 353 (CC) at para 43

*interests of justice require depends on the facts of a particular case. This standard applies both to appealability and the grant of leave to appeal, no matter what pre-Constitution common law impediments might exist.”*⁸ (my underlining)

The nature and effect of a provisional winding-up order

- [7] Item 9 of schedule 5 to the Companies Act (Act 71 of 2008; “the 2008 Companies Act”) provides for the continued application of provisions of the Companies Act (Act 61 of 1973; “the 1973 Companies Act”) in respect of the liquidation of insolvent companies. The application for liquidation was brought under the 1973 Companies Act.
- [8] The 1973 Companies Act does not expressly provide for provisional winding-up orders. However, the procedure is well established,⁹ albeit that in this Division it is the practice that a final order may be granted without first granting a provisional liquidation order.
- [9] The approach taken to the evidence contained in the affidavits is different at the provisional and final stages. As Binns-Ward J put it:

“While the evidence might be the same as it was when the provisional order was granted, the approach to be taken to it for the purposes of considering whether a final order should be made is different. At the provisional stage the applicant had to make out only a prima facie case – in the peculiar sense of that term

⁸ MV Smart: Minmetals Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another 2025 (1) SA 392 (SCA) at para 32; see also Lebashe Investment Group (Pty) Ltd and Others v United Democratic Movement and Another (1308/2023) [2025] ZASCA 29 (28 March 2025) at para 2

⁹ Wackrill v Sandton International Removals (Pty) Ltd and Others 1984 (1) SA 282 (W) (Wackrill) at 285B-D; Kalil v Decotex (Pty) Ltd and Another 1988 (1) SA 943 (A) para 59

explained in Kalil v Decotex (Pty) Ltd and another 1988 (1) SA 943 at 976D – 978F. In order to succeed in obtaining a final order the applicant has to prove its case on the evidence as it falls to be assessed in the usual manner in proceedings on motion for final relief. The practical distinction between the two requirements thus arises out of the application of the Plascon-Evans evidentiary rule in opposed proceedings for a final order; cf. Export Harness Supplies (Pty) Limited v Pasdec Automative Technologies (Pty) Limited 2005 JDR 0304 (SCA), at para. 4.2. The effect has been described in terms which suggest that a higher ‘degree of proof...on a balance of probabilities’ is required for a final order than for a provisional order (Paarwater v South Sahara Investments (Pty) Ltd [2005] 4 All SA 185 (SCA), at para. 3). While the basis for that description is understandable, I would suggest respectfully that the position might more accurately be described as being that while the applicant must establish its case on the probabilities to obtain either a provisional or a final order, in an opposed application, a different, and more stringent approach to the evidence, consistent with the Plascon-Evans rule, must be adopted by a court in deciding whether the applicant has made a case for a final order. This is in contradistinction to the approach to an opposed application for a provisional order, when the case is decided on the probabilities as they appear from the papers.”¹⁰

[10] Because the Court reassesses the matter on the return date and applies a different approach, what is decided at the provisional stage is inherently

¹⁰ Absa Bank Ltd v Erf 1252 Marine Drive (Pty) Ltd and Another (23255/2010) [2012] ZAWCHC 43 (15 May 2012) at para 4; applied in this Court in, *inter alia*, Land and Agricultural Development Bank of South Africa v Phosfert Trading (Pty) Limited (2020/28966) [2023] ZAGPJHC 84 (3 February 2023) at para 6

susceptible to alteration on the return date. It is not finally definitive of the rights of the parties and does not dispose of the relief sought (a final winding-up order).

[11] A provisional winding-up order accordingly does not have the **Zweni** attributes.

[12] Mr Moela drew my attention to the recent judgment in **Singh**. In that case, the High Court granted a provisional sequestration order. On appeal, the SCA held that the Judge was disqualified from hearing the matter because of a conflict of interest. Relying *inter alia* on the earlier judgment in **Moch**,¹¹ Keightley AJA (as she then was) held that the Judge ought not to have heard the case and that a case for her recusal was properly established. She set aside the provisional sequestration order.¹²

[13] Keightley AJA did not refer to appealability in **Singh**. Presumably, this is because that issue was already decided in **Moch**. In **Moch**, the High Court Judge had refused to recuse himself. He granted a provisional winding-up order. On appeal, Heher JA dealt with appealability. He held that, although the dismissal of a recusal application does not dispose of the relief sought by the parties, it is appealable. He held that a decision dismissing a recusal application reflects on the competence of the presiding Judge to define the parties' rights and to grant or refuse the order sought.¹³ It was accordingly appealable. Heher JA then considered the merits of the recusal application and held that the Judge ought to have recused himself. As a result, not only was the decision to refuse recusal set aside, but it followed that the provisional winding order was a nullity.¹⁴

¹¹ *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A)

¹² *Singh v Body Corporate of St Tropez* (386/2023) [2024] ZASCA 142 (21 October 2024)

¹³ *Moch*, *supra* at 10 F to 11 B

¹⁴ *Moch*, *supra* at 9 G to 10 B

- [14] Accordingly, neither **Singh** nor **Moch** is authority for the proposition that a provisional sequestration or winding-up order is appealable.

The Tariomix judgment

- [15] Mr Moela further relied on the judgment of Morgan AJ in **Tariomix**.¹⁵ **Tariomix** was the return date of a provisional winding-up order. Morgan AJ commenced his judgment as follows:

*“The crystallised issue for me to determine is whether Tariomix and/or other interested parties have made out a case militating against the provisional liquidation order, granted by Djaje DJP on 23 February 2023 against Tariomix, from being made final. In other words, this court is called to decide whether Tariomix and/or other interested parties have made out a case in favour of the discharge of the provisional liquidation order made against Tariomix.”*¹⁶

- [16] Morgan AJ held that, once a Court makes a provisional order, it is for the Court to set aside that order.¹⁷ Having quoted Section 354¹⁸ of the 1973 Companies Act, Morgan AJ held that the Court must satisfy itself that the respondent company or other interested parties have shown good cause why the company should not be liquidated.¹⁹

- [17] If Morgan AJ intended that there is an onus on the respondent or other interested parties to make out a case for the discharge of the provisional order, this is

¹⁵ Botes and Others v Tariomix (Pty) Ltd and Others 2024 (6) SA 203 (NWM)

¹⁶ Botes v Tariomix, *supra* at para 2

¹⁷ Botes v Tariomix, *supra* at para 55

¹⁸ Erroneously referred to as Section 254 in the judgment

¹⁹ Botes v Tariomix, *supra* at para 58

contrary to decisions such as **Absa v Erf 1252** and **Paarwater**.²⁰ On the return day, the onus rests on the applicant “*in seeking a final order to satisfy the court, on a balance of probabilities, that it was indeed “just and equitable” finally to liquidate the respondent.*”²¹ The fact that the rule *nisi* invites interested parties to “show cause why the order should not be made final” does not invert the onus and does not change the way in which disputes of fact in the affidavits are assessed.

[18] Section 354(1) of the 1973 Companies Act concerns an application to stay or set aside winding-up proceedings. It is not applicable to the return day of a provisional winding-up order. The legislative history and purpose of this subsection were discussed in **Storti v Nugent**.²² Gautschi AJ highlighted four features of Section 354(1) in that judgment. Two show that Section 354(1) is not applicable to the return day of a provisional winding-up order.

[19] “*Firstly, it refers to the staying or setting aside of ‘proceedings’ and not ‘order’.*”²³ The grant of a winding-up order sets in motion a process whereby a company is wound up. During the course of that process, events may occur which make it necessary or desirable to stay or set aside the winding-up process. One example given by Gautschi AJ is an offer of compromise.²⁴

[20] Secondly, the company itself does not have standing to bring the application.²⁵

²⁰ *Paarwater v South Sahara Investments (Pty) Ltd*, [2005] 4 All SA 185 (SCA)

²¹ *Paarwater*, *supra* at para 3

²² *Storti v Nugent and Others* 2001 (3) SA 783 (W)

²³ *Storti v Nugent*, *supra* at 794 A

²⁴ *Storti v Nugent*, *supra* at 794 B

²⁵ *Storti v Nugent*, *supra* at 794 D

- [21] An application in terms of Section 354(1) is an application brought by a liquidator, a creditor or member. It is not the mechanism used by the respondent company or an interested party to show cause why a final winding-up order should not be granted.
- [22] With respect, Section 354 is not relevant to the approach to be taken by the Court on the return day of a provisional winding-up order.
- [23] There is an additional fact that weighs against Morgan AJ's conclusion that, on the return date, the Court must satisfy itself that the respondent company or other interested parties have shown good cause why the company should not be liquidated. It is for the applicant to ensure that the matter is properly enrolled on the return date. If it is not enrolled, the rule *nisi* lapses and the provisional winding-up order is automatically discharged. If the matter is properly enrolled, but there is no appearance for the applicant on the return date, the Court will discharge the rule *nisi* and the operation of the provisional winding-up order comes to an end.²⁶ This would not be the case if the Court is required to satisfy itself that the respondent company or other interested parties have shown good cause why the company should not be liquidated.
- [24] Accordingly, I respectfully differ from Morgan AJ. In opposed liquidation proceedings the standards differ at the two stages: a *prima facie* showing may justify a provisional order, but a final order may issue only where the applicant proves its case on the affidavits as evaluated under Plascon-Evans.²⁷ The "show

²⁶ Ex parte S & U TV Services (Pty) Ltd: In re S & U TV Services (Pty) Ltd (In Provisional Liquidation) 1990 (4) SA 88 (W) at 89 J

²⁷ Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E–635C

cause” formulation in a rule nisi is procedural and does not shift the onus. Accordingly, on the return day, the enquiry is whether the applicant has established a case for final winding-up. It is not whether the respondent company or other interested parties have shown good cause to stave off liquidation.

[25] This means that the Court is required to revisit the merits of the matter and that, on the return date, the order may be altered in the sense that the provisional order may be discharged. It is not correct, as was submitted in argument, that the Court is bound by findings of fact at the provisional stage.

Interests of justice

[26] Is it, in any event, just and equitable that the provisional winding-up order should be considered appealable based on the facts? In my view, it is not.

[27] The grounds of appeal are wide-ranging. They start with the proposition that the respondent is not a creditor because the debt is not due and payable. That is not correct.

[28] On the common cause facts, the respondent is the applicant's creditor. The applicant signed an acknowledgement of debt. Section 346(1)(b) provides that an application may be brought by a creditor, including a contingent or prospective creditor. It does not matter whether the debt is due and payable.²⁸

[29] In submitting the contrary, Mr Moela referred me to the judgment of Crisp AJ in **Kowarski**. The learned Judge held: “*A debt which is not payable upon receipt of a statutory notice by a Respondent but has to undergo further processes in order*

²⁸ Absa Bank Ltd v Hammerle Group 2015 (5) SA 215 (SCA) at para 9

to determine whether payment is possible cannot support a winding-up order, in terms of my reading of s 345 (1) (a). Unless the debt is payable without further ado, such debt is not one which may support an application for a winding-up of a company.”

[30] If Crisp AJ intended that a creditor whose debt is not due cannot apply for winding-up, I respectfully disagree. The conclusion is contrary to the judgments of the SCA in **Absa Bank Ltd v Hammerle Group**²⁹ and **Express Model Trading v Dolphin Ridge**,³⁰ which are binding on me.

[31] Crisp AJ relied on two judgments in support of the reasoning. In **Barclays v Riverside**,³¹ Newton Thompson J held: “... *the main claim for the winding-up of respondent based on secs. 111 (f) and 112 (a) must fail, as there is no money ‘then due’ ... as required by sec. 112 (a).*”³² The references are to the 1926 Companies Act.³³ In that Act, Section 112(a) is the equivalent of Section 345(1)(a) of the 1973 Act. All that the learned Judge was saying was that in order to rely on the deeming provision in Section 112(a) (now Section 345(1)(a)), the applicant had to show a debt of no less than R100 then due. Newton-Thompson J then proceeded to consider whether it had been proved to the satisfaction of the Court that the respondent was unable to pay its debts under Section 112(c) (now Section 345(1)(c)).³⁴ He concluded that a proper case had not been made out.

²⁹ Kowarski v Time Clothing (Pty) Ltd (413/2010) [2010] ZAECHC 87 (16 September 2010) at para 31

³⁰ Express Model Trading 289 CC v Dolphin Ridge Body Corporate 2015 (6) SA 224 (SCA) at para 14

³¹ Barclays Bank (D, C & O) and Another v Riverside Dried Fruit Co (Pty), Ltd 1949 (1) SA 937 (C)

³² Barclays v Riverside, *supra* at 948

³³ Act 46 of 1926

³⁴ Barclays v Riverside at 949 to 950

[32] The second case referred to by Crisp AJ is **Gatx-Fuller**.³⁵ **Gatx-Fuller** was an application to interdict the respondent from instituting proceedings for the winding-up of the applicant on the basis of a Section 345(1)(a) notice. Kirk-Cohen held: “*It is trite that a contingent or prospective creditor has locus standi to apply to Court for the winding-up of a debtor company but not on the grounds of non-compliance with a demand for payment made by such creditor in terms of the provisions of s 345 (1) (a) (i) of the Act.*”³⁶ He agreed with the respondent’s counsel that it had standing to seek a winding-up order under grounds other than Section 345(1)(a). But that was not what the applicant sought to interdict.³⁷

[33] Neither **Barclays v Riverside** nor **Gatx-Fuller** is authority for the broad proposition in **Kowarski**. The correct position is that an applicant in a liquidation application cannot rely on Section 345(1)(a) unless it holds a debt of not less than R100 and that debt is due and payable. If the debt on which it relies is not yet due and payable, it retains *locus standi*, but must rely on other grounds. Insofar as it contends that the respondent should be wound up because it is unable to pay its debts, it can rely on Section 345(1)(b) or (c).

[34] In any event, the applicant itself admitted the debt and that it is due and payable. In answer to the allegation in the founding affidavit that the total sum of R685 738,60 was due, R621 840.39 for one property and R63 898,21 for the other property, the applicant said in the answering affidavit: “*Part of this paragraph is admitted. The remainder is denied. In amplification of the denial,*

³⁵ Gatx-Fuller (Pty) Ltd v Shepherd and Shepherd Inc [1984] 4 All SA 75 (W) [also reported in 1984 (3) SA 48 (W)]

³⁶ Gatx-Fuller, *supra* at 80

³⁷ Gatx-Fuller, *supra* at 81

the respondent pleads that the second property has no building or occupancy and to the extent it is billed for water, same is dispute.”

[35] The applicant accordingly admitted that a significant portion of the debt was due.

[36] The next ground of appeal is that the finding of commercial insolvency (inability to pay debts) is not supported by the facts. Focussing on paragraph 18 of my judgment, the applicant contends that I found that the debt was not due and payable and that this is a complete defence. That is not a correct interpretation of paragraph 18 and is not correct in law.

[37] My finding that the applicant is unable to pay its debts is based in the first place on the Section 345(1)(a) notice. It is so that, in order for this notice to be valid, the applicant for liquidation must show a debt of not less than R100 that is due. As I showed above, this is admitted on the affidavits. Counsel's argument does not detract from the admission.

[38] Second, the signing of an acknowledgement of debt is, in the circumstances, strong evidence of commercial insolvency. The debt was for levies and other charges due to a body corporate. The applicant's director signed the acknowledgement of debt because the applicant had failed to pay levies and other charges when they fell due. The most probable inference is that it was unable to do so.

[39] Third, the applicant said in its answering affidavit: *“Thus, it is evident that while the indebtedness has not been extinguished, the [applicant], with all its bona fides, paid approximately 40% of the debt and thus, is honouring the terms and spirit of the AOD as when it is able to do so.”*

[40] In my view, on a conspectus of the facts, the respondent proved to the satisfaction of the Court that the applicant is unable to pay its debts.

The discretion to grant a provisional winding-up order

[41] The respondent has not fully complied with Section 346(4A)(b). I referred in my judgment to the recent case of **Rent-a-Tank**³⁸ and concluded that this was a case in which it was appropriate to grant a provisional winding-up order. The reasons for this conclusion are set out in my judgment.

[42] Mr Moela referred me to another recent judgment in **Investec v Culverwell**.³⁹ Although **Rent-a-Tank** was delivered two months after **Investec v Culverwell**, it is not referred to by Gilbert AJ. In **Investec v Culverwell**, Mahalelo J referred to the judgment of Moorcraft J in **Cassim**.⁴⁰ **Cassim** was also not referred to in **Rent-a-Tank**.

[43] In both **Cassim** and **Investec v Culverwell**, there had been non-compliance with Section 346(4A). In **Investec v Culverwell**, Mahalelo J held that it was clear that the application was not served on the employees or on any trade union. Reliance was placed on a return of non-service.⁴¹

[44] In **Cassim**, the affidavit filed in terms of Section 346(4A)(b) was non-compliant because the deponent was not the person who furnished the application to the employees and to SARS. The sending of bulk sms's to employees and to SARS

³⁸ Rent a Tank JHB (Pty) Limited v Fuelgiants (Pty) Limited (2025/012156) [2025] ZAGPJHC 517 (19 May 2025)

³⁹ Investec Bank Limited v Culverwell Cattle Company (Pty) Ltd (048263/2022) [2025] ZAGPJHC 291 (17 March 2025)

⁴⁰ Cassim NO v Ramagale Holdings (Pty) Ltd and Others (2020/11605) [2020] ZAGPJHC 149 (12 June 2020)

⁴¹ Investec v Culverwell, *supra* at para's 12 and 13

did not cure that as the sms's did not include the application itself.⁴² Moorcraft AJ held that the SCA in **EB Steam**⁴³ did not give its blessing for the grant of a provisional order when the application was not "served" in terms of Section 346(4A). He held that the judgment is confined to urgent circumstances where it is shown that the employees could not be served, such as where it was affixed to the main gate but the employees had left the premises.⁴⁴

[45] In both **Cassim** and **Investec v Culverwell**, the Court removed the matter from the roll.

[46] In **Stratford**, the Constitutional Court interpreted the provisions of Section 9(4A) of the Insolvency Act (Act 24 of 1936). These mirror Section 346(4A) of the 1973 Companies Act. Leeuw AJ held:

*"Failure to furnish the employees with the petition may not be relied upon by the debtor for opposing sequestration when the question to be decided is whether sequestration is to the advantage of creditors. In EB Steam the Supreme Court of Appeal stated that the purpose is not to provide a 'technical defence to the employer, invoked to avoid or postpone the evil hour when a winding-up or sequestration order is made'. I agree. There may be instances where a provisional order should be granted to avoid the concealing of assets or for other urgent reasons in circumstances where a delay would substantially prejudice the creditors. Thus, non-compliance will not always render the granting of an order fatal, but this should be only in exceptional circumstances."*⁴⁵

⁴² Cassim, *supra* at para 18

⁴³ EB Steam Co (Pty) Ltd v Eskom Holdings Society Ltd 2015 (2) SA 526 (SCA)

⁴⁴ Cassim, *supra* at para 15

⁴⁵ Stratford and Others v Investec Bank Ltd and Others 2015 (3) SA 1 (CC) at para 42

[47] It is plain that the Court has a discretion to grant a provisional winding-up order in circumstances where there has not been proper compliance with Section 346(4A). This is consistent with the Court's power under Section 347(1) to make any interim or other order that it deems just.

[48] In essence, the applicant contends that I exercised my discretion to grant a provisional order incorrectly. However, this cannot be elevated to a fact that makes the provisional winding-up order appealable. If it were, then it would have precisely the effect that Leeuw AJ warned against in **Stratford** – it would give the company a technical defence to a provisional winding-up order.

Order not sought

[49] A further ground of appeal was that the Court granted an order not sought by the respondent. Mr Moela referred me to the very recent judgment of the SCA in **Selective Empowerment**.⁴⁶ In that matter, the appellant had been placed in final winding-up at the behest of the respondent. The majority upheld the appeal, set aside the order and replaced it with an order dismissing the application.

[50] The grounds upon which Norman AJA, writing for the majority were: (1) the applicant for the winding-up order did not have *locus standi*,⁴⁷ (2) the applicant had failed to satisfy the jurisdictional facts under Section 81(1)(f) of the 2008 Companies Act (Act 71 of 2008)⁴⁸ and (3), having brought its application under

⁴⁶ Selective Empowerment Investments 1 Ltd v Companies and Intellectual Property Commission (1325/2023) [2025] ZASCA 71; [2025] 3 All SA 368 (SCA) (30 May 2025)

⁴⁷ Selective Empowerment, *supra* at para 165

⁴⁸ Selective Empowerment, *supra* at para 157

that the applicant should seek a final winding-up order in the notice of motion, but the Court may still grant a provisional order. Paragraph 10.11 of the Practice Manual of the Gauteng Division: Johannesburg is to the same effect. This has long been the established practice in this Division.

[54] Norman AJA correctly pointed out that a provisional winding-up order has adverse consequences for a company and for its employees. The Court must always be alive to these consequences. That does not mean that a provisional winding-up order is appealable.

[55] Accordingly, I conclude that the provisional winding-up order is not appealable.

[56] The respondent sought punitive costs against the applicant's attorneys. I do not consider that to be justified in the circumstances. In respect of appealability, the applicant relied on **Tariomix**. It is hardly unreasonable for an applicant to rely on a reported case, even if the Court ultimately holds that the propositions that it relies on are incorrect.

[57] I accordingly make the following order:

57.1. The application for leave to appeal is dismissed.

57.2. The applicant is to pay the costs of the application, including the costs of counsel on Scale B.


Vivian, AJ
Acting Judge of the Gauteng Division
of the High Court of South Africa

Appearances

For the Applicant:	L Moela Instructed by Matlhwana Attorneys Inc.
For the Respondent:	SN Davis Instructed by JJR Inc.
Date of hearing:	10 September 2025
Date Delivered:	1 October 2025

MODE OF DELIVERY: *This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hearing are deemed to be 10h00 on 1 October 2025*