



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2024-075539

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

3/07/2025
DATE

SIGNATURE

In the matter between:

INKULU PIPE SOLUTIONS (PTY) LTD

APPLICANT

and

EE AND H DISTRIBUTORS (PTY) LTD

RESPONDENT

Summary:

In motion proceedings it is incumbent on the parties to raise and define the issues with precision and to set out the evidence upon which they rely in clear and simple terms following a logical and chronological sequence without the inclusion of unnecessary, argumentative and irrelevant matter.

Where reliance is placed on a statutory provision, the relevant statute must be either specifically cited or referred to in terms sufficiently clear to enable its identification.

Furthermore, procedural objections including rule 30 applications and points in limine must be raised promptly and not belatedly or at the eleventh hour.

JUDGMENT

FINE AJ:

INTRODUCTION

[1] This is an application for the winding up of the respondent. The applicant is a creditor of the respondent in an amount of approximately R1 190 602.79 ("the debt"). The debt is not in dispute, nor is the respondent's inability to repay it from its own resources.

[2] Before dealing with the issues and merits of the application, it is necessary to briefly remark on the highly unsatisfactory manner in which this case has been presented. Both parties' affidavits are marked by a failure to present the case in a concise or coherent manner, and are replete with loosely connected allegations, many of which are irrelevant or incapable of supporting the relief sought. This was fairly conceded by the applicant's counsel.¹

¹ Whose concise argument was of assistance to the court

- [3] The lack of structure and clarity makes it difficult to discern the true nature of the cause of action, the defence and even the precise basis upon which the relief is sought. Little or no attempt is made to distinguish between fact, speculation, vague generalisations and argumentative assertions.
- [4] Neither party has observed the trite principle (which has been stated many times by our courts²) that in motion proceedings, affidavits serve not only to place evidence before the court, but also define the issues between the parties. The requirement that parties must raise and define the relevant issues with clarity, set out the evidence upon which they rely in simple and clear terms, in a chronological sequence, and without argumentative matter,³ has been observed in breach rather than adherence.
- [5] Furthermore, it is trite that where a party relies on a statute or particular section of the statute, the number and section of the statute must be stated or it must appear with sufficient clarity from the affidavits what section and statute is being referred to.⁴ Winding up of companies is regulated by Chapter XIV of the Companies Act 61 of 1973, as amended ("the Act") which, by virtue of the provisions of Item 9 of Schedule 5 of the Companies Act 2008, continues to

² See *Transnet v Rubenstein* 2006 (1) SA 591 (SCA) at para 28; *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* 2008 (2) SA 184 (SCA) at para 43

³ *Swissborough Diamond Mines v Government of the Republic of South Africa and Others* 1999 (2) SA 275 TPD at 323 F- 324 G and the cases therein referred to

⁴ *Yannakou v Apollo Club* 1974 (1) SA 614 (A)

apply in respect of the winding up of insolvent companies. Yet, the applicant makes no attempt to engage with or refer to the relevant sections of the Act.

[6] The result of these deficiencies is a fundamentally unhelpful set of papers that require the court to sift through a jumble of apparently unrelated factual assertions in a bid to discern whether a case is made for the relief sought, or there is a defence that negates it.

[7] Added to these difficulties is the fact that the respondent failed to file heads of argument and, at the eleventh hour, produced a notice in terms of rule 30A seeking to raise two points *in limine*:

a. The first was that the affidavits filed on behalf of the applicant were inadmissible since the deponent to the applicant's affidavits was a female, whereas the Commissioner of Oaths had designated the deponent as a male. Quite apart from its lack of merit, the court has an inherent jurisdiction to condone non-compliance and, given the late stage at which the point was raised, it was unfair to the applicant who could, if given timeous notice, remedy the so-called defect.⁵

b. The second was that the application had failed to raise or rely on the deemed inability of the respondent to pay its debts as contemplated in terms

⁵ See the unreported judgment under case number **101816/2016** Capriati (applicant) and Bonnox (first respondent) and Momentum Health (second respondent).

of section 345(1)(a) of the Act. While I have some understanding for the respondent's position, given the dearth of cogency in the founding affidavit for the reasons outlined above, an applicant for a winding up order is not bound to rely on the deeming provision in section 345(1)(a) and may rely on, inter alia, commercial insolvency – as the applicant appears to in this case.

[8] The insolvency court is a newly constituted court, conceived as part of an innovative judicial design to address specialised matters with greater efficiency and focus. Necessarily, the issues that come before it have the potential to affect the status of both companies (in liquidation proceedings) and individuals (in sequestration proceedings), as well as the rights of their creditors in either case. It is therefore of fundamental importance that this fast-track court and its streamlined procedures be adhered to so that delay is avoided. Cases that come before the court must be properly prepared on concise, coherent pleadings, with proper reference to statutory provisions, where applicable, and in observance of the rules of court.⁶

[9] However, while timeous compliance is preferable, litigants who flout these requirements (for instance by failing to file heads of argument timeously or by bringing eleventh hour applications) in a bid to delay, engineer postponements

⁶ Postponements of status matters, particularly in relation to winding up proceedings should be avoided since it is undesirable that these matters be postponed indefinitely in the light of the retrospectivity provisions provided for in section 348 of the Act.

or otherwise stave off judgment, should not be surprised when this Court takes a dim view of their non-compliance and orders that the matter proceed notwithstanding their default, or belated application. Because the interests of creditors are paramount, I dismissed the Rule 30A application,⁷ and ordered that the application proceed despite the respondent's failure to file heads of argument.

THE MERITS

[10] It appears that in and during March 2024, the respondent applied to the applicant for the provision of credit facilities. After the written facility was approved, the applicant sold and delivered pipes to the respondent which the respondent would, in turn supply to its client(s) in the mining industry. It is not in dispute that the balance of the purchase price payable by the respondent to the applicant in respect of the pipes supplied is R1 190 602,79. Payments due in March 2024 were not made. Eventually, in May 2024, the respondent paid the sum of just R100 000,00 to the applicant. This leaves the due and payable balance in respect of the debt of R1 190 602,79.

[11] Before these proceedings were initiated, there were interactions between the applicant and respondent through their representatives verbally and in email correspondence. From the contemporaneous documents generated at the time,

⁷ Since it was without merit on both grounds

it is clear that the respondent is unable to pay the debt owed to the applicant from its own resources. Despite the confused and confusing nature of the respondent's affidavit, it accepts that while the initial credit facility was granted in terms of a written agreement, it now contends for an agreement which is termed "the new agreement". In terms of "the new agreement" the applicant and respondent allegedly agreed payment of the admitted indebtedness would be deferred until receipt of payment by the respondent from its client or clients.

[12] No reliance can be placed on "the new agreement". Apart from the fact that it is highly improbable, it is so vague in its alleged terms that it has no legal effect or traction. Accordingly, I am of the view that the debt is not disputed on *bona fide* and reasonable grounds. As a consequence, and on the common cause facts, the respondent is unable to pay the debt and falls to be wound up in terms of section 345(1)(c) read with section 344(f) of the Companies Act.

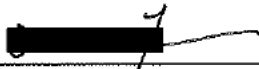
[13] The throwaway line in the founding affidavit – that it is just and equitable that the respondent be wound up and that it would be to the advantage of respondent's creditors – once again demonstrates the lack of appreciation of what is required in liquidation proceedings.⁸ For that reason alone, but also because of the conclusion to which I have already come in respect of the

⁸ *Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd* 1985 (2) SA 345 (W)

respondent's inability to pay its debts, it is not necessary to deal with whether a winding up would be just and equitable.

[14] In the circumstances, I make the following order:

- a. The respondent is placed under final winding up; and
- b. The costs of the application are to be costs in the liquidation.


DM FINE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

DATE OF HEARING	: 03 June 2025
DATE OF JUDGMENT	: 03 July 2025
APPLICANT'S COUNSEL	: Adv W Pye SC
APPLICANT'S ATTORNEYS	: K Maharaj Inc.
RESPONDENT'S COUNSEL	: Adv M Kohn
RESPONDENT'S ATTORNEYS	: DS Attorneys