IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)

CASE NO.: 1993/2025

In the matter between:

LOMAJASA BELEGGINGS (PTY) LTD	**First Applicant**
JOHANNES NICOLAAS WILKEN	**Second Applicant**
and	
NASTOWORX PROPRIETARY LIMITED	**First Respondent**
STANDARD BANK OF SOUTH AFRICA LIMITED	**Second Respondent**
THE MASTER OF THE HIGH COURT	**Third Respondent**
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)	**Fourth Respondent**
THE SOUTH AFRICAN REVENUE SERVICES	**Fifth Respondent**
ANY OTHER AFFECTED PARTIES	**Sixth Respondent**

CASE NO.: 1123/2024

In the matter between:

STANDARD BANK OF SOUTH AFRICA LTD **Applicant**

and

NASTOWORX PROPRIETARY LIMITED **Respondent**

JUDGMENT

<u>MOLONY AJ</u>:

Introduction

[1] The second respondent in this matter ('Std Bank') issued applications for the winding-up of the first applicant ('Lamajasa'), the first respondent ('Nastoworx') and a third company, Wilgrow (Pty) Ltd ('Wilgrow'). The affairs and financial circumstances of the three companies are intertwined.

[2] Lamajasa is the majority shareholder of Nastoworx.

[3] A provisional winding-up order in regard to Wilgrow was obtained, and then made final, on 18 May 2025.

[4] The application relating to Lamajasa has been postponed to allow assets of Lamajasa to be sold in an attempt to pay its debts.

[5] Std Bank obtained a provisional winding-up order (under case number 1123/2024) in regard to Nastoworx on 24 April 2025, along with a rule *nisi* calling upon all persons interested to show cause on 20 May 2025 why it

should not be made final, and why the costs of the liquidation application should not be costs in the liquidation.

[6] Lomajasa and the second applicant, Mr Wilken (collectively referred to as 'the applicants'), who is a director of both Lomajasa and Nastoworx, launched a business rescue application on 19 May 2025 in regard to Nastoworx (under case number 1993/2025), requesting that:

6.1 Nastoworx be placed under supervision and that business rescue proceedings commence in terms of section 131(4) of the Companies Act, 71 of 2008.

6.2 That the winding-up proceedings under case number 1123/2024 be confirmed to be stayed in terms of section 131(6) of the Companies Act, 2008.

6.3 That Mr George Rautenbach be appointed as interim business rescue practitioner of Nastoworx, as intended in section 131 (5) of the Companies Act, 2008, with all powers and duties entrusted to him in terms of the Companies Act, 2008, pending ratification by the holders of a majority of the independent creditors' voting interest at the first meeting of creditors, as contemplated in section 147 of the Companies Act, 2008.

6.4 Costs of the application to form part of the costs in the business rescue, alternatively to be paid by any party that opposed the relief sought.

[7] This led to the provisional liquidation application being postponed for hearing on 18 September 2025 with costs reserved, along with provision for the filing of further papers being made.

[8] Both applications were heard on 18 September 2025, but it was agreed that the parties would advance argument primarily in regard to the business rescue application, the agreement being that if the business rescue application failed, then a final winding-up order was inevitable.

Relevant Law

[9] Section 131(4)(a) of the Companies Act, 2008, sets out that:

> *'(4) After considering an application in terms of subsection (1), the court may-*
> *(a) make an order placing the company under supervision and commencing business rescue proceedings, if the court is satisfied that-*
> *(i) the company is financially distressed;*
> *(ii) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment-related matters; or*
> *(iii) it is otherwise just and equitable to do so for financial reasons,*
> *and there is a reasonable prospect for rescuing the company'.*

[10] Section 128(b)(iii) of the Companies Act, 2008, defines 'business rescue' as including:

> *'(iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company'.*

[11] The issue of a court's discretion in a business rescue application was addressed in the matter of *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others*[1]as follows:

> *'[21] With this rather lengthy prelude I can now revert to the pertinent question: does s 131(4) afford the court a discretion in the strict sense or not? I think the short answer is 'no'. In a case such as this, the court's discretion is bound up with the question whether there is a reasonable prospect for rescuing the company. The other pertinent requirement in s 131(4), namely, that the company must be financially distressed, seems to turn on a question of fact. As to whether there is a reasonable prospect of rescuing the company, it can hardly be said, in my view, that it involves a range of choices that the court can legitimately make; of which none can be described as wrong. On the contrary, as I see it, the answer to the question whether there is such a reasonable prospect can only be 'yes' or 'no'. These answers cannot both be right.'*

[12] The concept of a 'reasonable prospect' for rescuing the company is also addressed in the *Oakdene Square Properties*[2] matter, in which the following is stated:

> *'[29] This leads me to the next debate which revolved around the meaning of 'a reasonable prospect'. As a starting point, it is generally accepted that it is a lesser requirement than the 'reasonable probability' which was the yardstick for placing a company under judicial management in terms of s 427(1) of the 1973 Companies Act (see eg Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Ltd 2012 (2) SA 423 (WCC) para 21). On the other hand, I believe it requires more than a mere prima facie case or an arguable possibility. Of even greater significance, I think, is that it must be a reasonable prospect — with the emphasis on 'reasonable' — which means that it must be a prospect based on reasonable grounds. A mere speculative suggestion is not enough. Moreover, because it is the applicant who seeks to satisfy the court of the prospect, it must establish these reasonable grounds in accordance with the rules of motion proceedings which, generally speaking, require that it must do so in its founding papers.'*

[13] Whilst an extensive amount of detail is not required, the applicants are required to lay an appropriate factual foundation upon which they may claim

[1] 2013 (4) SA 539 (SCA).
[2] *Supra*.

that a reasonable prospect of achieving one of the goals of business rescue (as contemplated above) exists.[3]

Factual Matrix and Analysis

[14] Nastoworx's total liabilities, as reflected in the first circular to creditors distributed by Nastoworx's provisional liquidators, is some R 162 144 240.00.

[15] Nastoworx owes Std Bank R 46 292 430.49 (excluding accrued interest). The debt has been due, owing and payable since November 2023.

[16] It is furthermore not in dispute (or not convincingly disputed) that Nastoworx is unable to pay its debt and is thus commercially insolvent.[4]

[17] A reading of the papers in the business rescue application points to the fact that the focus of such business rescue would be a better return for creditors and shareholders, as opposed to the continuation of the business.

[18] Nastoworx's primary asset is Fairview Farm ('the farm'). The farm was purchased in 2020 for R 76 000 000.00. It was accounted for, at the time, as property in the accounting records of Lomajasa, but was later transferred to Nastoworx for the same value.

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[3] See the *Oakdene Square Properties* matter (*supra*) at para 31.

[4] According to Mr de la Harpe, who appeared for Std Bank, if one has regard to the papers, the company appears to have suffered a tax loss every year – see p. 207 of the papers.

[19] Nastoworx was intended to operate mainly as a property holding company. Lomajasa advanced R 56 000 000.00 of the purchase price. The remaining shareholder of Nastoworx (the Doornberg Trust) obtained a loan from Std Bank for R 20 000 000.00 (with the Doornberg Trust's assets being security for the loan), which made up the remainder of the purchase price.

[20] On 16 May 2025 (after the provisional liquidation order of 24 April 2025) an agreement of sale for the business and business assets of Nastoworx (including the farm) was signed by a neighbouring farmer and businessman (Mr Malcolm MacKenzie, on behalf of the Nanaga Farming Trust – 'the NFT').

[21] The sale of business agreement, which was conditional *inter alia* upon the business rescue application being granted, stated that the business and business assets would be sold for R 66 000 000.00. The sale agreement referred to Mr MacKenzie acting on behalf of Propco Proprietary Limited (which was the purchaser).

[22] The farm was appraised in June 2025, with the open market value of the farm being set at R 114 500 000.00, and the forced sale value at R 73 400 000.00. The applicants proposed the sale of the farm which, they submitted, would lead to a better return for Nastoworx's creditors than would be received in a liquidation of Nastoworx.

[23] The purchase price for the farm, as reflected in the sale agreement, is significantly less than the farm's appraised market value and its forced sale

appraised value. It is also significantly less than the original purchase price of the farm (R 76 000 000.00).

[24] A proposed business plan, to support the business rescue application, was annexed to the replying affidavit.[5] Ignoring for the moment that this had the appearance of attempting to make out a case in reply, the proposed business plan provided a more detailed overview of the proposal made in the founding affidavit.

[25] According to the applicants' proposed plan, the shortfall after the above-mentioned sale would be made up by the sale of a farm and water rights by Lomajasa.

[26] Lomajasa, according to the applicants, has, in fact, already concluded an agreement of sale of one of its properties ('Teebus Flats'). The sale will allegedly render an amount of R 29 000 000.00, all of which will, ultimately, go to Std Bank.[6]

[27] Lomajasa is also selling other water rights, and the proceeds received which can be allocated to Std Bank are approximately R 3 500 000.00. The proposed business rescue plan also includes that the sale of Wilgrow's moveable assets, which are expected to yield approximately R 6 222 843.20. The applicants furthermore have noted (without providing specific detail) that there are also other creditors of Nastoworx which will need to be settled.

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[5] See annexure 'RA1' at p. 148.

[6] R 23 340 000.00 will be paid to Std Bank on registration, with R 5 660 000.00 being ceded to Std Bank and, upon transfer of certain water rights, will be paid to Std Bank.

[28] A final winding-up order has already been granted in regard to Wilgrow. It is furthermore worth noting that Nastoworx provided guarantees in regard to part of Wilgrow and Lomajasa's debt to Std Bank, which forms part of Nastoworx's current debt predicament.

[29] The proposed path, in regard to the financial assistance to be provided by Lomajasa, is *inter alia* self-evidently flawed, as Lomajasa is a separate entity to Nastoworx, and itself faces a winding-up application, which was postponed in order for Lomajasa to sell assets to meet the liabilities of Lomajasa.

[30] Nastoworx's business is also reliant, to some extent, on Wilgrow, which rents part of the farm from Nastoworx and assists with the running of the business. The fact that Wilgrow was finally liquidated on 20 May 2025 would mean that the operation of Nastoworx's business would cease, unless the business was sold to a purchaser who could take over the running thereof.

[31] According to the applicants, an amount of roughly R 50 000 000.00 will allegedly emanate from the sale of Nastoworx's business, which will be payable to Std Bank upon registration of transfer of the farm.

[32] The above-mentioned proceeds would, according to the applicants, *inter alia* allow Std Bank to receive 100 cents in the Rand, or that concurrent dividends could later be expected, and for employees to retain their employment.

[33] How the proposed business rescue plan will cater for Lomajasa and Wilgrow's own debt issues, is not readily apparent, nor is an objective factual foundation

to support the applicants' averments laid - this would include a basis being laid as to why the appointed liquidators of Nastoworx could not achieve substantially the same result when selling Nastoworx's assets.

[34] The appointed provisional liquidators of Nastoworx, on 22 July 2025, obtained an order effectively extending their powers in order, amongst other needs, to allow for the farming operations of Nastoworx to continue in the interim, thus maintaining the existing value of the business and its assets.

[35] The risks of the proposed business rescue plan are not dissimilar to those of liquidating (according to the proposed business rescue plan itself).

[36] Std Bank's view is that once the farm has been transferred to another entity, Nastoworx will become an empty shell. It also cannot be overlooked that Mr Rautenbach, if appointed, will have no control over the assets of Lamajasa, upon which much of the proposed plan relies.

[37] The total amount made available via the applicants' proposed course of action (some R 82 500 000.00),[7] remains (even were the promised funds from other entities to be provided) far less than Nastoworx's total liabilities. With this in mind delaying the winding-up process (in order to engage in the proposed business rescue process) would achieve little more than a significant increase in interest on Nastoworx's debt and Nastoworx's asset base potentially degrading in value.

[7] Calculated by Std Bank as per the amounts outlined in para 53 of the founding affidavit, at pp. 17 – 18.

[38] In a supplementary affidavit deposed to on 16 September 2025, Mr Rautenbach confirmed receipt of an email from the applicants' attorneys of record which recorded *inter alia* that it was believed that a new transaction would be concluded with the same purchasers as the sale of business agreement.

[39] The new transaction would be for the sale of the farm only, and not the entire business, to PropCo, for R 70 000 000.00.

[40] The NFT group and the Wilken family would be the shareholders, with NFT paying approximately R 60 000 000.00 towards the purchase price, whilst the Wilken family would pay about R 10 000 000.00.

[41] The final plan is apparently to subdivide the farm, with each shareholder to receive a portion of the farm for future operations. The end result would clearly be one where the Wilken family would retain partial control of the farm, whilst the remaining portion of the farm (after subdivision) would belong to a company (which had purchased the farm at a price significantly below its value) in which the Wilken family was a shareholder.

[42] The above-mentioned plan, when considered in the context of the business rescue application, has the appearance of an attempt being made (with the help of a neighbouring farmer) to phase Nastoworx out of the picture, whilst still retaining a measure of control of the farm and the business. This would obviously be far less likely to occur in the context of a liquidation run by independent provisional liquidators.

[43] According to Std Bank, the sale agreement (for R 66 000 000.00) is, in any event, void, as it was executed on 16 May 2025, which was after the provisional winding-up order was granted.[8]

[44] It was submitted on behalf of Std Bank that Std Bank, as Nastoworx's major creditor, would not support the business rescue plan, which would also be fatal to the current application.[9] Such opposition, it was submitted, would not be unreasonable or *mala fide* given the obvious challenges (aside from Std Bank's opposition) the applicants face in the current application.

[45] Std Bank in fact views the business rescue application, given its timing, the details of the sale of the farm, and the paucity of factual detail provided, as potentially *mala fide*, not genuine, and not establishing that any of the benefits of business rescue will be achieved.[10]

[46] Instead, says Std Bank, it appears that the applicants have launched the business rescue application in order to utilise business rescue as an alternative to liquidation, and without the oversight and controls put in place by the Companies Act, 1973.[11]

[47] In my view the proposed business rescue plan, when viewed objectively in the context of the intertwined nature of Nastoworx, Lomajasa and Wilgrow, renders it probable that Std Bank's suspicions are justified.

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[8] See section 341(2) of the Companies Act 61 of 1973.
[9] See *Oakdene Square Properties* (*supra*) at para 38.
[10] See *Richter v Absa Bank Ltd* 2015 (5) SA 57 (SCA) at para 16.
[11] See *Oakdene Square Properties* (*supra*) at paras 33 and 35.

[48] The applicants have therefore, based upon all of the above considerations, failed to provide the necessary factual basis to demonstrate that there is a reasonable prospect of achieving the goals of business rescue.

[49] In the result, the application for business rescue falls to be dismissed.

The Liquidation Application

[50] I am satisfied, having read the papers, that Std Bank has complied with the requirements of section 346A of the Companies Act, 1973, and see no reason not to grant a final winding-up order.[12]

Order

In the result the following is ordered:

(a) The application (under case number: 1993/2025) for business rescue is dismissed with the applicants, jointly and severally, to pay the costs of the application.

(b) The provisional order of winding-up (under case number 1123/2024) is made final.

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[12] See *Afgri Operations Limited v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) at para 12.

MOLONY AJ

Appearances:

For the applicants:	Adv Cole SC
Instructed by:	Grosskopf Attorneys c/o Whitesides Attorneys **MAKHANDA**
For the second respondent:	Adv de la Harpe SC
Instructed by:	Edward Nathan Sonnenbergs Inc. c/o de Jager Lordan Inc. **MAKHANDA**

Heard on: 18 September 2025

Judgment delivered on: 9 October 2025