



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case no: 2025-123216

In the matter between:

HAZENDAL WINE ESTATE

APPLICANT

and

PURE ELECTRICAL SOLUTIONS

RESPONDENT

Coram: **O'Brien AJ**
Date heard: **11 September 2025**
Delivered: **27 October 2025**

Summary:

Company Law – Winding-up – Urgent application – Service Level Agreement for relocation of Eskom pylons – Large advance payments diverted to shareholder's personal accounts – No services rendered – Respondent's tender to repay accepted but not honoured – Insolvency established.

Urgency – Whether applicant entitled to approach court on urgent basis – Court held that urgency justified given undisputed diversion of funds, tender of repayment, and

absence of explanation – Rules designed to secure expeditious resolution of disputes, not obstruct relief.

Right to Silence – Shareholder invoked constitutional right to remain silent in civil proceedings – Court held right applies to accused persons in criminal proceedings – In civil matters adverse inferences may be drawn – Reliance on silence misplaced.

JUDGMENT

O'Brien AJ

Introduction

1. On 30 July 2025, the applicant approached this court for an urgent order placing the respondent under a final winding-up order in the hands of the Master of the High Court (Western Cape), Cape Town. Alternatively, placing the respondent under a provisional winding-up order in the hands of the Master of the High Court, Cape Town.
2. If successful with the alternative relief, the applicant sought a rule nisi calling upon the respondent or any other interested party to appear and to show cause why the court should not finally liquidate the respondent and why the cost of the application should not be costs in the liquidation. The parties agreed to postpone the matter until 11 September 2025, the day the applicant sought the order.
3. They agreed on a timeline for the filing of answering papers, heads of argument and costs. The respondent brought an application seeking

condonation for the late filing of the supplementary answering affidavit, which was not opposed. The court grants condonation.

Factual background

4. The applicant is a private company with its registered address at Hazendal Wine Estate, B[...] Road, Stellenbosch, Western Cape. The respondent is a private company having its registered office at 1[...] B[...] Street, Gordon's Bay, Western Cape. It carries on business from premises at Unit 1 [...], C[...] Way, Brackenfell, Western Cape. In their dealings with the applicant, one Theart, the sole director and shareholder and Pretorius – a former director and current shareholder represented the respondent.
5. On the premises of the applicant are multiple large electrical pylons supporting high-voltage overhead lines. These electric pylons detract from the tranquillity of the property on which the applicant conducts its business. It began exploring the possibility of relocating the electric pylons from their present position to another position on the property. The respondent, through Theart and Pretorius, said that they had contacts with senior Eskom officials who had the expertise to help the applicant move the electric pylons, and that the project could be finished by the end of that year.
6. At the beginning of January 2024, acting on these representations, the applicant agreed to some preliminary work being performed on the pylon

project by the respondent. The respondent issued an invoice for R287 500.00 for work done.

7. From June 2024 until 4 July 2024, the applicant's attorneys and the respondent negotiated to formalise an agreement on how to conduct the pylon project and what the agreed price would eventually be.
8. On 10 July 2024, the applicant, represented by one Shlomi and Theart representing the respondent concluded a service level agreement in terms whereof the applicant appoint the respondent to render services described in a statement of work to begin with the project which services were to completed on or about 5 December 2024.
9. The service level agreement recorded the total project cost to be R63,250,000.00, inclusive of VAT, plus the respondent's commission for rendering the services, being 2.5% of the total cost. In relation to the project cost, the applicant would pay a deposit of R32,000,000.00 in advance on the signature date of 10 July 2024, the remaining balance payable in three separate tranches, being R17,875,012.04 at the start of Phase 2, R10,636,083.20 at the start of Phase three and R3,011,904.76 at the completion of Phase four.
10. The respondent would be responsible for the payment of the project costs regarding phase one to Eskom and a company called Adenco.

11. On 10 July 2024, the signature date of the agreement, the applicant paid the initial deposit of R32,000,000.00. Under a tax invoice received from the respondent, the applicant paid a further R7 950,000.00 to purchase EMF reactors to counteract electronic fields on the property. The applicant claims to have made this payment based on representations from Pretorius.
12. During August 2024, Marvol Development a company that developed adjacent land raised queries about the EMF reactors, which will affect the pylon project. The representative of that company raised concerns with Theart regarding the procurement of the reactors, as the former needed to know the technical specifications of the reactors and the company that would provide these reactors.
13. On 29 August 2024, Theart responded by stating that Eskom will not take responsibility for electrical shocks or the experience of an electromagnetic field on the applicant's property. Theart said the applicants turned down various options considered in South Africa regarding the purchase of the reactors. The respondent found another option with which the applicant was happy, as it will not affect the golf course massively and will relieve the electromagnetic field experienced.
14. On 16 January 2025, Marvol Development addressed an email to Theart requesting him to supply the approved locations or diagrams with the exact locations of all the new pylons, and also to provide timelines and a programme for the works to be done. Theart responded on 21 January 2025,

stating that between the distribution and transmission departments, there are still conversations to be had with Eskom. They are still awaiting their feedback, which the respondent will follow up on weekly. They concluded that the planned commencement date of the project would be mid-February 2025.

15. On 26th February 2025, the golf manager of the applicant addressed an email to one Coetzee, a former employee of the applicant, and questioned whether they could approve the plans with just two pylon moves, as this would mean they could start the process. Theart responded to this e-mail on 27 February 2025, stating that the respondent was still waiting for Eskom.
16. On 17 May 2025, Allen Petersen, the newly appointed facilities manager at the applicant, addressed an urgent e-mail requiring feedback and evidence regarding the relocation of the Eskom electrical pylons on the applicant's property. After not receiving a response, he followed up with an email to Theart and Pretorius on 28 May 2025, requesting a site meeting.
17. On 13th June 2025, Theart responded, provided approximate timelines and design routes, and attached a document that stated the project would take 14 to 18 months from the day Eskom's cost estimate letter was received. Theart stated that he expects the cost estimation letter by the end of June 2025. On 7 July 2025, Petersen requested Theart to advise whether they had received the letters from Eskom. On 7 July 2025, Petersen had received no feedback.

18. The applicant was unhappy with the pace at which the project was to be conducted. They requested a site meeting with the respondents' directors. At this meeting, the respondent's representatives did not attend, prompting the applicant to start an investigation.
19. During its investigation, the applicant found that Coetzee issued fraudulent invoices for work the respondent had not yet completed. This notwithstanding Eskom had concluded no agreement regarding the pylon project with the respondent.
20. Similarly, Coetzee issued a tax invoice to a company, Adenco, with the latter allegedly performing work even before the pylon project began. The applicant claims that the issued invoices are forged because their layout differs from other invoices that were issued.
21. The above led the applicant to conclude that the respondent had induced the applicant to sign a service level agreement on fraudulently manufactured invoices.
22. On 14 July 2205, Theart and Pretorius met the applicant's golf manager. At this meeting, they informed her about their difficulties with Eskom, because every time there is a change in the location of the electrical pylon, they had to pay an amount of R1.9 million "under the table" to Eskom. She requested from them a full breakdown, with supporting documentation of the payments made to the respondent.

23. On 16 July 2025, Theart handed her a handwritten schedule of payments he had made. The note showed a payment of R10,300,000 for the first set of pylon structures. Included in the amount was R3,000,000.00 for Sars. In other words, monies meant for the project was spent on the respondent's tax obligations. The respondent also allegedly paid R13,300,000 million, apparently because of seven design changes and approvals by the applicant.
24. The applicant also established that for the period 19 March 2024 until 3 May 2025, an amount of R13,815,000 was paid into the Capitec Bank account of Pretorius. For the period 11 July 2024 to 31 May 2025, an amount of R7,579,000 was paid into the Discovery Bank account of Pretorius by the respondent.
25. The upshot of the above was that the applicant, in terms of the service level agreement, paid a deposit of R32,000,000 which was supposed to be paid to Eskom and Adenco for the pylon project. Stated differently, the R32,000,000 was not income in the hands of the respondent but a deposit to start the pylon project. Moreover, the payment of R7,950,000 for the EMF reactors never materialised. Accordingly, the respondent is indebted to the applicant to the tune of R39,750,000.
26. I pause to mention that the applicant ended both the service level agreement and reactor purchase because of the respondent's alleged fraudulent conduct. In turn, the respondent tendered payment of the amount of R39,750,000 by 31 August 2025. The tender was never honoured. At the time of the hearing of

this matter, the respondent failed to make good on the tender. Also, I have not been informed that the respondent made the payment while I prepared this judgment.

Discussion

27. The respondent contends that the application is not urgent, as the applicant has failed to state facts explaining why it cannot obtain substantial redress in the ordinary course. Mr Van der Merwe, together with Mr Whitcomb, made much of the fact that the applicant failed to set out the circumstances that make the matter urgent and why it could not obtain substantial redress in the ordinary course. Mr Manca, for the applicant, countered by referring to *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd, Commissioner, South African Revenue Services v Hawker Aviation Partnership and Others and Others 2006 (4) SA 292 (SCA)*. In this judgment, Cameron JA articulated that urgency may justify a deviation from the times and forms the Rules prescribe. It is a matter of form, not substance, and is not a prerequisite to a claim for substantive relief. In *Federated Trust Ltd v Botha 1978 (3) SA 645 at 654D-F* Van Winsen AJA said:

“The court does not encourage formalism in the application of the Rules. The Rules are not an end in themselves to be observed for their own sake. They are provided to secure the inexpensive and expeditious completion of litigation before courts...”

28. I accept courts should not pay mere lip service to urgency. An applicant, in approaching a court, establishes its own rules regarding urgency. However, in this instance, the respondent could file its opposing papers and heads of argument after the court postponed the matter on the set-down date. The postponement enabled the respondent to file a supplementary answering affidavit. Here – the undisputed facts – an admitted debt, vanished funds, and Pretorius' silence demand prompt intervention. Delay would only embolden abuse and might further dissipate the applicant's recourse. The applicant was therefore fully justified in invoking the urgent jurisdiction of this court.
29. I turn to these facts. The respondent accepted the R32,000,000 to realign the electrical pylons on the applicant's farm in terms of the service level agreements, but they failed to perform the work. Also, an amount of R7,950,000 was paid to the respondent to purchase EMF reactors. This was never purchased without explaining why it was never done. An amount of R21,394,000 was transferred to Pretorius's personal bank accounts. It is also undisputed that the respondent tendered payment of R39, 959,000 to be paid by 31 August 2025. Pretorius is silent about what happened to the money transferred to his personal accounts. He refers to his right to remain silent as the reason for his non-disclosure.
30. May Pretorius rely on his right to remain silent in the face of damning allegations?

31. In his supplementary answering affidavit, Pretorious states: *"I have been advised that some of the allegations contained in the applicant's founding affidavit may have criminal implications for me and the respondent and its employees. In the premises any allegations left specifically unanswered should not be deemed to have been admitted.*
32. *In the premises I invoke my right to silence in the respect of any allegations left unanswered. (sic)"*
33. In *Gratus & Gratus (Pty) Ltd v Jackelo* 1930 WLD 226, the respondent admitted to the misappropriation of monies. The respondent claimed he had made the admission unfairly when the sequestration proceedings started. During the sequestration proceedings, he applied for a stay thereof because he would suffer prejudice. Tindall J said:

"But this point has been taken on behalf of the respondent- that is, the usual practice, where civil proceedings and criminal proceedings arising out of the same circumstances are pending against a person, is to stay the civil proceedings until the criminal proceedings have been disposed of. The principle at the root of the practice is, I think, that the accused may be prejudiced in the criminal proceedings if the civil proceedings were first, because he might give evidence in the civil proceedings and might be subjected to cross examination, or he might be compelled to disclose information in his possession before the criminal proceedings were disposed of."

34. In *Equisec (Pty) Ltd v Rodriguez and Another* 1999 (3) SA 113 (W) at p 116 I - J Nugent J (as he then was) drew attention to the fact that our courts have intervened where the potential exists for the person to be subjected to compulsion to divulge information, although even then it has not generally been by suspending the civil proceedings. In *Gratus and Gratus supra*, the court granted a provisional sequestration order but directed that, pending the result of the criminal proceedings, there should be no interrogation of the respondent. (See: *Du Toit v Van Rensburg* 1967 (4) SA 433 (C) and *Irvin & Johnson Ltd v Basson* 1977 (3) SA 1067 (T)) where a similar approach was adopted.
35. I take cognisance of the fact that the Bill of Rights in our Constitution under section 35 gives an arrested or detained person who allegedly committed an offence the right to remain silent, and section 35(1)(c) provides that every such person has the right not to be compelled to make any confession or admission that could be used in evidence against him or her. Section 35(3) provides that every accused person has a right to a fair trial, which includes the right to be presumed innocent, to remain silent, and not to testify during the proceedings. Section 35 (3)(j) gives anyone the right not to be compelled to give self-incriminatory evidence.
36. In *Ferreira v Levine NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC) the court declared section 417(2)(b) of the Companies Act unconstitutional because it allowed answers given at an

enquiry to be used as evidence in criminal proceedings against the person on charges other than those of perjury and related offences.

37. Section 10 of the Judicial Matters Amendment Act 55 of 2002, published in the Government Gazette 24277 dated 17 January 2003, has amended section 417(2)(b) of the Companies Act. The new amendment reads that any person summoned to an enquiry may be required to answer any question put to him or her at the examination, notwithstanding that the answer might incriminate him or her, and shall, if he or she refuses on such ground, be obliged to answer at the instance of the Master or the Court. The Master or the Court may only compel a person to answer a question after the Master or the Court has consulted with the Director of Public Prosecutions, who has the requisite jurisdiction. Section 417(2)(c) now determines that any incriminating answer or information directly obtained or incrementing evidence directly derived from an examination in terms of this section shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned, except where the person concerned is charged with perjury or related offences.
38. Pretorius' invocation of the constitutional right to remain silent betrays either misunderstanding or deliberate evasion. Pretorius cannot, without more, refuse to say what happened to the monies that were transferred to his personal account. His failure to explain why the money was transferred to his personal accounts other than the business account of the company would not necessarily open him to self-incriminating conduct or evidence. It depends whether he has an innocent explanation. Furthermore, the tender the

respondent made, which was accepted by the applicant, is an admission by the respondent of its indebtedness to the applicant. At this stage of the proceedings, Pretorius is not an accused person because he was neither arrested nor detained in connection with any criminal charge. At this stage of the proceedings, there is no risk of an impending prosecution, it is only speculation.

39. In any event, the amended section 417(2)(c) compels Pretorius to answer any question, even if it incriminates him, as such evidence at an inquiry would not be admissible against him in subsequent criminal proceedings, except if he perjured himself. As things are at the moment, there can be no prejudice if he stated in the supplementary answering affidavit what happened to the funds. Stated differently, there is therefore no conceivable prejudice in accounting for funds entrusted to the respondent. The applicant has a legitimate interest to quote Nugent J in establishing the whereabouts of the funds that were placed in the respondent's possession. Pretorius' silence, in the face of detailed allegations strengthens the inference that the funds were wilfully misappropriated.
40. The respondent's tender to repay R39,750,000.00 is a judicially binding admission of indebtedness. Its failure to honour that tender demonstrates commercial insolvency. The supposed damages claim advanced is unsubstantiated and incapable of negating a clear monetary obligation. As the Supreme Court of Appeal said in *Afgri Operations Limited v Hamba Fleet (Pty) Ltd 2022 (1) SA 91 (SCA)* par 7, a speculative counterclaim cannot defeat a

liquidation application where indebtedness is admitted and the debtor is plainly unable to pay.

41. The court cannot ignore what is self-evident: a corporate entity that accepts vast sums, renders no service, and fails to account for its use of funds has forfeited the right to continue trading under the protection of limited liability.
42. The applicant's claim exceeds R100.00 (Companies Act 61 of 1973, s 344(f); the respondent is unable to make good on its tender (s 345(1)(a)); and there is no *bona fide* dispute on reasonable grounds. See *Kalil v Decotex (Pty) Ltd 1988 (1) SA 943 (A) at 976H- I*. Each of these requirements is manifestly satisfied.
43. I make the following order:
 - 43.1. The applicant's non-compliance with the forms and service provided for in Rule 6 of the Uniform Rules of Court be condoned and this matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
 - 43.2. The respondent is placed under provisional winding-up in the hands of the Master of the High Court, Cape Town.

43.3. A rule *nisi* be issued calling upon the respondent and any other interested party to appear and to show cause, if any, to this Honourable Court on 5 December 2025 as to:

43.3.1. why the respondent should not be placed under final liquidation; and

43.3.2. why the costs of this application should not be costs in the winding-up in the liquidation.

43.4. That service of this order be effected:

43.4.1. by the Sherif of this Court at the registered office of the respondent;

43.4.2. by publication in one English and one Afrikaans newspaper circulating in the Western Cape;

43.4.3. by the Sheriff of this Court on the respondent's employees in the manner prescribed in Section 346(4)A of the Companies Act, 61 of 1973, as amended;

43.4.4. by the Sheriff of this Court on every Trade Union, as far as the applicant can ascertain represents the respondent's employees; and

43.4.5. on the South African Revenue Services.

S C O'BRIEN

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Adv B Manca SC

Instructed by: Assheton-Smith Ginsburg Inc

For the Respondent: Adv J Van der Merwe SC assisted by Adv G Whitcomb

Instructed by: Spamer Triebel Inc