IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Case no: 990/2025

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

Circulate to Magistrates: YES / **NO**

In the matter between:

ZECHA JV ROSSTECH XEROX (PTY) LTD	1st Applicant
SEPHIRI ERNEST MOSALA	2nd Applicant
CHARLES ALFRED ROSSOUW	3rd Applicant
ROSSBURG INDUSTRIAL ENTERPRISES (PTY) LTD t/a ROSSTECH XEROX	4th Applicant

and

ZECHA HOLDINGS (PTY) LTD	1st Respondent
MELISSA MARLENE JAPHTA	2nd Respondent
FIRSTRAND BANK LTD t/a FNB BANK	3rd Respondent
STANDARD BANK OF SOUTH AFRICA LTD t/a STANDARD BANK	4th Respondent

Neutral citation: *Zecha JV Rosstech Xerox (Pty) Ltd and 3 Others v Zecha Holdings (Pty) Ltd and 3 Others* (Case no 990/25) 07/11/ 2025.

Coram: TLALETSI JP

Delivered: 07 November 2025.

Summary: Return day of a rule *nisi* – Having granted interim restorative relief on urgent *ex parte* basis – Respondents failing to show cause why relief should not be made final – Applicants having made a case for the relief – Relief granted – Rule *nisi* confirmed.

ORDER

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1. The third respondent is ordered to forthwith transfer the amount of R4,250 000,00 (Four Million Two Hundred and Fifty Thousand Rands), from the account held in its books by the first respondent under account number 6[...], into the account held by the first applicant with the fourth respondent under account number 3[...]; and

2. The first and second respondents are ordered to pay the costs of this application on party-and-party scale, jointly and severally with each other, the one paying the other to be absolved *pro tanto*.

JUDGMENT

Tlaletsi JP

[1] This is a return day of a rule *nisi* that was granted *ex parte* by Stanton J on 17 April 2025 based on the *viva voce* evidence tendered by Ms Andriette Rossouw on behalf of the first applicant. The interim order granted is on the following terms: -

“1. That this matter be heard as one of urgency and that the applicants’ non-compliance with the rules of court regarding service and time periods be condoned.

2. That the respondents are called upon to show cause, if so advised, on 16 May 2025 why the following shall not issue:

   2.1 That the third respondent is ordered to forthwith transfer the amount of R4,250, 000.00 from the account held in its books by the first respondent under account number 6[...] and transfer it into the account held by the first applicant with the fourth respondent under account number 3[...]; and

   2.2 That first and second respondents be ordered to pay the costs of this application on the scale as between attorney and client and which liability is to be jointly with and severally from each other, the one paying the other to be absolved pro tanto.

3. That paragraph 2.1 above will serve as an interim interdict with immediate effect pending the final determination of this application and that the fourth respondent is ordered to place a hold on account number 3[...] pending the final determination of the application.

4. That the evidence tendered be transcribed as a matter of extreme urgency and on transcription thereof be served and filed before the return date, together with the notice of motion, founding affidavit by Ms A Rossouw, confirmatory affidavit of Mr L Fouche, and annexures thereto, service to be effected in terms of the Rules of Court.

5. That the Applicant’s attorney is authorised to deliver a copy of the court order to the Respondents either by email or hand.”

[2] It is apposite to set out the factual matrix to identify the parties and their respective standing, and further provide the factual basis of the controversy in this matter.

[3] The first applicant is Zecha JV Rosstech Xerox (Pty) Ltd ("Zecha JV"), a private company duly registered in terms of the laws of the Republic of South Africa. The second applicant is Mr Sephiri Ernest Mosala ("Mosala"), a major male businessman. The third applicant is Mr Charles Alfred Rossouw ("C Rossouw"), a major male businessman. The fourth applicant is Rossburg Industrial Enterprises (Pty) Ltd, trading as Rosstech Xerox ("Rosstech Xerox"), a company also duly registered in terms of the laws of the Republic.

[4] The first respondent is Zecha Holdings (Pty) Ltd ("Zecha Holdings"), a company also duly registered in terms of the laws of the Republic. The second respondent is Ms Melissa Marlene Japhta ("Japhta"), a major female. The third respondent is FirstRand Bank Ltd, a public company duly registered in terms of the laws of the Republic and providing banking services to its clients. The fourth respondent is Standard Bank of South Africa Ltd, also a public company duly registered in terms of the laws of the Republic and providing banking services to its clients.

[5] On 6 August 2021, Zecha Trading CC (a Close Corporation of which Mosala is the sole member) entered into a joint venture agreement with Rosstech Xerox, the fourth applicant. The purpose of the joint venture was to submit a tender to the Northern Cape Department of Education ("the Department") to provide printing and packaging of examination papers used, *inter alia*, in the administration of the Matric Examinations in the Northern Cape Province.

[6] The said tender was ultimately awarded to the joint venture entity. The parties to this joint venture converted the joint venture into a private company for it to be a vehicle to conclude the required contract with the Department. That is how the Zecha JV came into being. The shareholding of Zecha JV was as follows: Mosala held 51% and C Rossouw held 49% of the issued share capital. The two were also the only initial directors of Zecha JV.

[7] In the course of time, Mosala and C Rossouw resigned as directors of Zecha JV and appointed Japhta as the sole director. The reason for this move is something that is not fully explained on the papers. Considering the view I take of this matter, nothing turns on this issue. However, according to the applicants, the two (Mosala and C Rossouw) remained the only shareholders of Zecha JV. As it will be shown later, Japhta contends that the actual shareholding of Zecha JV changed. The administrative tasks of Zecha JV were performed by the staff of Rosstech Xerox. Andriette Rossouw, who is the deponent to the founding affidavit and employed by Rosstech Xerox, acted as the manager of Zecha JV. Mr Louis Fouché ("Fouché"), who is the financial manager of Rosstech Xerox, performed the same functions for Zecha JV.

[8] The business of Zecha JV was conducted thus: All printing, packaging, paper and other consumables required for its contractual obligations with the Department were supplied and performed by Rosstech Xerox. Rosstech Xerox paid for all consumables needed and invoiced Zecha JV for goods and services supplied by it. According to the applicants, Rosstech Xerox is currently owed an amount of R18 579 568,33 for goods and services supplied to Zecha JV.

[9] At all material times, the main source of income for Zecha JV was the contract concluded with the Department. Payments received by Zecha JV

for goods and services rendered to the Department were used to pay for invoices rendered to Zecha JV by Rosstech Xerox, and the balance would be used to pay for other liabilities. At the inception of Zecha JV, a business current account was opened at Standard Bank with account number 3[...]. Mosala and C Rossouw were the only two persons authorised as signatories on the said bank account. Fouché was the only person authorised by the directors to effect internet payments from the said bank account.

[10] Rosstech Xerox obtained material for the service of the contract between Zecha JV and the Department from other creditors (i.e. Mondi, Altron and BCX Bank). For example, it obtained paper from Mondi. BCX Bank financed the specialised equipment obtained by Rosstech Xerox for the discharge of Zecha JV's obligations with the Department. As of April 2025, Rosstech Xerox was facing substantial pressure from these creditors and was anxiously awaiting a long overdue payment from the Department. The long-awaited payment was to be effected by the Department into the account of Zecha JV, pursuant to the contract alluded to above. It bears emphasis that the management of Zecha JV and that of Rosstech Xerox are, for all intents and purposes, the same.

[11] It is not disputed that on 16 April 2025, Andriette Rossouw received a telephonic call from an official in the employ of the Department, advising her that a substantial payment was to be made by the Department to Zecha JV on that day, and that they should confirm receipt thereof by 16h00. Andriette Rossouw informed Fouché of this situation and requested him to be on the alert and, as requested, to confirm the payment by 16h00 if made. She further requested him to effect payment to Rosstech Xerox in respect of monies owed to it.

[12] Shortly after 16h00 on 16 April 2025, Fouché did check Zecha JV's bank account electronically and established that a payment of R5 912 197,32 from the Department indeed reflected in the account. However, he further discovered that a payment not effected by him, in the amount of R4 000 000,00 had been made from that account of Zecha JV. He immediately drove to Andriette Rossouw to report the development.

[13] It transpired that shortly after the payment of the R4 000 000,00, further amounts of R250 000,00, and two amounts of R5 000,00, respectively, had been paid from the account of Zecha JV. These transactions were unbeknown to both Andriette Rossouw and Fouché. Upon enquiry from Standard Bank, it was established that Japhta had on 16 April 2025 changed the mandate with the bank, and replaced Fouché with herself as the only person authorised to effect payment from that banking account. She made the payments of R4 000 000,00 and R250 000,00 referred to above to an account held in the name of Zecha Holdings held at FNB with account number 6[...]. The sole director of Zecha Holdings is Mr Quincy Marlon Monchusie, Japhta's brother.

[14] The two payments in the amount of R5 000,00 were made as cash transfers to telephone numbers, which would entitle the person with the telephone numbers to withdraw the cash amounts from any Standard Bank outlet ("cash send"). On the same day (16 April 2025), Fouché received a letter from Japhta informing him, *inter alia*, that his access to the account number 3[...] is terminated with immediate effect, and that any access by him to the account will be considered fraudulent.

[15] It is not clear from the papers how Japhta, who in the applicants' version was not an authorised signatory to the account with number 3[...], happened to know about the payment of the amount of R5 912 197,32 by the Department on 16 April 2025.

[16] Immediately after the discovery of the above facts, Mosala and C Rossouw, as shareholders of the first applicant, reported the above transactions to Standard Bank as fraudulent. The latter interacted with FNB and caused the FNB account (which received the payments) to be placed on temporary hold. A criminal case for theft and or fraud was also registered with the South African Police Service. Mosala and C Rossouw claim that as the only shareholders of Zecha JV, they took these steps with a view to safeguard the monies belonging to Zecha JV, pending the resolution of a possible dispute between the parties.

[17] Mosala and C Rossouw held a meeting of the shareholders of the first applicant on 17 April 2025 at 10:30. At this meeting, Japhta was dismissed as the director of Zecha JV in absentia. The shareholders reinstated themselves as directors of the first applicant. They resolved to institute legal proceedings and authorised Andriette Rossouw to bring an application to this Court on behalf of Zecha JV, and that the applicants' attorneys of record be appointed for that purpose.

[18] Japhta deposed to an answering affidavit in opposition to the application. The other three respondents are not opposing the application. Her response in a nutshell boils down to the following. On 15 April 2022 at Kimberley, she entered into a written Shareholder Sale Agreement ("Share Sale Agreement") with Mosala in terms whereof Mosala sold, and she purchased, 51% of the shareholding in the first applicant (Zecha JV). In support of this averment, she attached as annexure MJ1, the alleged Share Sale Agreement. As consideration for the 51% shareholding interest, an amount of R100-00 was paid in cash to Mosala after signing the agreement. Monchusie is one of the two witnesses to the agreement.

[19] Japhta avers further that it was a condition precedent to the Share Sale Agreement that she would or ought to replace Mosala as a Director of Zecha JV within sixty days from the 15th of April 2022. The condition was, according to her, fulfilled. To support this fulfilment, she refers to annexure AR5 to the founding affidavit, which is a certificate issued by the Commissioner of Companies and Intellectual Property Commission ("CIPC") on 22 November 2022 for Zecha JV. In the certificate, Japhta is reflected as "Director" having been appointed on 01 May 2022. She avers that she has, "*therefore*" been the majority shareholder in the applicant since 15 April 2022, and that this position has not changed.

[20] She further refers to annexure MJ2 of her answering affidavit, being a copy of an email dated 13 June 2022 from Andriette Rossouw to Veronica Crouse. The latter is an accountant to Zecha JV, and the email was directing her to see to it that Mosala is removed as "dir" and Japhta and C Rossouw must be included "51 – 49". The above notwithstanding, Japhta avers that the applicants, together with Andriette Rossouw, are well aware that she is the majority shareholder of Zecha JV. According to her, the above email was informing Crouse that she should see to it that the amendments to the shareholding of Zecha JV be effected to show that she (Japhta) holds 51% of the issued share capital and C Rossouw holds 49% thereof. According to Japhta, she had been under the impression that all formalities required for the registration of her 51% shareholding in Zecha JV had been complied with. She states that she remained under this impression until she was provided with the interim order granted by Stanton J in these proceedings.

[21] The implication of the above circumstances, she avers, is that Mosala had ceased to be a shareholder of Zecha JV since 15 April 2022, and therefore no valid shareholders' meeting could be held with him on 17 April 2025. She had acquired Mosala's rights attached to Zecha JV,

including his voting rights. Therefore, any decision taken at that meeting was irregular and unlawful, including the decision to launch this application. Japhta further contends that Mosala does not have a substantial interest in Zecha JV and, as such, lacks the *locus standi* to bring this application against her.

[22] Regarding the dealings with the bank, Japhta avers that on 14 April 2025, she formally requested Standard Bank to remove Fouché as a signatory on Zecha JV's account and to change the internet banking login details on the account. As the sole director and signatory to the account with Standard Bank, she avers that she was entitled to take the aforesaid steps. That she acted urgently, as she could no longer allow Andriette Rossouw and Fouché to sideline her in the conduct of the business of Zecha JV and continue to financially mismanage it. She contends that as the sole director of the applicant, she is legally responsible for the day-to-day running of the entity and entitled to exercise her functions.

[23] According to Japhta, it was Monchusie who identified the opportunity to submit a tender to the Department and who brought Mosala and C. Rossouw together for the purpose of submitting that tender. As regards the payments from the Standard Bank account, which she admits having made, Japhta avers that her brother (Monchusie) had entered into a verbal agreement with the parties to the joint venture in terms whereof he would be remunerated for the consultancy services he provided to Zecha JV. To date, he had been paid approximately 50 times by Zecha JV for his consultancy services in a total amount of R5, 500 000.00. In support of this averment, Japhta refers this Court to annexure MJ9, being an extract of Zecha JV bank statement showing some of the payments made to Zecha Holdings. She avers further that he was, however, not paid since February 2024 by Zecha JV, and at the end of February 2025, he was owed an amount of R21 453 051,00. Therefore, on 3 March 2025, Japhta,

acting on behalf of Zecha JV, entered into a written Acknowledgement of Debt and Settlement Agreement in terms whereof it was agreed *inter alia*, that Monchusie be paid an amount of R4 000 000,00 by the 30th of April 2025, and that such payment would settle Zecha JV's indebtedness to Monchusie. The Acknowledgement of Debt and Settlement Agreement is attached as annexure MJ10 to the Answering Affidavit. An invoice dated 12 April 2025, rendered to the applicant by Zecha Holdings (of which Monchusie is a director), is annexure MJ11.

[24] Japhta avers that she had a verbal agreement with Andriette Rossouw when she became a director of the applicant that she would earn a salary of R45,000.00 per month. She was, however, not paid her salary by Andriette Rossouw and Fouché despite her repeated requests. As a result, she effected payment to herself on the 16th of April 2025 in part payment in the sum of R250 000,00. She denies that the payments she made were fraudulent.

[25] To recap, the interim order granted by Stanton J is simply that the third respondent be ordered to forthwith transfer the amount of R4,250, 000.00 from the account held in its books by the first respondent under account number 6[...] and transfer it into the account held by the first applicant with the fourth respondent under account number 3[...]. This is the order that the applicants seek this Court to confirm. In essence, the applicants are seeking a restitutionary relief. In addition, the interim order granted in the form of an interdict ordered the fourth respondent to place a hold on account number 3[...] pending the final determination of the application. To succeed, the applicants must establish a clear right, an injury committed or apprehended, and the absence of a satisfactory remedy.[1]

[26] The affidavits filed by the parties raise some disputes of fact. Since the applicants are seeking final relief, the principles established in *Plascon-*

[1] *Setlogelo v Setlogelo* 1914 AD 221 at 227.

Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd[2], where possible, find application. The final order will be granted if the facts averred by the applicants in the founding affidavit, which have been admitted by the respondents, together with the facts alleged by the respondents, justify the order sought.[3] The applicants are required to show, on a balance of probabilities, facts which in terms of substantive law, establish the right relied upon.[4] I proceed to consider whether the applicants have satisfied the requirements for the order sought.

[27] At the outset of the hearing, there was a misunderstanding as to which issues needed to be determined in this application. The parties ultimately agreed that the issues that were to be determined in the application that was launched by Japhta and Zecha JV Rosstech Xerox (Pty) Ltd against some of the current applicants should not be part of this application. That application served before Mamosebo J, and she made an order "dismissing the application with costs". In this application, the issues as agreed by the parties are: whether Japhta as the sole director of Zecha JV had, as a matter of fact, on 16 April 2025, the authority to transact on account number 3[...] held at Standard Bank; whether Japhta is the holder of 51% of the issued share capital in Zecha JV; and what an appropriate order would be in relation to costs.

[28] The common cause facts have established that the money that had been deposited into bank account number 3[...] held at Standard Bank belonged to Zecha JV. Further, that Japhta made payments from that account. The question that arises is whether Japhta could deal with that money as she did. It is Japhta's case that by being the sole director of Zecha JV, she had

[2] 1984 (3) SA 623 (A).

[3] *Ibid* at 634H-I; See also *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) para 26.

[4] *Technoserve Medium Voltage (Pty) Ltd v Technical Reticulation Services (Pty) Ltd and Others* 2025 JDR 1747 (WCC) para 43 – 44; See also *Mayula Procurement and Property Management (Pty) Ltd v Kopane* 2020 JDR 1679 (FB) para 16.

all the authority to transact on its behalf as she did. Furthermore, she contended that Mosala had ceased to be the shareholder of Zecha JV as she purchased his shares, and she became the majority shareholder. It is therefore necessary to investigate whether indeed Japhta became the majority shareholder as she alleges. The result of this investigation will provide the answer to the point in *limine* raised by Japhta, namely, that the applicants failed to disclose material information to the court when they obtained the interim order *ex parte.* The information which is alleged ought to have been disclosed is that Mosala was no longer a shareholder of Zecha JV as of 15 April 2022. The applicants are, as a result, said to have misled the court.

[29] Japhta relies on the Share Sale Agreement for her contention that at the time when she made the monetary transfers, she was the majority shareholder of Zecha JV, having purchased Mosala's 51% interest. Mosala disputes that he concluded the alleged Share Sale Agreement. He disputes his signature on the document and submits that if it is indeed his signature, it must have been taken from a separate contract and added to the alleged Share Sale Agreement.

[30] The court is then faced with diametrically opposed versions of the parties. On the face of it, what appears to be Mosala's signature and those of witnesses to the document (the alleged Share Sale Agreement) is in the document. In the disputed Share Sale Agreement, Ernest Mosala is reflected as the "Seller" and Japhta is reflected as the "Buyer". The significance and relevance of the document in this application is considered hereunder.

[31] It is common cause that the Share Certificate of Zecha JV dated 11 February 2022 (annexure AR2) reflects that Mosala is the owner of 51% Ordinary Shares. Similarly, the Share Certificate issued to C Rossouw,

also dated 11 February 2022, reflects the latter as the owner of 49% of the Ordinary Shares in Zecha JV. These appear to be the only Share Certificates issued by Zecha JV. There is no other official document produced to show that Japhta had become a shareholder of Zecha JV. The only official document produced indicates that she was registered as a Director of Zecha JV. In the absence of any official document, it must be accepted that, for all intents and purposes, Japhta had not been a shareholder of Zecha JV. Zecha JV has legal personality, and the only proof of its shareholders is reflected in the documents provided by Zecha itself, and the records held by the entity responsible for the registration of companies, the CIPC. If indeed there was any valid Share Sale Agreement between Mosala and Japhta, the official records of Zecha JV were never changed to reflect the purported changes. On this aspect alone, it must be found that Mosala was a 51% shareholder of Zecha JV and not Japhta.

[32] The determination of the legality or otherwise of the Share Sale Agreement is, in my view, not necessary to determine whether a clear right for purposes of this application has been established. The probabilities and improbabilities relating to the conclusion of the alleged agreement shall therefore not be considered in this judgment. In this regard, the shareholders have a standing to bring this application on behalf of the joint venture and in their individual capacity as well. Section 60 of the Companies Act 71 of 2008[5] allows shareholders to pass a

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[5] **60. Shareholders acting other than at meeting**

(1) A resolution that could be voted on at a shareholders meeting may instead be-

(a) submitted for consideration to the shareholders entitled to exercise voting rights in relation to the resolution; and

(b) voted on in writing by shareholders entitled to exercise voting rights in relation to the resolution within 20 business days after the resolution was submitted to them.

(2) A resolution contemplated in subsection (1)-

(a) will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders meeting; and

(b) if adopted, has the same effect as if it had been approved by voting at a meeting.

resolution in writing, outside of a formal meeting. Such a resolution has the same legal effect as if it was passed at a shareholders' meeting.

[33] The legality of the removal of Japhta as the director of Zecha JV has no bearing in these proceedings. It is to be recalled that the removal occurred by resolution taken at a meeting held on 17 April 2025. This application is based on the activities of Japhta on 16 April 2025, when her directorship of Zecha JV was not an issue. This brings me to the next issue to be determined, namely, whether Japhta could transact as she did on 16 April 2025 on the bank account number 3[...] held at Standard Bank.

[34] The mandate given to Standard Bank on who had the authority to make transactions on the account on behalf of Zecha JV is contained in annexure AR4 to the replying affidavit. The aforementioned annexure is an application to open a current account for Zecha JV submitted on 12 May 2022. The related persons in the application are C Rossouw and Mosala. The instruction is that the two are to sign jointly for the validity of the transactions on the account. It is notable that this application (to open a Business Account) is preceded by the alleged Share Sale Agreement between Japhta and Mosala. However, in the aforesaid application made on 12 May 2022, Japhta's particulars do not appear.

[35] Annexure MJ13 is a document that Japhta contends is a mandate to the bank to afford her signing authority in the aforementioned bank account

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(3) An election of a director that could be conducted at a shareholders meeting may instead be conducted by written polling of all of the shareholders entitled to exercise voting rights in relation to the election of that director.

(4) Within 10 business days after adopting a resolution, or conducting an election of directors, in terms of this section, the company must deliver a statement describing the results of the vote, consent process, or election to every shareholder who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be.

(5) For greater certainty, any business of a company that is required by this Act or the company's Memorandum of Incorporation to be conducted at an annual general meeting of the company, may not be conducted in the manner contemplated in this section.

from which she transacted on 16 April 2025. The objective facts found on this document, however, support the applicants' version. The document is dated 29 January 2024, and was submitted to open a "Moneymarket Call Account-Investment" as an additional account for Zecha JV. Notably, Fouché is included together with Japhta as signatories to this additional account. The latter is also reflected as the director of Zecha JV. Both Japhta and Fouché have appended their signatures to the document. Furthermore, just like as reflected in Annexure AR4, which relates to the current account of Zecha JV, both Mosala and C Rossouw are reflected as shareholders. Notably, at the time when the additional "Moneymarket Call Account – Investment" was opened in the name of Zecha JV, the shareholding and respective percentage interests of Mosala and C. Rossouw in Zecha JV, as reflected on Annexure MJ13, remained unchanged from what appears on Annexure AR4. The mandate to the bank is for Japhta and Mosala to sign jointly for the transactions on this additional account.

[36] The inescapable conclusion is that, when Japhta transferred the money from account number 3[...], she did not have the necessary signing powers on the account. For her to acquire such powers, she needed the mandated signatories to authorise the Bank to allow her to be able to access and transact on the account. She also required the authority of the signatories, namely, C Rossouw and Mosala, for her to remove Fouché as a signatory to the transactions on the account.

[37] There is a further reason why Japhta could not legally transfer money from the account as she did. Section 75(3) of the Companies Act provides that:

"If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued securities of the company, that person may not-

(a) approve or enter into any agreement in which the person or a related person has a personal financial interest; or

(b) as a director, determine any other matter in which the person or a related person has a personal financial interest,

unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders."

[38] It is common cause that she has a familial relationship with Monchusie, which makes the latter a "related person" for purposes of section 75(3).[6] Similarly, the purported Acknowledgement of Debt and Settlement Agreement Japhta submits the R4 000 000 payment was made with regards to, would be an "agreement" for purposes of section 75(3).[7] Japhta did not obtain the consent of the shareholders to conclude an Acknowledgement of Debt and Settlement Agreement with Monchusie. Therefore, her actions contravened the provisions of section 75(3) of the Companies Act.

[39] Japhta's claim to the payment of the amount of R250 000,00 and subsequent payments of the amounts of R5000,00, is that they represented outstanding salary that was due to her, which was not paid to her despite her repeated requests. These payments were partial settlement of the joint venture's indebtedness to her. The challenge Japhta is encountering is that in her own version, she had a verbal agreement with Andriette Rossouw some time back that she would earn a remuneration of R45000,00 per month, and that the verbal agreement was never honoured. Andriette Rossouw, who disputes this averment, was

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[6] By virtue of s 2(1)(*a*)(ii) of the Companies Act 71 of 2008.

[7] Section 1 of the Companies Act describes "agreement" as including a contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties.

neither a shareholder nor a director of Zecha JV for her to conclude a verbal agreement with Japhta to bind it.

[40] It was open to Japhta to obtain the consent of the shareholders for these payments if there was nothing untoward about them. She must have known that the shareholders would not give the necessary authority for the payments.[8] She unilaterally took a decision in a matter in which she had a financial interest to the disadvantage of a company which she owed a fiduciary duty. Secondly, the payment of R250 000,00, which she claims to have paid to her Capitec Bank account as her salary, is not factually correct. The payment was made to Zecha Holdings, a company in which her brother (Monchusie) is a sole director. It is also significant that she does not provide any reason or explanation for the two R5000,00 cash payments to cell-phone numbers.

[41] I am satisfied that the applicants have succeeded in showing that the first, second, and third applicants have a clear right. By making the monetary transfers to Zecha Holdings, Japhta interfered with the applicants' clear right. This includes the transfers of the two R5000,00 made through the Cellphone numbers as "Cash Send". The applicants had a clear right that the money belonging to Zecha JV not be appropriated without authorisation. The applicants have registered a criminal case with the South African Police Service against Japhta. That would not secure the money to be paid back to the joint venture account. That case can therefore not serve as substantial redress to the applicants. The submission on behalf of Japhta to the contrary has no merit. FNB has placed a temporary hold on the money transferred. Without the

[8] Her conduct may very well constitute "self-help", which our common law has always recognised as unlawful. [*Bock and Others v Duburoro Investments (Pty) Ltd* (228/2002) [2003] ZASCA 94; [2003] 4 All SA 103 (SCA); 2004 (2) SA 242 (SCA) (26 September 2003) para 14)

confirmation of the rule *nisi*, the money will not be repaid to the joint venture. The rule *nisi* issued must therefore be confirmed.

[42] What remains is the issue of costs. Both parties to the dispute have submitted that costs should follow the result. I agree. What needs to be decided is the scale applicable to such costs. On behalf of the applicants, Mr Van Niekerk SC urged this Court to award costs on the scale between attorney and client. He based his submission on what he referred to as the conduct of the respondent which is said to be of a reprehensible nature. He further submitted that the matter is of sufficient complexity such that counsel's fees be taxable on scale C of Rule 69(7). I am not persuaded that the facts and conduct of the parties warrant a punitive order of costs, and further that the matter is sufficiently complex to warrant fees of counsel to be taxed as submitted. There are certain matters that have not been sufficiently explained regarding the conduct and the role of the parties in the activities of the tender itself.

[43] In the result, the rule *nisi* issued by Stanton J is to be confirmed with costs. In effect, the following order is made:

1. The third respondent is ordered to forthwith transfer the amount of R4,250 000,00 (Four Million Two Hundred and Fifty Thousand Rands), from the account held in its books by the first respondent under account number 6[...], into the account held by the first applicant under account number 3[...]; and

2. The first and second respondents are ordered to pay the costs of this application on party-and-party scale, jointly and severally with each other, the one paying the other to be absolved *pro tanto*.

LP TLALETSI

JUDGE PRESIDENT

NORTHERN CAPE DIVISION

Appearances

On behalf of the Applicants:	Adv. J.G Van Niekerk SC
Instructed by:	Engelsman Magabane Inc, Kimberley
On behalf of the 1st and 2nd Respondents:	Adv. J.K Mongala
Instructed by:	JC Taylor Inc, Kimberley