

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2025-038772

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

In the matter between

K[...] S[...] S[...]

Applicant

and

FIRE FANATIX CC

First Respondent

W[...] A[...] S[...]

Second Respondent

JUDGMENT

[1] This is the return day of a provisional winding-up order, granted by Dippenaar J, winding-up the first respondent, a close corporation, on the basis that it is just and equitable to do so.

[2] The applicant and the second respondent are husband and wife, apparently in the throes of an acrimonious divorce, and each a 50% registered member of the first respondent.

[3] The second respondent raised various defences to the winding-up application brought by the applicant, the main ones being:

[3.1] The applicant is not in fact a 50% member, but holds her 50% interest as the second respondent's nominee.

[3.2] The first respondent is not unable to pay its debts.

[3.3] The applicant has not approached the court with clean hands, which is necessary when seeking a winding-up on just and equitable grounds.

[4] Dippenaar J gave a careful and reasoned judgment, the main findings of which are the following:

[4.1] The respondents to a large extent left the applicant's version unchallenged (para 14).

[4.2] It was not meaningfully disputed on the papers that the business of the first respondent has been subsumed into Facility Fire¹ (para 15).

[4.3] The respondents' version that the applicant holds her 50% interest in the first respondent as the second respondent's nominee does not create a *bona fide* irresolvable dispute of fact, and it would serve no purpose to refer that issue to oral evidence (para 25).

[4.4] The applicant manifestly failed to make out any case that the first respondent is commercially insolvent or unable to pay its debts (para 27).

¹ The relevance of this entity to this matter is explained below.

- [4.5] The applicant's behaviour does not bar her from obtaining a winding-up order on the just and equitable ground (para 35).
- [4.6] The evidence establishes at least *prima facie* that the deadlock principle is applicable (para 38).
- [4.7] It cannot be concluded that there are alternative remedies at the disposal of the parties (para 39).
- [4.8] A winding-up order is appropriate and necessary so that all the irregularities can be properly investigated (para 39).
- [4.9] The applicant has "established a case on a *prima facie* basis and a provisional order is appropriate. Importantly, there may well be interested parties, such as creditors of the first respondent, who may wish to participate in the proceedings who should be afforded an opportunity to do so. It is further open to the respondents to seek to persuade a court on the return of the order that no final order should be granted." (para 40).
- [5] The respondents delivered no further affidavits after the provisional order was granted, and have done nothing to disturb the *prima facie* case found by Dippenaar J. To the extent that it was incumbent on the respondents to show cause why the provisional order should not be made final, they have done nothing to do so. Instead, counsel for the respondents, Mr W Coetzee, sought to argue that the applicant's case as made out in the founding papers did not pass muster and was insufficient to justify a final order. Whereas the test at the stage of provisional winding-up is whether the applicant has adduced *prima*

facie proof of its case, when a final order is sought, the relief sought must be proved on a balance of probabilities²

- [6] Mr Coetzee submitted that, on the strength of the case of Jafte v Ilifu Trading 330 CC³, that it is an extreme stance to wind up a solvent entity. That case is however distinguishable. There were four members in the respondent close corporation, and the court found that the winding-up of the respondent would bear extremely harshly on the applicant's co-members who had contributed their effort and expertise to the respondent and grown it into a successful and flourishing concern against the applicant's minimal contribution and deliberate lack of participation since a particular event.
- [7] The applicant and second respondent are in the throes of an acrimonious divorce. That makes co-operation difficult if not impossible, and a deadlock probable.
- [8] But more importantly, the applicant alleges that the business of the first respondent, Fire Fanatix, has over a number of years been transferred to and subsumed into another entity owned by the second respondent and later by his father, namely Facility Fire (Pty) Ltd, which is in the same line of business as the first respondent. The financial statements of the first respondent reflect that from the financial year ending 28 February 2020 until the financial year ended 28 February 2023, the turnover from its operations has progressively dwindled from (in round figures) R 12.6 million to R 3.7 million in the next year, to R 48 000 in the next year, to nothing in 2023. There is no proper denial of the

² Braithwaite v Gilbert (Volkskas Bpk intervening) 1984 (4) SA 717 (W) 718B-C; Wackrill v Sandton International Removals (Pty) Ltd 1984 (1) SA 282 (W) at 285A-286B

³ Jafte v Ilifu Trading 330 CC (EL 1259/11, ECD 2092/11) [2012] ZAECELLC 6 (5 April 2012)

allegation of diversion of business or explanation for this state of affairs, save for the second respondent's insistence that the applicant held her 50% member's interest in the first respondent as his nominee, and that his father started Facility Fire "pursuant to the Applicant's continued abuse of the member's interest in the First Respondent". However, on the applicant's version, not denied by the second respondent, the applicant played no role in the business for at least the last seven years, and has had no access to the bank accounts or the premises of the first respondent in that period. There was accordingly apparently no obstacle to him running the business as he saw fit, and the diversion of business to another company is clearly aimed at prejudicing the applicant. It is therefore not surprising that Dippenaar J found that the deadlock principle was at least *prima facie* established to be applicable, and that it was just and equitable to wind-up the first respondent. Dippenaar J had to go no further than a *prima facie* case, but it is clear to me that this has been established on a balance of probabilities.

- [9] Dippenaar J found that there was no purpose in referring the question of the applicant's 50% interest in the first respondent to oral evidence. I agree with that finding. The applicant and the first respondent are both reflected as 50% members of the first respondent in the annual financial statements to which I referred above. That is certainly the picture presented to the world at large. If the second respondent was indeed the beneficial 100% member of the first respondent, I would have expected him to seek to establish that in a court of law, rather than diverting business from what is, on his version, entirely his own close corporation to another company. That would be cutting his nose to spite his face. But diverting business to another entity makes sense if he believes

that the applicant is a 50% beneficial member of the first respondent. I therefore find on a balance of probabilities that the applicant is indeed a 50% beneficial member of the first respondent.

[10] Mr Coetzee also submitted that the applicant did not come to court with clean hands. That was dealt with by Dippenaar J, who found that the conduct of the applicant was not causative of the breakdown of the parties' business relationship, and that in any event the second respondent was also not without blame. That finding is in my view well justified on the facts, and has not been disturbed by any new facts.

[11] The applicant is therefore in my opinion entitled to a final order.

[12] The applicant, in a supplementary affidavit, sought further relief, namely to convene a section 417/418 enquiry. I have two difficulties with this. The first is that it is simply requested in a supplementary affidavit, without a notice of motion. The second is that there is no commissioner identified and suggested, but it is left to the court to appoint a commissioner. That is in my view undesirable, and contrary to the usual position which is that the party seeking the order would have approached a potential commissioner, obtained their agreement and suggested their name to the court. I am therefore not prepared to grant this order. The applicant is free to approach the court after the final winding-up order is granted.

[13] In the result, I make the following order:

[1] The first respondent is placed under final winding-up in the hands of the Master of this Court.

- [2] The costs of this application are to be costs in the winding-up of the first respondent.

ANDRÉ GAUTSCHI
Acting Judge of the High Court
10 November 2025

Date of hearing:	28 October 2025
Date of judgment:	10 November 2025
For the applicant:	Adv N Riley (Instructed by Fairbridges Wertheim Becker Inc)
For the respondent:	Adv W Coetzee (Instructed by Jurgens Bekker Attorneys Inc)