



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

CASE NO: 2024-099196

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

04 December 2025

Date

K. La M Manamela

In the matter between:

KAMEELDRIFT VOERE (PTY) LTD

(REG NO.: 2010/023433/07)

and

BULEX GROUP (PTY) LTD

(REG NO.: 2022/705764/07)

Applicant

Respondent

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on Caselines by the Judge's secretary. The date of the judgment is deemed to be 04 December 2025.

JUDGMENT

Khashane Manamela, AJ

Introduction

[1] The respondent, Bulex Group (Pty) Ltd ('Bulex'), was provisionally liquidated on 11 September 2024 in terms of an order of this Division at the instance of the applicant, Kameeldrift Voere (Pty) Ltd ('Kameeldrift'). Bulex proclaims to be 'an agent of business funders', locally and internationally, at the instance of 'business people and companies in need of funding'.¹ The liquidation of Bulex is or was pursued on the bases which included that Bulex is unable to repay or refund a deposit of R15 million paid into its bank account by Kameeldrift² and, thus, is commercially insolvent. Kameeldrift declares its business to in the agricultural business sector, primarily in establishing feed for feedlot and the distribution of red meat to clients. The Court issued a *rule nisi* ('an order of court to which a fixed period of validity has been assigned')³ with the return date of 1 November 2024. The return date was, subsequently, extended a number of times until 18 August 2025, when the matter served before me.

[2] Bulex was absent from Court when the order for its provisional liquidation was made. Kameeldrift had procured the order on an *ex parte* ('on behalf of; from one side')⁴ basis in an urgent application. But Bulex subsequently signalled its opposition against confirmation of the provisional liquidation order, primarily, on the ground that its role was that of an agent (in the transaction in which the R15 million from Kameeldrift was received) and that the money was transferred to an overseas to procure a loan for Kameeldrift. Bulex says it acted in good faith at all material times and, besides, it is commercially solvent.

[3] The opposed motion came before me on 18 August 2025, which date was the extended return date of the *rule nisi*. Mr MP van der Merwe SC appeared for Kameeldrift, whilst Mr LP van der Merwe appeared for Bulex. The legal representatives of Bulex only attended the

¹ Answering or opposing affidavit ('AA') par 4.1, CaseLines ('CL') 02-354.

² Pars [66]-[70] below for more on the claim or debt relied upon by Kameeldrift.

³ RC Claassen and M Claassen, *Claassen's Dictionary of Legal Words and Phrases* (Juta 2025).

⁴ *Claassen's Dictionary of Legal Words and Phrases*.

hearing to seek postponement of the proceedings and after postponement was refused they merely observed the remainder of the proceedings. I say more on the postponement below. It was also indicated that the provisional liquidators, appointed by the Master of the High Court, following the granting of the order for the provisional liquidation of Bulex, had prepared and filed a report. They wanted the report to be admitted to form part of the papers before the Court on the basis that they are jointly considered *amicus or amici curiae* ('friend(s) of the court').⁵ But they did not formally seek leave of the Court to participate in the proceedings, although they had counsel observing the proceedings. For completeness, it ought to be mentioned that the provisional liquidators had previously furnished an interim report which was incorporated into Kameeldrift's replying affidavit.⁶ I reserved this judgment after listening to oral submissions by counsel for Kameeldrift and, out of caution, extended the *rule nisi* until the handing down of this judgment.

Bulex's application for postponement

General

[4] When the matter was called on 18 August 2025, counsel for Bulex indicated that his client sought a postponement of the liquidation application ('the Postponement'). This would have been through an extension of the *rule nisi*, again.

[5] The affidavit for the Postponement is deposed to by Mr Rudolf van Niekerk, who had formally come on board, earlier that morning,⁷ as Bulex's attorney of record and not (deposed to) by any of the three directors of Bulex.⁸ The following are some of the reasons or grounds

⁵ *Claassen's Dictionary of Legal Words and Phrases*, where it is further stated that *amicus curiae* is 'the name given to a [person], who advises the court regarding a point of law or fact upon which information is required'.

⁶ Par [68] below.

⁷ CL 31-1 to 31-3. Bulex was represented by another law firm until 8 or 11 August 2025 and Rudolf van Niekerk Attorneys were appointed as Bulex's attorneys on 18 August 2025, the date of the hearing of this application.

⁸ Generally, it is considered undesirable for attorneys to depose to affidavits on matters or issues where their client is more appropriate or equally able to do so. See *Mazibuko v Singer* 1979 (3) SA 258 (W) at 264F; *Samex Consulting (Pty) Ltd v Department of Roads and Public Works Northern Cape* (2101/2021)

for the Postponement: (a) Bulex has recently changed attorneys of record; (b) a comprehensive opposing affidavit has been filed raising substantial issues of fact and law, including an explanation of Bulex's business model and how the memorandum of understanding or MOU with Kameeldrift came into being and denial of Bulex's commercial insolvency; (c) the opposing affidavit is detailed, technical and voluminous and, thus, the new attorneys require a reasonable time to consider the extensive paperwork, consult with Bulex's representatives and prepare heads of argument; (d) the hearing on 18 August 2025 is Bulex's first opportunity to fully ventilate its defences before the Court; (e) continuation of the hearing will be 'on an incomplete or ill-prepared basis' with serious prejudice to Bulex and undermining the interests of justice;⁹ (f) liquidation is final and drastic in effect with devastating consequences for the business of Bulex, a solvent company; (g) the outcome of the matter has a direct bearing on the rights of shareholders, employees and creditors; (h) the principle of *audi alteram partem* ('hear the other side')¹⁰ dictates that Bulex be afforded a reasonable opportunity to be heard and its legal representatives be given an opportunity to fully and effectively present Bulex's case, lest it is deprived of its constitutional right of access to the courts and fair hearing; (i) no prejudice will be suffered by Kameeldrift from a short postponement; (j) the 'dispute remains extant and capable of determination once [Bulex's attorneys] have had adequate opportunity to prepare';¹¹ (k) Bulex tenders the costs occasioned by the postponement inclusive of those of senior counsel; (l) postponement ought to be granted where its refusal would have an effect not capable of being remedied through an order of costs; (m) the appointed provisional liquidators – whose powers have been extended – would, in the meantime, preserve the estate and safeguard Kameeldrift's interests, and (n) the timing of Bulex's late service of the

[2022] ZANCHC 68 (28 October 2022) [7]. Also see DE van Loggerenberg, *Erasmus: Superior Court Practice* (Service 26, Jutastat e-publications May 2025) ('*Erasmus: Superior Court Practice*') RS 26, 2025, D1 Rule 6-10.

⁹ Bulex Affidavit for postponement ('Bulex AFP') par 10, CL 32-5.

¹⁰ *Claassen's Dictionary of Legal Words and Phrases*.

¹¹ Bulex AFP par 22, CL 32-9.

Postponement application (i.e. only on the morning of the hearing) ought to be condoned as it has been occasioned by Bulex's new attorneys devoting their attention to what is described as 'the fallout of these warrants and preventing the unlawful arrest' of Bulex's directors in the insolvency enquiry.¹² The latter is reference to an enquiry in terms of sections 417 and 418 of the Companies Act 61 of 1973 ('the Enquiry') as to the affairs of Bulex initiated by the provisional liquidators.

[6] Counsel for Kameeldrift submitted that the Postponement was not sought *bona fide*.¹³ Bulex or its directors had multiple opportunities to put its or their house in order, but failed to do so. No explanation is given by the directors why heads of argument were not filed earlier. This is so, despite Bulex having the necessary resources to do what it had wanted to do. Bulex's opposing affidavit was filed as far back as 18 October 2024. The Postponement is actually a repeat of what occurred in respect of the Enquiry. Bulex launched an urgent application in February 2025 for the review and setting aside or reconsideration of the provisional liquidation order ('the Interlocutory Application') the Friday before the Enquiry was set to commence. But, Bulex is yet to file a replying affidavit in the Interlocutory Application, which is opposed by Kameeldrift. It appears Bulex has abandoned the Interlocutory Application, it is submitted by Kameeldrift's counsel. Bulex's directors have stalled the proceedings and had appeared only once at the Enquiry. Regarding the assertion that Bulex's situation is the result of change in attorneys, counsel for Kameeldrift submitted that, the current attorneys were already involved in July 2025. But, there was no word from them to Kameeldrift's lawyers in this regard.

¹² Bulex AFP pars 37-38, CL 32-13 to 32-14.

¹³ A postponement application ought to be *bona fide* and not be sought 'as a tactical manoeuvre' in order to derive an advantage not legitimately possible for the particular applicant. See *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-7. See also *Van Den Steen NO and Another v Khewija Engineering and Construction Proprietary Limited* (2021/12760) [2022] ZAGPJHC 780 (10 October 2022) ('*Van Den Steen v Khewija*') [55]; *Rabie v Cotterell N.O and Others* (813/2017) [2023] ZAECELLC 1 (31 January 2023) [19].

Overall, it is submitted that, Bulex is in no position to impeach the impugned transaction or the case against it.¹⁴ For Kameeldrift's funds have been siphoned off.

[7] During the hearing I remember asking counsel for Bulex as to the source of the funds to make good the tender for the costs and his response was that the tender is from the directors. Counsel for Kameeldrift submitted that the tender for costs seemed hollow. I agree that without more, the tender seems to be of no detectable value.

[8] I also agree that from the papers in the Postponement application it is clear that Rudolf van Niekerk Attorneys, Bulex's new attorneys had been involved in the matter much earlier than 18 August 2025, the date his law firm decided it was opportune to formally come on board. This is borne by the letter the attorneys directed to the presiding officer or magistrate in the Enquiry, dated 12 August 2025, in which the following, among others, appears:

Our predecessor in the matter, attorneys Mapekula Incorporated, addressed a letter to yourself on 30 July 2025, which was also copied to the instructing attorney on behalf of the liquidating creditor, together with the Master, in terms of which it was brought to your attention that the persons summonsed to attend the enquiry had provided the necessary information and as such the warrant of arrest should be uplifted.¹⁵

[9] But the change in attorneys in itself does not avail Bulex. For, the position of our law is that a withdrawal from a matter by a legal practitioner or termination of a legal practitioner's mandate does not create a right or entitlement to a postponement to the party ultimately without a legal practitioner.¹⁶ When viewed from its proper context, Bulex enjoyed legal representation by its previous attorneys of record from 3 October 2024 to 11 August 2025. Indeed the opposing affidavit had been filed as far back as 18 October 2024. By then Kameeldrift had

¹⁴ *Lekolwane and Another v Minister of Justice* (CCT47/05) [2006] ZACC 19; 2007 (3) BCLR 280 (CC) (23 November 2006) [17] wherein the court enlarged the pool of factors worthy of a consideration in applications for postponement, namely, the broader public interest and prospects of success on the merits of the matter. See also *Shilubana And Others v Nwamitwa (National Movement of Rural Women And Commission for Gender Equality as Amici Curiae)* 2007 (5) SA 620 (CC) ('*Shilubana v Nwamitwa*') [11]; *Magistrate Pangarker v Botha And Another* 2015 (1) SA 503 (SCA) [27].

¹⁵ Bulex AFP annexure 'X', CL 32-18.

¹⁶ *Take and Save Trading CC and Others v Standard Bank of SA Ltd* 2004 (4) SA 1 (SCA); [2004] 1 All SA 597) [3]; *Magistrate Pangarker v Botha* 2015 (1) SA 503 (SCA) [26].

filed its heads of argument in September 2024, already, in preparation for the urgent sitting where the provisional order was granted. Kameeldrift, subsequently, delivered a practice note on Bulex's attorneys on 21 February 2025. There is no explanation why Bulex did not attend to all that was required during all this time when it was still represented by its previous attorneys of record. In fact, by the time the current attorneys came on board it was already too late to positively remedy the situation. There is no explanation why the previous attorneys did not file the heads of argument. Equally, it is not explained why the new or current attorneys for Bulex allowed a week to elapse, despite the urgency created by the imminent hearing of the matter. All that is mentioned is that it is due to circumstances beyond the control of Bulex, including fending off warrants for the arrest of Bulex's directors in the Enquiry. This too is recent material. The explanation is not reasonable. Therefore, no one compelled Bulex to proceed with the hearing of this opposed motion, as claimed by its attorneys. And postponement is not there for the asking¹⁷ or taking, as it ought 'to be properly motivated and substantiated'.¹⁸

[10] A seeker of a postponement is after an indulgence from the court.¹⁹ To access postponement, an applicant ought to proffer good and strong reasons.²⁰ This is attained by the applicant fully and satisfactorily explaining the circumstances giving rise to the application for postponement.²¹ Further, postponement ought to be sought timeously, being the moment the

¹⁷ *Ndamase v Commissioner: Private Inquiry into the affairs SNS Holdings (Pty) Ltd (In Liquidation) and Others* (2023/019694) [2024] ZAGPPHC 7 (17 January 2024) [11].

¹⁸ *Psychological Society of South Africa v Qwelane and Others* (CCT226/16) [2016] ZACC 48; 2017 (8) BCLR 1039 (CC) (14 December 2016); *Ndamase v Commissioner* [2024] ZAGPPHC 7 [8].

¹⁹ *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-7, relying on *Isaacs v University of the Western Cape* 1974 (2) SA 409 (C) at 411H; *Western Bank Ltd v Lester and McClean* 1976 (3) SA 457 (SE) at 460A; *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC) at 75F–G; *Van Den Steen v Khewija* [55].

²⁰ *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-7, relying on *McCarthy Retail Ltd v Shortdistance Carriers* CC 2001 (3) SA 482 (SCA) at 494D; *Grootboom v National Prosecuting Authority* 2014 (2) SA 68 (CC) at 76C–D. See also *Bovungana v Road Accident Fund* (2090/2007) [2009] ZAECHC 22; 2009 (4) SA 123 (E) (27 February 2009) [13].

²¹ *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-7 relying, among others, on *National Police Service Union and Others v Minister of Safety and Security* 2000 (4) SA 1110 (CC) at 1112C–F; *McCarthy Retail v Shortdistance Carriers* 2001 (3) SA 482 (SCA) at 494D–H; *Shilubana v Nwamitwa* at 624B–

applicant gains knowledge of the circumstances capable of justifying an application for postponement.²² However, the court retains its capacious discretion to grant postponement where this is justified by fundamental fairness and justice (rendered appropriate by the facts in a matter) even where postponement was not sought timeously.²³

[11] I dismissed the Postponement application by way of an extemporaneous ruling when this main application was heard. Counsel for Bulex informed the Court that he had no instructions to take part in the hearing beyond the Postponement application. There was no way he can argue the matter under the given circumstances, it was submitted. But he remained in Court for the entirety of the proceedings, either in keeping with the necessary decorum or his brief morphed to a ‘watching brief’. Despite, the adverse ruling against Bulex in respect of the Postponement, I will consider the contents of Bulex’s opposing affidavit, as they constitute evidence before the Court.

Background facts

[12] A brief narration of the facts in the background to this matter is necessary in order to provide context to the issues to be determined. I will do so on the basis of the facts that are common cause between the parties or, else, the points of divergence would be indicated.

[13] As indicated above, I will also have regard of Bulex’s opposing affidavit for purposes of the determination of the relevant issues, even though no written argument was filed and no oral argument was advanced on behalf of Bulex.

C; *Magistrate Pangarker v Botha* 2015 (1) SA 503 (SCA) at 509E–F; *Van Den Steen v Khewija* [55]; *Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings (Pty) Ltd* (326/2021) [2022] ZASCA 143 (24 October 2022) [6].

²² *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-7 relying, among others, on *National Police Service Union v Minister of Safety and Security* 2000 (4) SA 1110 (CC) at 1112E; *Shilubana v Nwamitwa* at 624B; *Van Den Steen v Khewija* [55]; *Rabie v Cotterell* (813/2017) [2023] ZAECELLC 1 at [16] and [18].

²³ *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-7. See also *Van Den Steen v Khewija* [55].

[14] Kameeldrift was introduced to Bulex by Mr Fritz Setzkorn. Mr Setzkorn is a representative of a Namibian related company to Kameeldrift, called Kameeldrift Fresh Meats (Pty) Ltd and is a brother in law of one of the directors of Kameeldrift. The Kameeldrift entities are involved in business in the agricultural sector. Bulex was told that Kameeldrift seeks funding for the expansion or funding of the Namibian business or operations into the red meat industry with another Namibian company or parastatal. Bulex, also, has presence in Namibia. Bulex informed Kameeldrift that Bulex can assist them in securing funding from international funders at low interest rates. Kameeldrift was informed that it needed to conclude a memorandum of understanding ('MOU') with Bulex labelled Joint Private Project Funding Program ('JPPFP'). According to Bulex, Mr Setzkorn also wanted to participate in the JPPFP as he sought to qualify for his own funding, but he was persuaded to combine his funds with those of Kameeldrift in order to secure or qualify for a higher amount. The latter assertions are denied by Kameeldrift.

[15] On 13 March 2024, Mr Schalk Jakobus Swart, in his capacity as finance manager of Kameeldrift and as a representative of the Namibian entity, met with the directors of Bulex, namely Messrs Dawid Schalk van Eck; Robert van Doorn and Markus van den Berg, at Bulex's offices in Menlyn Maine, Pretoria. Mr Swart is also the deponent to both the founding and replying affidavits. The parties met again including in Cullinan (home of Kameeldrift, with both Kameeldrift's directors joining Mr Swart) to discuss the JPPFP.

[16] According to Mr Van Eck, a Bulex's director and deponent to its opposing affidavit, on 18 March 2024 Kameeldrift informed him that it had a 'large loan' with the Landbank and that Bulex intended to utilise part of the funding secured from the international funders to settle the Landbank loan or debt. The remainder of the loan was to be used for Kameeldrift's expansion costs relating to its Namibian business.

[17] Around 25 March 2024, the representatives of Kameeldrift received a typed version of the MOU. The document was signed by representatives of Kameeldrift on 25 March 2024.

[18] On 9 April 2024, Kameeldrift paid an amount of R15 million into Bulex's bank account as the so-called 'project owner contribution' ('POC'). Elsewhere, the POC is referred to as a 'performance guarantee deposit'.²⁴ According to Bulex or a document obtained by Kameeldrift through the mechanism of Rule 35(12), the international funder is said to have received Kameeldrift's R15 million on 30 April 2024.²⁵ On 10 April 2024, Bulex furnished or issued to Kameeldrift a document purporting to be a 'corporate guarantee' in favour of Kameeldrift.

[19] On 16 April 2024, the parties are said to have met at Cullinan to discuss funding by Bulex of Kameeldrift's acquisition of 'cheap weaners' or calves. The amount of the funding sought was also R15 million and was to be made available from Bulex's own funding. It is emphasised on behalf of Kameeldrift that this meeting and oral agreement were not intended to amend the MOU between the partners. Bulex has a different recollection of this meeting, particularly its purpose.²⁶

[20] According to Bulex, a draft bank guarantee was received from the funders on 17 April 2024 and passed on to Kameeldrift and ABSA bank on 18 April 2024. On 18 April 2024, Bulex received the signed draft guarantee from Kameeldrift. Bulex says it assumed that ABSA had approved same.

[21] On 3 May 2024, a guarantee was issued, as opposed to 29 April 2024, due to the celebrations during the Muslim holy month of Ramadan. According to Bulex, ABSA received a 'MT760' message from Asia Pacific Investment Bank in Malaysia ('Asia Pacific').

²⁴ Bulex AFP par 5, CL 32-3.

²⁵ AA pars 8 and 9, CL 02-4 to 02-7.

²⁶ Pars [35], [39] and [48] below.

[22] Around 8 May 2024, Kameeldrift received a document purporting to be a ‘bank guarantee’ by WhatsApp from one of Bulex’s directors. For a variety of reasons Kameeldrift disputes the veracity of the bank guarantee, and denies that it is a genuine bank guarantee.

[23] On 15 May 2024, Mr Van Eck of Bulex says he received a call from Mr Marais of Kameeldrift requesting repayment of the R15 million or the POC, as Kameeldrift had borrowed same from a third party who required it back.

[24] According to Kameeldrift the time period for the loan funds to have been made available lapsed on 14 June 2024. This was 45 banking days from the date on which the contribution by Kameeldrift reflected in the designated bank account. It is common cause that no loan funds have yet materialised. And the parties held other meetings in June and July 2025 to discuss the offshore funding and Bulex’s own funding of Kameeldrift. They also exchanged correspondences towards these ends. The meeting of the parties held on 31 July 2025 ended acrimoniously and, thereafter, the attorneys took over. The last letter in the correspondence was on 6 August 2025 in the form of a demand for performance by Kameeldrift’s attorneys. According to Kameeldrift, this is where the request for the refund of the R15 million was made for the first time.

[25] On 3 September 2024, Kameeldrift launched this application as an urgent application enrolled for hearing on 10 September 2024. On 11 September 2024, my brother, Mooki J ordered the provisional liquidation of Bulex. On 18 October 2024, Bulex filed its opposing affidavit. And Kameeldrift filed its replying affidavit on 19 November 2024.

[26] In October 2024, the Master of the High Court appointed provisional liquidators for Bulex.

[27] On 7 February 2025, Bulex launched – on an urgent basis – the Interlocutory Application, which was to be heard on 4 March 2025. It sought the review and setting aside of the provisional liquidation order or its suspension, pending a business rescue process. Kameeldrift opposed the Interlocutory Application and Bulex is yet to file a replying affidavit or to set down the application for hearing.

Bulex's point in limine

[28] In its affidavit opposing this application, Bulex raised a preliminary objection or point in *limine* ('at the outset of the suit').²⁷ The preliminary point concerned the authority of the deponent to the founding affidavit to depose to the founding affidavit without a resolution or special resolution of the board of directors of Kameeldrift. The affidavit was signed by Mr Schalk Jakobus Swart, a financial manager of Kameeldrift. Evidently, Mr Swart is not a director. But the founding affidavit included confirmatory affidavits by Kameeldrift's directors, namely Messrs Burger Marais and Johan Kritzinger. Bulex sought the dismissal of the application on this ground.

[29] The challenge to the authority of Mr Swart to depose to the affidavit is of no consequence, as a deponent does not require such authority. What is required in terms of the durable authority afforded by the Supreme Court of Appeal through the decision in *Ganes v Telecom Namibia Ltd*,²⁸ is the authority to institute and prosecute proceedings.²⁹ Besides the authority of the deponent is confirmed under oath by both of directors in terms of confirmatory affidavits. To reject this unequivocal form of authority – and insist on a resolution of the board comprising the same directors who confirmed Mr Swart's authority - would be to unreasonably

²⁷ Claassen's Dictionary of Legal Words and Phrases.

²⁸ *Ganes v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA).

²⁹ *Ganes v Telecom Namibia* 2004 (3) SA 615 (SCA) at 624G–H; *PM v MM And Another* 2022 (3) SA 403 (SCA) [10]; *Multiflat Residential Properties (Pty) Ltd – Eikehof (M) v Ali* (011335/2024) [2025] ZAGPPHC 222 (11 March 2025) [27]. See also *Erasmus: Superior Court Practice* RS 26, 2025, D1 Rule 6-10.

elevate form over substance. Bulex hasn't shown any palpable prejudice and neither did I detect any in this regard. Besides, Kameeldrift subsequently did file a formal resolution as part of its replying affidavit. Therefore, the point in *limine* is without merit and it is dismissed.

Kameeldrift's case and submissions

[30] Kameeldrift obtained the provisional winding-up of Bulex on 11 September 2024, after launching this application on an urgent basis and without notice (i.e. *ex parte*) to Bulex. According to Kameeldrift the absence of notice to Bulex was justified by, among others, the fact that Bulex had defrauded Kameeldrift and any notice given to Bulex, would have defeated the purpose of the application. As stated above, the Court issued a rule *nisi* and the return date has since been extended a number of times.

[31] The crux of Kameeldrift's averments against Bulex or submissions by Kameeldrift's counsel towards that end, include what is mentioned next. Kameeldrift, on the basis of the claim in the amount of R15 million, is a substantial creditor of Bulex. It is common cause that Kameeldrift paid that amount into a bank account controlled by Bulex as the so-called 'project owner contribution' (i.e. POC). Kameeldrift's claim is based upon a contract, alternatively delict. Bulex was part of a gargantuan fraud perpetrated upon Kameeldrift. Bulex was an instrument utilised in the furtherance of an unlawful scheme. As Bulex is an incorporated entity or company, those who controlled it at the material times, have consequently attracted joint and several liability to Kameeldrift, as they acted in concert, as a group of wrongdoers. Bulex is clearly unable to pay its debts, and, thus, it is just and equitable for Bulex to be liquidated.

[32] The background facts, further to what is stated above, which culminated in Kameeldrift making the aforementioned payment into a bank account of Bulex can be summarised as follows. Kameeldrift became aware of the opportunity to make an investment in Namibia, with reference to a feedlot. In order to finance the Namibian venture, Kameeldrift required

substantial capital. It was represented to Kameeldrift that Bulex might be of assistance, and may help Kameeldrift to procure the funding. Representatives of Kameeldrift and representatives of Bulex met, and discussed the possible assistance which Bulex may give Kameeldrift in this regard. It was then represented to Kameeldrift by Bulex's representatives that if Kameeldrift pays an amount of R15 million into a bank account of Bulex, then that R15 million would be instrumental in, and would be utilised in order to create a platform from which an overseas funder would then make available to Kameeldrift a loan of R100 million. In this context it was explained that Kameeldrift would receive R100 million from the funder, but would only have an obligation to repay, as a loan, R85 million plus interest, and in that way Kameeldrift's initial 'deposit' of R15 million would be repaid. In order to implement the aforementioned deal, Kameeldrift was presented by Bulex's representatives with a memorandum of understanding ('MOU').

[33] On 25 March 2024, the representatives of Kameeldrift received the MOU and the document was subsequently signed by representatives of Kameeldrift. In terms of the MOU, once Kameeldrift pays the R15 million 'project owner contribution' (i.e. the POC), Bulex would issue a corporate guarantee to Kameeldrift. Within 14 days from date of receipt of the POC, a bank guarantee would be issued to Kameeldrift denominated in US dollars. This would facilitate receipt - within 45 banking days from the date when the POC reflects in the nominated account - of the R100 million by Kameeldrift, as project funding.

[34] It is common cause that Kameeldrift paid the POC of R15 million into the designated bank account on 9 April 2024 in compliance with the MOU. On 10 April 2024, Bulex (as the 'guarantor') issued to Kameeldrift a 'corporate guarantee', irrevocably and unconditionally guaranteeing to pay Kameeldrift (as the 'beneficiary') an amount of US\$790 000 (then equivalent to R15 million). Around 8 May 2024, Kameeldrift received a 'bank guarantee', a document which is considered by Kameeldrift not genuine. This means that the loan or project

funding was to be received by Kameeldrift on 14 June 2024, but it hasn't been received by Kameeldrift. The latter is common cause.

[35] Whist waiting for the bank guarantee and, consequently, the receipt of the loan funds, Bulex and Kameeldrift, according to the latter, concluded a further arrangement in terms of which Bulex was to provide Kameeldrift with an amount of R15 million. This too, has not materialised, despite undertakings by Mr Van Eck, on behalf of Bulex. Kameeldrift denies that this was its cancellation of the previous loan funding transaction from the funder, coincidentally also in the amount of R15 million.

[36] On consideration of what it stated above, Kameeldrift launched the application for the liquidation of Bulex. It is submitted that this was done without Kameeldrift being privy to Bulex's bank statements of the account into which it paid the R15 million. This would have informed Kameeldrift what Bulex did with the money. Kameeldrift says it suspected that Bulex never applied for the loan funding agreed upon, but rather misappropriated the R15 million. In these circumstances, Kameeldrift's claim in its founding papers was based on contract or the MOU. Alternatively to the aforesaid, the claim is premised on delict in the form of misrepresentation by Bulex to Kameeldrift that the latter's R15 million would be used to secure loan funding, but then Bulex went on and misappropriated the money or used it for a different purpose.

[37] Bulex's case put forward in the opposing affidavit – given the lack of access by Kameeldrift to the statements of the nominated bank account – was, incessantly, that the R15 million has been transferred or paid out to the overseas funder in compliance with Bulex's obligations, it is pointed out by Kameeldrift.

[38] But, once the order for the provisional liquidation of Bulex was secured by Kameeldrift and the Master had appointed the provisional liquidators, Kameeldrift gained access to Bulex's

impugned bank statements of March and April 2024. The provisional liquidators also filed an interim report incorporating the bank statements. These revealed that - contrary to Bulex's assertions - the R15 million was never paid out to an offshore funder, but substantially paid out to other entities or persons within South Africa which had nothing to do with the agreement between Bulex and Kameeldrift. But, Bulex steadfastly persisted with its position that the money was properly transferred offshore, even producing (in response to Kameeldrift's Rule 35(12) notice) a document purporting to be an email from a representative of the offshore funder confirming receipt by the funder of the R15 million on 30 April 2024. This was in stark contrast to the contents of the statements from the nominated bank account and is rejected by Kameeldrift.

[39] Bulex, also, obfuscated the true facts of the 'second deal' between the parties in terms of which Bulex had agreed to make an amount of R15 million to Kameeldrift, it is further submitted. Bulex, falsely and as an excuse, contended that the second deal was actually Kameeldrift demanding a refund of its R15 million. Bulex says it requested a written cancellation of the loan funding to secure the refund. This was incorrect and denied by Kameeldrift in its reply, as the second deal had nothing to do with the first one consummated by the MOU between the parties.

[40] Against the backdrop of its case and submissions on its behalf, as summarised above, Kameeldrift says it has met the requirements for the provisional liquidation order to be made final. I turn to the case put forward by Bulex, next.

Bulex's case (garnered from its opposing affidavit)

[41] As indicated above, Bulex did not actively participate in the proceedings after its request for a postponement was refused, although its legal representatives remained in Court

for the remainder of the proceedings. But, as appearing above, I am considering the case put forward in Bulex's answering affidavit.

[42] Bulex's opposition to the application begins with criticism of Kameeldrift having approached the Court on an urgent and *ex parte* bases. Bulex says this deprived it of an opportunity to respond prior to the granting of the provisional order.

[43] Bulex, essentially, denies that it - in any way - acted fraudulently or criticises Kameeldrift for creating that impression. Bulex says its business is to act as an agent of business funders. It does business in this regard with local-based and international funders. The target market of potential clients comprises natural persons and companies. But, it is neither a bank, registered credit provider nor a financial advisor. Kameeldrift is being mischievous by giving Bulex the tags 'financial advisor' or 'commercial bank' in order to buffer its application for liquidation. Bulex's letters and letterhead do not reflect these.

[44] Starting with the conclusion of the MOU. Bulex says Kameeldrift's representatives were given a copy of the MOU to go through, earlier, before it was signed. They read it and considered its terms, before agreeing thereto. This included getting legal advice on its terms. There was no coercing or trickery by Bulex to induce Kameeldrift to sign the MOU. It ought to be pointed out that Kameeldrift's representatives say that they did not get any legal or expert advice at the time due to their trust in the *bona fides* of their counterpart from Bulex. Bulex's role included its conduct of an inspection of Kameeldrift's premises to determine whether there was a need for the R85 million loan funding and Kameeldrift's viability in repaying same. This is a requirement of the international funders and Bulex was merely acting on their instructions. But, Kameeldrift pointed out that Bulex failed to include a confirmatory affidavit from the international funders.

[45] Bulex confirmed the terms of the MOU. It says that it explained to Kameeldrift's directors that a deposit amount of R15 million was required for the 'huge loan' of R85 million. The deposit was to be paid over to the funders against Bulex's corporate guarantee issued to Kameeldrift. This entailed Bulex acting as a guarantor on the transaction and Kameeldrift as the beneficiary. The guarantee was a temporary measure or security and only valid while the funds were in the hands of Bulex. It ceased to exist once the funds were paid over to the funders. As with the MOU, Kameeldrift's representatives were provided with the guarantee in time for them to go through it and seek legal advice, if necessary. They also signed the guarantee without demur. They were not coerced or tricked into doing so.

[46] The deposit of R15 million paid by Kameeldrift was paid over to a Dubai based international funder, named, Oxford Group Limited ('Oxford'), it is asserted by Bulex. Oxford comprises a group of companies with offices in Dubai, United Kingdom and Thailand. Oxford applied for a bank guarantee from Asia Pacific Investment Bank ('Asia Pacific') in Malaysia. And for the reason that Asia Pacific does not have a trading agreement with ABSA, it used its correspondent bank called Guaranty Trust Bank (Kenya) Limited, to provide the guarantee. But what remains is that Oxford is Bulex's funder and Asia Pacific provided the funding or guarantee on behalf of Oxford. The Kenyan bank was merely an intermediary who passed on the guarantee to ABSA. Kameeldrift says there is contradiction in this regard as in some instance Bulex has said Asia Pacific provided the guarantee directly to ABSA.

[47] The guarantee was issued on 3 May 2024, instead of 29 April 2024. Bulex acknowledges that there was delay in the furnishing of the guarantee and attributes this to the Muslim holy month of Ramadan. Bulex considers the three days delay to be reasonable. It says that the original guarantee was given to ABSA and with Kameeldrift only given a copy on 8 May 2024. A draft guarantee had been sent earlier in April 2024 to Kameeldrift and ABSA for approval as to its contents. Kameeldrift then signed the draft and returned it to Bulex. The latter

considers this a confirmation that Kameeldrift had no problems with the draft guarantee and also assumed ABSA was in the same position and ABSA expressed no concern.

[48] On 15 May 2024 - Bulex's deponent states - a call was received from Mr Marais of Kameeldrift requesting repayment of the R15 million. The reason given was that Kameeldrift had borrowed the equivalent thereof from a third party who required it back. This, Bulex contends, was prior to the maturity date of the loan funding transaction linked to the MOU. Although, Bulex's directors undertook to engage with the funder to request for repayment of the deposit prior to the maturity date, the funder, Oxford, was dissatisfied with the request as the monies were locked up in the funding program. It is stated that Bulex directors even went to Dubai to have discussions with Oxford, but in vain. Oxford requested for a cancellation letter of the MOU in order to pass it onto Asia Pacific for cancellation of the guarantee, but Kameeldrift has not furnished the cancellation letter. This persists despite requests and formal engagements by Bulex. But, according to Kameeldrift, it wasn't seeking to cancel the MOU but to secure funding from Bulex for other purposes, coincidentally, also in the amount of the R15 million (i.e. the second deal).³⁰

[49] Bulex, further, states that because it did not want to spoil the good relationship it has with the funder, it undertook to repay Kameeldrift from its own monies generated by other projects in three instalments of R5 million each, with effect from 31 May 2024. But the money could not materialise on time due to unforeseeable circumstances. It would also be difficult for the money to be paid into Bulex's bank account as it is frozen. Bulex is unable to conduct business due to this. Kameeldrift, as indicated, disputes that the transaction in which these

³⁰ Pars [35], [39], [48] above.

instalments were to be made related to the MOU, but for the ‘second deal’ (i.e. different funding transaction for Kameeldrift’s acquisition of young cattle).³¹

[50] Kameeldrift, it is lamented by Bulex, persistently refused to furnish a cancellation letter for the MOU. This is ‘the basic requirement’ due to the guarantee containing an ‘expiry date’ and has to be furnished before the monies are refunded. Instead, Kameeldrift opted to unfairly rush to Court for relief instead of acceding to the request, Bulex further laments.

[51] As indicated above, Bulex denies that the bank guarantee furnished to Kameeldrift is fraudulent or defective. It disputes that ABSA considered it that way. What ABSA did, according to Bulex, was merely to refuse to participate in the transaction due to its view that the guarantee or instrument involved did not accord to banking practice. ABSA received a message from Asia Pacific on 3 May 2024 via the interbank Swift system only accessible to banks and not by individuals, it is pointed out by Bulex.

[52] Overall, Bulex denies that it is commercially insolvent or that it is just and equitable for it to be liquidated at the instance of Kameeldrift. It considers the application for its liquidation an abuse of the court process and is prejudicial to Bulex and its operations, employees and service providers. And the primary cause of this is Kameeldrift’s persistent refusal to furnish a written cancellation letter for early repayment of the POC. The MOU does not allow verbal variations, including verbal cancellation.

Issues requiring determination

[53] The main primary issue to be determined is whether Kameeldrift, as the applicant in whose favour the provisional liquidation of Bulex was ordered, has satisfied the Court that Bulex ought to be placed under final liquidation.

³¹ Par [19] above.

[54] Determining the main or primary issue above is a composite enquiry. It involves a number of ancillary or secondary issues. The latter issues ought to be dealt with before arrival at the outcome on the main issue. But some of the ancillary issues are of such force that a ruling on one or more of them may dispose of the entire application. The ancillary or secondary issues include: (a) memorandum of understanding (i.e. MOU); (b) cancellation of the MOU and/or the guarantee; (c) is Kameeldrift a creditor of Bulex or not (or Kameeldrift's *locus standi* (standing in court)³²); (d) is Bulex commercially insolvent or not; (e) is it just and equitable for Bulex to be liquidated; (f) formal requirements for a final liquidation or winding-up; and (g) costs of the application.

[55] More issues may arise for determination in addition to the primary and secondary issues identified above. Other issues, including Bulex's request of a postponement and its point in *limine* on the deposition of the founding affidavit, have already been dealt with above. I will deal with the issues requiring determination after reflecting some of the legal principles applicable to the issues.

Applicable legal principles

[56] The liquidation application by Kameeldrift is premised on the basis that Bulex is unable to pay its debts as and when they become due and, therefore, is commercially insolvent. And that it is just and equitable for Bulex to be wound up.

[57] Despite its repeal by the Companies Act 71 of 2008 ('CA 2008'),³³ the statutory provisions grounding the liquidation of insolvent companies are still in terms of Chapter XIV of the Companies Act 61 of 1973 ('CA 1973').³⁴

³² The full phrase is *locus standi in iudicio* and it refers to 'a right of appearance (in court as a party); *standing in court*'. See Hiemstra VG and Gonin HL, *Trilingual Legal Dictionary* (3rd edn, Juta 1992).

³³ Preamble and section 224(1) of the CA 2008.

³⁴ Item 9 of Schedule 5 of the CA 2008 retains – as a transitional measure effective from 1 May 2011 – Chapter XIV of the CA 1973, despite the repeal of the latter legislation. Winding-up commercially solvent

[58] Section 344 of the CA 1973 provides for circumstances under which a company may be wound up by the court, including if ‘the company is unable to pay its debts as described in section 345’³⁵ and ‘it appears to the Court that it is just and equitable that the company should be wound up’.³⁶ Section 344 is the only source of the power of the court to wind up a company.³⁷

[59] Section 345 of the CA 1973 provides for when company may rebuttably be deemed or presumed to be commercially insolvent or unable to pay its debts as and when they become due, premised on section 344(f), as follows: and a creditor serving a letter of demand on the company at its registered office address by giving the company three weeks ‘to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor’;³⁸ where the sheriff has issued a *nulla bona* (no goods (upon which to execute))³⁹ return stating that he or she ‘has not found sufficient disposable property to satisfy the judgment, decree or order or that any disposable property found did not upon sale satisfy such process’⁴⁰ and by producing satisfactory proof to the court that a company is unable to pay its debts.⁴¹

[60] Section 345(2) of the CA 1973 provides that when determining a company’s inability to pay debts under section 345(1), ‘the Court shall also take into account the contingent and prospective liabilities of the company’.

companies is in terms of the CA 2008. See Chapter 2 Part G (ss 79–83) CA 2008 read with item 9 Schedule 5 CA 2008; *Boschpoort Ondernemings (Pty) Ltd v ABSA Bank Ltd* [2013] ZASCA 173; 2014 (2) SA 518 (SCA); [2014] 1 All SA 507 (SCA) [20]–[22]; *Superior Macadamias (Pty) Ltd and Others v Emvest Agricultural Corporation (Mauritius) Ltd and Another* (865/2022) [2024] ZASCA 182 (24 December 2024) [5]. See also Eberhard Bertelsmann and others, *Mars: The Law of Insolvency* (Juta 10th Ed, 2019) at 10th Ed, 2019, p 747.

³⁵ Section 344(f) of CA 1973.

³⁶ Section 344(h) of CA 1973.

³⁷ *Ex parte Muller: In re PL Myburgh (Edms) Bpk* 1979 (2) SA 339 (N) 340. See also M S Blackman and others, *Commentary on the Companies Act* (Juta Revision Service 9, 2012) (‘Blackman Commentary on the Companies Act’) OS, 2002 ch14-p74.

³⁸ Section 345(1)(a) of the CA 1973.

³⁹ Hiemstra and Gonin, *Trilingual Legal Dictionary*.

⁴⁰ Section 345(1)(b) of the CA 1973.

⁴¹ Section 345(1)(c) of the CA 1973.

[61] An application for the winding up of a company may be made in terms of section 346 of the CA 1973, including by one or more of a company's creditors, including contingent or prospective creditors.⁴²

[62] The court seized with a winding-up application is empowered – at the hearing of such application to ‘grant or dismiss any application under section 346, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other order it may deem just...’⁴³ In this matter the Court granted an order incorporating a rule *nisi* and provisional winding-up. It is said that a rule *nisi* is aimed at providing interested persons an opportunity to be heard whilst a provisional order of winding-up affords interim protection to persons with interest.⁴⁴

[63] A petition or application for winding-up cannot serve as a legitimate means to enforce payment of a debt disputed *bona fide* by a company. Such application, ostensibly made for a winding-up order when it is actually meant to exert pressure will be dismissed by the Court and constitutes a scandalous abuse of the process of the Court.⁴⁵

[64] Section 339 of the CA 1973 states that the provisions of the law relating to insolvency apply *mutatis mutandis* (with the necessary changes)⁴⁶ to the winding-up of a company unable to pay its debts, ‘in respect of any matter not specially provided’ for by the CA 1973.⁴⁷

[65] For completeness, I reflect some principles relating to the adjudication of applications for postponements, as eloquently summarised by the learned author of *Erasmus: Superior*

⁴² Section 346(1)(b) of the CA 1973.

⁴³ Section 347 of CA 1973.

⁴⁴ Blackman *Commentary on the Companies Act* RS 2, 2005 ch14-p178, relying on *Ex parte Beach Hotel Amanzimtoti (Pty) Ltd* 1988 (3) SA 435 (W) 439.

⁴⁵ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 348A-B. See also *Unigon Wonings (Pty) Limited v Brooklyn and Eastern Areas Citizen Association* (A253/2022) [2024] ZAGPPHC 105 (7 February 2024) [10].

⁴⁶ Hiemstra and Gonin, *Trilingual Legal Dictionary*.

⁴⁷ *Cooper and Others v Miftah Ul Junainah* CC 2023 (1) SA 523 (WCC) [35].

Court Practice as follows: (a) postponement is at the discretion of the court; (b) the discretion ought to be exercised in a judicial manner and for substantial reasons, without any element of caprice or based on wrong principles; (c) postponement is an indulgence and, thus, its seeker ought to show good and solid reasons, by furnishing an explanation of the circumstances giving rise to the application in a full and satisfactory manner (not amounting to delaying tactics and dictated by the interest of justice); (d) postponement ought to be sought timeously and immediately when the circumstances justifying an application for postponement became known to the applicant, albeit that fundamental fairness and justice – based on the facts in a matter - may justify the granting of postponement even if the application was not made timeously; (e) postponement ought to be always sought *bona fide* and not for purposes of gaining an advantage not legitimately befitting an applicant through tactical manoeuvring; (f) considerations as to prejudice to a party due to the postponement would predominate the exercise of the discretion of the court, including whether such prejudice (caused by a postponement) may be fairly compensated by an appropriate order as to costs or other ancillary means; (g) balance of convenience or inconvenience to the parties (i.e. prejudice to the respondent if the matter is postponed or prejudice to the applicant if postponement is refused), and (h) withdrawal of a practitioner or termination of his or her mandate (an old trick in the book to force postponement on the basis of lack of representation) does not create a right to postponement and, in fact, constitutes abuse of the court system.⁴⁸

Is Kameeldrift or the applicant a creditor with locus standi?

General

[66] In order to qualify to apply for the winding of Bulex, Kameeldrift ought to be a person stated in section 346(1) of the CA 1973.⁴⁹ Kameeldrift considers itself to be a creditor of Bulex

⁴⁸ *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 41-6 to RS 22, 2023, D1 Rule 41-9.

⁴⁹ *Blackman Commentary on the Companies Act* RS 1, 2004 ch14-p148 to p150.

on the basis of the R15 million paid into a bank account nominated by Bulex in terms of the MOU.⁵⁰ Kameeldrift says its claim against Bulex, based on the MOU and ancillary documents, is contractual in nature. But it also asserts that given the fraud perpetrated by Bulex, the agreements will not be enforceable. Therefore, the amount may be recovered on the basis of fraud or *condictio* (condiction: an action for reclaiming something which has been obtained from the plaintiff without lawful cause or from a mistaken or immoral motive),⁵¹ especially *condictio sine causa* (suit for repayment of a sum of money paid without (valid) consideration).⁵²

[67] As may be the case with the other requirements, Kameeldrift would have convinced the Court, at least on the *prima facie* (on the face of it)⁵³ basis, that it has *locus standi* to apply for the winding up of Bulex, when the provisional order was granted.⁵⁴ But, the test elevates to a balance of probabilities at this stage when a final winding up is sought.⁵⁵

[68] It is common cause that Kameeldrift paid R15 million to Bulex in terms of the MOU. But, Bulex disputes that this money is due and payable by it in terms of the MOU. According to Bulex, the money has been paid to Oxford, the offshore funder, on 30 April 2024. But the objective facts from the joint provisional liquidators and, subsequently, incorporated in Kameeldrift's replying affidavit establishes that the money or most of it, probably, had been transferred to other recipients, seemingly Bulex's directors, on 9 and 10 April 2024. I am satisfied that the location of this material in Kameeldrift's replying affidavit, as opposed to its

⁵⁰ Pars [18], [23], [31]-[32] above. See Blackman *Commentary on the Companies Act* RS 1, 2004 ch14-p150 to p156, generally, on who constitutes a creditor.

⁵¹ Hiemstra and Gonin, *Trilingual Legal Dictionary*.

⁵² Hiemstra and Gonin, *Trilingual Legal Dictionary*.

⁵³ Hiemstra and Gonin, *Trilingual Legal Dictionary*.

⁵⁴ *Kalil v Decotex (Pty) Ltd* 1988 (1) SA 943 (A) 976C *et seq.* See Blackman *Commentary on the Companies Act* RS 6, 2009 ch14-p179 to p180; p186 to p186-1 and the authorities cited there. See section 10 of the Insolvency Act 24 of 1936, which refers to a '*prima facie*' opinion of the court on a debtor's insolvency for the granting of an order provisional sequestration of a debtor's estate, which wording is absent from s 347 of the CA 1973.

⁵⁵ Blackman *Commentary on the Companies Act* RS 6, 2009 ch14-p179 to p180 relying, among others, on *Kalil v Decotex (Pty) Ltd* 1988 (1) SA 943 (A) 979-980.

founding affidavit, was rendered permissible as a special circumstance by Bulex's baseless assertions (in the opposing affidavit and in the Rule 35(12) process)⁵⁶ that the R15 million was paid out to the offshore lender.⁵⁷ As already mentioned, documentary evidence clearly revealed that the money left the impugned bank account immediately it was received therein.⁵⁸ There was clearly no delay before the money or most of it was paid out of Bulex's account. I agree with Kameeldrift that an offshore transfer of R15 million would have required the approval of the South African Reserve Bank⁵⁹ and attracted hefty bank charges as an international transaction. There is a radio silence from Bulex with regard to how these hurdles were cleared when it made the offshore payment, but I will let nothing turn on it.

[69] Although doing its best to distance itself from the repayment of the R15 million, Bulex says the money could be repaid if Kameeldrift could furnish a written cancellation of the MOU so that Bulex can pass it on to Asia Pacific for cancellation of the guarantee. Kameeldrift disputes that such cancellation is necessary. I agree. Without there being a compliant cancellation in written form (which is Bulex's case) the loan funding ought to have been advanced by now, but it hasn't. All these clearly confirm that the dispute about the repayment of the R15 million debt is not *bona fide*⁶⁰ and genuine (i.e. 'disputed on good, reasonable or substantial grounds').⁶¹ I am satisfied that Bulex's denials or allegations are 'so farfetched or clearly untenable that the Court is justified in rejecting them merely on the papers'.⁶²

⁵⁶ Blackman *Commentary on the Companies Act* RS 3, 2006 ch14-p1661 and the authorities cited there.

⁵⁷ Replying Affidavit ('RA') par 8, CL 02-4 to 02-6.

⁵⁸ RA pars 9 to 16, CL 02-6 to 02-9.

⁵⁹ Exchange Control Regulations, promulgated in terms of section 9 of the Currency and Exchanges Act 9 of 1933.

⁶⁰ Blackman *Commentary on the Companies Act* RS 2, 2005 ch14-p87 and the authorities cited there.

⁶¹ Blackman *Commentary on the Companies Act* RS 2, 2005 ch14-p87, relying on *Badenhorst v Northern Construction Enterprises* 1956 (2) SA 346 (T) at 348A-B.; *Kalil v Decotex (Pty) Ltd* 1988 (1) SA 943 (A) 980 at 980B-D. See, generally, Blackman *Commentary on the Companies Act* RS 5, 2008 ch14-p80 to OS, 2002 ch14-p91. See also Boraine, Kunst and Burdette (eds), *Meskin's Insolvency Law* par 2.1.1 and the authorities relied upon by the learned authors.

⁶² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C; *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) [26]; *Mtolo and Another v Lombard and Others* (CCT 269/21) [2021] ZACC 39; 2022 (9) BCLR 1148 (CC) (8 November 2021) [38]; *African National*

[70] The above clearly establishes that Kameeldrift is a creditor. I can also add that its claim is based on a liquidated debt in the amount of R15 million. And Bulex's assertions as to written cancellation of the MOU – taken at face value, given my rejection thereof - may at most render Kameeldrift a contingent or prospective creditor.⁶³ Kameeldrift was alive to this probability. Therefore, Kameeldrift will - at least - be a contingent or prospective creditor in respect of the repayment of R15 million debt paid to Bulex. Kameeldrift, thus, was accordingly cloaked with the necessary standing or *locus standi*, envisaged by section 346 of the CA 1973,⁶⁴ when it applied for the liquidation of Bulex.

Is Bulex commercially insolvent?

[71] Kameeldrift says Bulex ought to be wound up due to its commercial insolvency or inability to pay its debts.⁶⁵ It is Bulex's case that Kameeldrift failed to address the issue of commercial insolvency. I partially agree that Kameeldrift did not specify under which of the three instances indicated in section 345(1) of the CA 1973 Bulex should be deemed to be unable to pay its debts.⁶⁶ But, such explicitness – although of some benefit to the Court – is not decisive of the issue of commercial insolvency, which is assessed from all the facts before the Court.

[72] From the facts or evidence before the Court in this matter, I am able to conclude or be satisfied that Bulex is unable to pay its debts, as contemplated by section 345(1)(c) of the CA 1973.⁶⁷ Bulex has siphoned off the R15 million received from Kameeldrift and now Bulex finds itself unable to repay same. It wasn't even able to raise money from its 'other projects'

Congress v Ezulweni Investments (Pty) Ltd (979/2022) [2023] ZASCA 159 (24 November 2023) [20]. See also *Erasmus: Superior Court Practice* RS 27, 2025, D1 Rule 6-33 to 6-34.

⁶³ Section 346(1)(b). A contingent or prospective creditor is a person with a claim against the company - premised on a *vinculum iuris* (bond of law or obligation: *Trilingual Legal Dictionary*) between such person and the company - which may become an enforceable debt in the future or upon occurrence of a future event. See *Blackman Commentary on the Companies Act* RS 6, 2009 ch14-p151; *Choice Holdings Ltd and Others v Yabeng Investment Holding Co Ltd* 2001 (3) SA 1350 (W) 1357B; *Wilde and Another v Wadolf Investments (Pty) Ltd and Others* 2005 (1) SA 354 (WLD) [10].

⁶⁴ Section 346(1)(b) of the CA 1973. See pars [60]-[61] above.

⁶⁵ Section 344(f), read with s 345, both of the CA 1973. See pars [58]-[60] above.

⁶⁶ Section 345(1)(a)-(c) of the CA 1973. See pars [58]-[60] above.

⁶⁷ *Blackman Commentary on the Companies Act* RS 3, 2006 ch14-p165.

when it tried to pay the three instalments of R5 million required in May 2024. It does really matter that the parties attach different meanings to the latter transaction or activity.⁶⁸ Bulex is, indeed, commercially insolvent.

Is it just and equitable for Bulex to be wound up

[73] It is also contended that, Bulex be wound up on the basis that it is just and equitable to do so. This is provided for under section 344(h) of the CA 1973, which, ordinarily, is applicable to winding-up of insolvent companies.⁶⁹ And to the extent that Bulex is a solvent company,⁷⁰ its winding-up on just and equitable ground is also possible under Part G of Chapter 2 of the CA 2008.⁷¹ But it ought to be borne in mind that just and equitable ground is not a somewhat ‘catch-all’ ground, but ‘rather a special ground under which only certain features of the way in which a company is being run or conducted can be questioned to the point of requesting the Court to wind it up’.⁷²

[74] Kameeldrift alleges ‘unconscionable fraud’ of a ‘gargantuan’ proportion on the part of Bulex and that Bulex – as a juristic entity - was used by its functionaries to further an unlawful scheme. This to some extent correlates with one of the five – but extendable into more - categories of just and equitable ground under section 344(h) of the CA 1973.⁷³ The categories are not to be considered to constitute *numerus clausus* (restricted number),⁷⁴ in any way.⁷⁵

⁶⁸ Pars [35]; [39] and [48] above.

⁶⁹ Item 9(2) of Schedule 5 of the CA 2008. See Piet Delpont, *Henochsberg on the Companies Act 71 of 2008* (LexisNexis October 2025) at 324 and 332(7).

⁷⁰ *Henochsberg on the Companies Act 71 of 2008* at 324, 328 for a detailed discussion.

⁷¹ Section 81(1)(c)(ii) of the CA 2008. See also ...

⁷² *Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd* 1985 (2) SA 345 (W) at 350C-H. See also Delpont, *Henochsberg on the Companies Act 71 of 2008* at 330.

⁷³ The categories of just and equitable ground are: (a) disappearance of a company’s substratum; (b) illegality of the objects of a company and fraud committed in connection therewith; (c) deadlock; (d) ground analogous to those for the dissolution of the partnerships, and (e) oppression. See *Rand Air v Ray Bester Investments* 1985 (2) SA 345 (W) 350C-H; *Ferreira v Executors of Estate Late Halse NO and Others* (1461/2009, 1200/2010) [2010] ZAKZDHC 62 (25 June 2010) [34]; *Lidino Trading 580 CC v Cross Point Trading (Pty) Ltd*, *In re: Mabe v Cross Point Trading 215 (Pty) Ltd* (2130/2012) [2012] ZAFSHC 155 (23 August 2012) [28]. See also Delpont, *Henochsberg on the Companies Act 71 of 2008* at 330.

⁷⁴ Hiemstra and Gonin, *Trilingual Legal Dictionary* the phrase ‘*numerus -i m. clausus*’ is explained as meaning ‘restricted number’.

⁷⁵ Delpont, *Henochsberg on the Companies Act 71 of 2008* at 330-332.

Therefore, there may be merit in Kameeldrift's assertions that the Court may wind up Bulex on the just and equitable ground on the basis that Bulex or its functionaries breached various statutory provisions, such as those of the Banks Act 94 of 1990 and the Financial Advisory and Intermediary Services Act 37 of 2002. But it is not necessary to render a firm ruling on this.

Formal requirements for a final liquidation or winding-up

[75] A representative of the attorneys of record for Kameeldrift deposed to an affidavit on 4 September 2024 confirming that the application was served on the Master of the High Court and the South African Revenue Service on 3 September 2024.⁷⁶ At that stage no service had been effected on the respondent, Bulex, and its employees and their trade union(s), as the matter proceeded before the Court on an *ex parte* basis.

[76] My brother, Mooki J, directed in terms of the provisional order that service be effected on the latter interest bearers and be published in the government gazette and a local newspaper. There is now before the Court evidence by Kameeldrift's attorneys of record that this was done.⁷⁷ And, the tendering of security for costs was confirmed in terms of certificate issued by the Master on 7 August 2025.⁷⁸

Conclusion and costs

[77] On the basis of what appears above, the Court is satisfied that the substantive and formal or procedural requirements for final liquidation or winding up of Bulex have been met. Therefore, the rule *nisi*, previously, issued by the Court - and, subsequently extended a number of times up to when the application came before me - will be confirmed and Bulex placed in final liquidation.

⁷⁶ CL 02-333 to 338.

⁷⁷ CL 01-1 to 6.

⁷⁸ CL 01-22.

[78] The order made below will reflect that costs of the application will be costs in the winding-up of Bulex.

Order

[79] In the result, I make an order in the following terms:

1. the rule *nisi* is confirmed and an order for the final winding-up of the respondent, Bulex Group (Pty) Ltd, registration number 2022/705764/07, is granted, and
2. costs of the application shall be costs in the winding-up of the respondent.

Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : **18 August 2025**

Date of Judgment : **04 December 2025**

Appearances :

For Applicant : Mr MP van der Merwe SC
Instructed by : Dawie Beyers Attorneys Inc, Pretoria

For Respondent : Mr LP van der Merwe
Instructed by : Rudolf van Niekerk Attorneys, Johannesburg
c/o Cawood Attorneys Inc, Pretoria