



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

(1) REPORTABLE: YES / <u>NO</u>	
(2) OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>	
(3) REVISED <u>Yes</u>	
<u>28/11/2025</u>	<u>[Redacted Signature]</u>
DATE	SIGNATURE

CASE NO.: 29047/2015

In the matter between:-

CHRISTOPHER PERE VAN ZYL N.O.

First Applicant

OSCAR JABULANI SITHOLE N.O.

Second Applicant

SELBY MUSAWENKOSI NTSIBANDE

Third Applicant

v

MATTHEWS TUMANI MULAUDZI

First Respondent

VIOLET MABONTSI MULAUDZI

Second Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

Third Respondent

Heard on: 12 November 2025

Delivered: 28 November 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 28 November 2025

Summary:

1. A court of law has a judicial discretion in terms of Section 127A(1) of the Insolvency Act 24 of 1936 (the Act) to delay or deny the automatic rehabilitation of the respondents (*Engelbrecht v Naidoo*) cited herein.
2. Unrehabilitated insolvents are required to show that the sequestration of their estate was to the advantage of creditors.
3. The respondents were instrumental in causing the trustees not to finalize the administration of their estate.
4. The relief sought in Part A is interim in nature. The respondents are afforded an opportunity to state their case in Part B of the application.
5. The non-compliance with the Uniform Rules of Court is condoned in terms of Uniform Rule 6(12). This application is adjudicated upon as an urgent application.

ORDER

It is ordered:-

1. The non compliance with the Uniform Rules of the court be condoned in terms of Rule 6(12). This application is adjudicated upon as an urgent application.
2. Condonation for the late filing of the replying affidavit is granted.
3. The further affidavit of the respondents, in response to the replying affidavit is permitted.
4. Pending the final determination of the application set out in Part B, the respondents shall not be deemed to be rehabilitated from 2 December 2025 as envisaged in Section 127A(1) of the Insolvency Act.
5. Each party is ordered to pay their own costs resulting in the postponement of the matter on 4 November 2025.
6. The first and second respondents are ordered to pay the costs of the Part A application, including the costs of two counsel.
7. Part B is postponed *sine die*.

JUDGMENT

KOOVERJIE J

NATURE OF THE APPLICATION

- [1] This matter was instituted as an urgent application where the court is required to exercise its discretionary power in terms of Section 127A(1) of the Insolvency Act

24 of 1936 ("Act") to either delay or deny the automatic rehabilitation of the first and second respondents, currently unrehabilitated insolvents.

- [2] The second and third applicants are the remaining trustees of the insolvent estate of Matthews Tuwani Mulaudzi (the first respondent) and Violet Mabontsi Mulaudzi (the second respondent).
- [3] The respondents are married in community of property, and their joint estate was finally sequestrated by order of court on 27 May 2016.
- [4] The first meeting of creditors occurred on 15 November 2016 whereupon the proven creditors voted for the appointment of the applicants as trustees. The applicants were appointed as trustees on 20 February 2017. The second meeting of creditors was convened on 9 May 2017.

THE RELIEF SOUGHT

- [5] In this application the trustees seek the following relief, namely
 - 5.1 in Part A they seek interim relief on an urgent basis that, pending the outcome of the main relief in Part B – the first and second respondents are not to be deemed to be rehabilitated in terms of the provisions of Section 127A(1) of the Insolvency Act from 2 December 2025.
 - 5.2 in Part B they seek final relief, thus confirming that the first and second respondents are not to be deemed to be rehabilitated in terms of the provisions of Section 127A(1) of the Insolvency Act.

- [6] The applicants submit that Part A is interim in nature pending the outcome of the main relief sought in Part B. This court is seized with part A relief.

ISSUES FOR DETERMINATION

- [7] The issues for determination and those that were persisted with in argument were the following:

- 7.1 Whether the matter is rendered urgent;
- 7.2 whether condonation for the late filing of the replying affidavit should be granted;
- 7.3 whether the further affidavit filed by the respondents should be permitted;
- 7.4 whether a case has been made to interfere with the Section 127A(1) deeming provision. The substantive dispute between the parties centers on Section 127A(1) of the Act, which stipulates:

“(1) Any insolvent not rehabilitated by the court within a period of 10 years from the date of sequestration of his estate, shall be deemed to be rehabilitated after the expiry of that period unless the court, upon application by an interested persons after notice to the insolvent, orders otherwise prior to the expiration of the said period of 10 years”.

- [8] I have noted that although the locus standi of the trustees were challenged on the papers, this point was not persisted in argument. In any event the applicant's response is that their authority was confirmed on the basis that the creditors at the

second meeting of creditors authorized the trustees to institute, *inter alia*, these proceedings.

URGENCY

- [9] The core issue for determination is whether the applicant can obtain substantial redress at a hearing in due course. The undisputed fact is that the respondents will be automatically rehabilitated in terms of the deeming provision set out in Section 127A(1) of the Act on 2 December 2025, by the effluxion of time. The application at this stage is intended to delay the operation of Section 127A(1) of the Act.
- [10] This application had already been instituted on 25 July 2025. The respondents duly filed their answering affidavit on 22 August 2025. They were further informed that the matter was set down for hearing on 2 September 2025. However the matter was removed from the roll at the behest of the applicants. The applicants only filed their replying affidavit on 24 October 2025, (62 days late) according to the respondents.
- [11] The respondents expressed their discontentment as to the manner in which the matter was dealt with thereafter by the trustees. They alleged that whilst the trustees took their own time to file their replying affidavit, they then, without consulting with the respondents, sought an urgent preferential allocation from the office of the Acting Deputy Judge President. They unilaterally proposed the date, 4 November 2025, for the hearing which was unreasonable. The respondent's were clearly prejudiced in having to prepare for the hearing on such short notice.

This constituted self-created urgency and an abuse of the court processes. It was argued that since the filing of the answering affidavit on 22 August 2025 the applicants had ample time to respond and accordingly arrange a date by agreement between the parties.

[12] Notably the matter eventually did not proceed on 4 November 2025. I remind the parties that I directed that the matter could be heard in the following week on the basis that the parties agree on a date. I further gave leave to the respondents to file a further affidavit in response to the replying affidavit. The parties then agreed that the matter be heard on 12 November 2025.

[13] There can be no doubt that the matter warrants urgent attention in light of the imminent date, 2 December 2025, which would affect the status of the respondents. From the said date, they will be deemed to be automatically rehabilitated unless this court directs otherwise.

[14] Clearly the trustees would not be able to attain substantial redress in the normal course of court proceedings. In *East Rock Trading*¹ the court expressed that the delay in instituting proceedings is not on its own a ground for refusing the matter to be urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, an applicant can or cannot be afforded substantial redress at a hearing in due course.

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* 2011 ZAGPJHC 196 at paragraph 6,7 and 8

- [15] Section 127A(1) of the Act gives this court the judicial discretion to delay or deny the deeming provision provided that such application is presented to court before the expiration of a period of 10 years. On 2 December 2025, the respondent will be deemed to be rehabilitated by the effluxion of time. There can be no doubt that this matter warrants urgent attention.

THE LATE FILING OF THE REPLYING AFFIDAVIT

- [16] The applicants sought condonation for the late filing of their replying affidavit. They proffered the following reasons:

16.1 after they launched this application on 25 July 2025, their co-trustee, Mr Christopher Peter van Zyl (the first applicant) passed on. This caused an unforeseen delay in finalizing their replying affidavit. They submitted although the Master was duly informed of the death of Mr van Zyl, his response was extensively delayed. The trustees required directions from the Master on whether another trustee should be appointed;

16.2 it was only on 16 September 2025 that the Master advised that the remaining trustees would be capable of finalizing the estate of the insolvents. Hence there was no need to appoint a third trustee. In light of this response, a further meeting of creditors in terms of Section 62(3) of the Act became unnecessary²;

² S62(3) makes provision for the election of a new trustee in the place of the trustee who has vacated his/her office, has resigned or has died. The Master may convene a meeting for this purpose.

- 16.3 thereafter the trustees anticipated their amended certificates of appointment which were not forthcoming from the Master's office;
- 16.4 in this period as well, the remaining trustees were advised that it would be convenient to appoint a new set of attorneys from the jurisdiction of this court. The trustees alleged that the said attorneys had to be given an opportunity to acquaint themselves with the facts and the nature of the extensive litigation that ensued between the parties;
- 16.5 this was not a deliberate delay caused by willful or negligent conduct on their part;
- 16.6 the late objection to the request for condonation has no merit. The respondents had every opportunity to oppose the condonation since the filing of the replying affidavit on 21 October 2025;
- 16.7 the applicants had further tendered the reasonable costs associated with the condonation and submitted that such costs order would cure the prejudice;
- 16.8 lastly the respondents have not alleged any prejudice suffered due to the late filing of the replying affidavit. This is an overriding factor that must be taken into account.³

³ Pangbourne Properties Ltd v Pulse Moving CC and Another 2013 (3) SA 140 (GSA) where the court stated at page 147G to 148D:

[17] The respondents opposed the condonation mainly on the premises that the trustees failed to account for the entire period of the delay. They further argued that there was no reason for the trustees to await any communication from the Master as they could continue with the litigation. Moreover, the purported new set of attorneys were instructed on the matter since December 2023 and could therefore not have been a valid reason for the delay.

“[18] The respondents had the replying affidavit in their possession for four months and made no attempt to object to the late filing thereof until the objection was made in argument before me. Its own affidavit was late and would pursuant to the Waliloo judgment not be before me. The respondents did not show why it would be prejudiced should the matter be heard by me. The objection to the affidavit is stated thus:

‘Applicant’s replying affidavit was served and filed some 8 months out of time and falls to be disregarded.’

It fails to indicate what prejudice, if any, the respondents suffered as a result of the late filing of the replying affidavit. The words of Brand JA in Anglo Operations Ltd v Sandhurst Estates (Pty) Ltd 2007 (2) SA 363 (SCA) at para [32] are apposite:

‘I am not entirely sure what is meant by the description of the application as ‘totally irregular’. If it is intended to convey that the application amounted to a deviation from the Uniform Rules of Court, the answer is, in my view, that, as is often been said, the Rules are there for the Court, and not the Court for the Rules. The court a quo obviously had a discretion to allow the affidavit. In exercising this discretion, the overriding factor that ought to have been considered was the question of prejudice. The perceived prejudice that the respondent would suffer if the application were to be upheld, is not explained. Apart from being deprived of the opportunity to raise technical objections, I can see no prejudice that the respondent would have suffered at all. At the time of the substantive application the respondent had already responded – in its rejoining affidavit – to the matter sought to be included in the founding affidavit. The procedure which the appellant proposed would have cured the technical defects of which respondent complained. The respondent could not both complain that certain matter was objectionable and at the same time resist steps to remove the basis for its complaint. The appellant’s only alternative would have been to withdraw its application, pay the wasted costs and bring it again supplemented by the new matter. This would merely result in a pointless waste of time and costs.’

On the facts of the present matter I deem it unnecessary for either of the parties to have brought a substantive application for condonation.”

- [18] They emphasized that the full explanation that covers the entire period of the delay has to be explained. They submitted that without a reasonable and acceptable explanation for the delay the prospects of success are immaterial.
- [19] I am however mindful that condonation is not merely granted upon the request by a party seeking the indulgence. Such party is required to show good cause. This court is required to exercise its judicial discretion taking into account certain factors, *inter alia*, that a reasonable and full explanation is given for the delay, which should cover the entire period of the delay⁴, that there was no reckless or intentional disregard of the rules of court and the delay was *bona fide*. The main reason for the delay was due to the trustees awaiting directions from the Master. The Master belatedly advised them on the future administration of the estate. I find this explanation is reasonable and does not show *mala fide* on their part.
- [20] The prospects of success is a critical factor in a condonation application and it is weighed alongside other factors such as the extent of the delay and the reasons thereof. Strong prospects of success can compensate for an inadequate explanation for the delay provided that the delay is not excessively long. In this matter the delay was not excessive and that the explanation for such delay was further reasonable. Moreover, the trustees have strong prospects of success. The facts must be considered in context and not individually and whether it is in the interests of justice to allow the indulgence⁵.

⁴ Van Wyk v Unitas Hospital 2008 (2) SA 472 CC at 477 E-G

⁵ Grootboom v National Prosecuting Authority and Another 2014 (2) SA 68 CC at par 50
Bosch v Seynhaeve at para 50 No 159/2023 [2024] ZALCCT 25 (27 June 2024)

- [21] I am therefore satisfied that the applicants have shown good cause. Consequently the condonation is granted.

THE RESPONDENT'S FURTHER AFFIDAVIT

- [22] On 4 November 2024, when the matter was initially set down for hearing, the respondents requested an indulgence to file a further affidavit to respond to “new matter and untruths” which they alleged was not raised in the founding papers in particular, the allegation that R105 million was not accounted for by the respondents.
- [23] I made provision for the filing of their further affidavit on the basis of the new matter and the untruths. The applicants, however, contended that the further affidavit was repetitive and did not address new matter. Consequently the postponement sought was disingenuous.
- [24] In exercising my discretion in terms of Rule 6(5)(e), I am inclined to allow further affidavit premised on fairness to both sides and in particular that there is no prejudice to either parties. The applicants, in fact responded to the further affidavit. Moreover it is in the best interests of justice that the court has the benefit of all the pleadings.

Delay in the administration of the insolvents' estate

[25] The applicants requested this court to delay the deeming provision pending the final determination in terms of Section 127A(1) of the Act. They contend that there is merit in this application on the basis that:

25.1 the trustees were prevented from interrogating the respondents concerning the business dealings and affairs of the insolvent estate;

25.2 they were unable to investigate the respondents' affairs and transactions due to the lack of information. Consequently, they were unable to properly report to the creditors;

25.3 they were further unable to establish the full extent of the respondents' assets and an enquiry was necessary;

25.4 to date none of the creditor's claims have been dealt with and none of them received any dividends.

[26] It was explained that the sequestration process is intended for the benefit of the creditors. The respondents' rehabilitation would be to the disadvantage of the creditors. Consequently, the respondents will escape accountability to the creditors, the trustees and the Master, thus evading all consequences of the insolvency.

- [27] The overarching consideration when rehabilitating an applicant is that it is for the benefit of the creditors. As set out in *Ex Parte Purdon*⁶ the court stated at paragraph [15] that:

"To avoid any manipulation or abuse of the process, I take a view that an applicant for rehabilitation is obliged to demonstrate how the sequestration of his or her estate had been to the advantage of creditors, and if it had not, the reasons therefor. It should make no difference that the sequestration resulted from voluntary surrender or compulsory sequestration, for, in both instances, the benefit to the body of creditors, is the overarching and key consideration. Courts have a particular responsibility to ensure that people who have in the past failed in managing their financial affairs, and in the process caused financial loss to others, are not without more, unleashed back into the economic mainstream."

- [28] The conduct of both the respondents as well as the trustees after the sequestration order was granted, were outlined in the detailed chronology. The timeline is relevant in that it provides context to the litigious history between the parties.
- [29] The trustees argued that in the last ten (10) years they were unable to administer the insolvent estate, firstly due to the *curator bonis* having custody of the insolvents' assets for a period of 5 years and secondly the continuous and unmeritorious litigation initiated by the respondents; in particular the Maumela J and Kwinana J proceedings.

⁶ *Ex Parte Purdon* (53894/2013) [2014] ZAGPPHC 95 (24 January 2014)

[30] I have taken cognisance of both parties conduct as extrapolated in the chronology. I find it appropriate to highlight the salient events namely:

- 30.1 on 22 December 2015 the provisional order was already granted and on 27 May 2016 the final order was granted. The respondents wasted no time in launching a plethora of applications, mainly to oppose the sequestration orders, to interdict the trustees for performing their functions and to challenge their appointments.
- 30.2 in fact the litigation commenced immediately (one day after the provisional order was granted). Two applications were instituted for the setting aside of the provisional sequestration order. The respondents were unsuccessful in these applications.
- 30.3 after the final sequestration order was granted, the respondents instituted applications to interdict the provisional trustees from securing their assets and to further set aside the final order of sequestration, followed by an application to return their assets as well as an appeal against the final sequestration order. They were again unsuccessful in all of these applications.
- 30.4 determined to overturn the final order of sequestration they further launched a rescission application, a rehabilitation application, as well as a review application;

- 30.5 they then instituted the first interdict application to, *inter alia*, challenge the appointment of the trustees and to interdict them from any further administration of the insolvent estate pending the outcome of the Section 381 enquiry into the fitness of the trustees to hold office;
- 30.6 the respondents were successful in the first interdict application before Maumela J. The order had the effect of setting aside the creditors' meeting, interdicting the trustees from administering the insolvent estate ordering them to hold over the process of the disposal of the estate and pending the institution of the Section 381 enquiry. They further directed the Master to institute a Section 381 enquiry against the trustees in this insolvent estate. The Maumela J order of 11 May 2018 was only set aside by the Full Bench, four years later, on 24 June 2022;
- 30.7 post June 2022 the respondents approached the Supreme Court of Appeal and the Constitutional Court in order to overturn the Full Bench decision regarding the first interdict application;
- 30.8 the respondents further attempted to cause the Master to remove the trustees and requested that the creditors' claims proved at the first meeting of creditors be expunged;
- 30.9 the respondents also filed a complaint to the Special Investigating Unit (the SIU) against the trustees;

[31] Amidst these unsuccessful applications, the National Director of Public Prosecutions ("the NDPP") obtained an order in terms of Section 26 of the Prevention of Organised Crimes Act 121 of 1998 ("POCA"), restraining the first respondent from dealing with any of the assets contained in the insolvents' estate, pending the outcome of the criminal charges against him regarding an alleged fraud committed against Old Mutual in excess of over R48 million. Hence from 6 June 2017 to 5 September 2022 the insolvent estate vested in the hands of the *curator bonis* for a period of over 5 years.

[32] It cannot be disputed that in this period, the trustees were unable to administer the assets of the estate. Furthermore, the Maumela J order of 18 May 2018 hindered them from complying with their obligations, until the outcome of the appeal of this order, (24 June 2022). The trustees advised that due to the respondents' application for leave to appeal against the Full Bench order that overturned Maumela J's order, they were further unable to administer the insolvent estate for a further period from October 2022 to September 2023.

[33] Thereafter the second interdict application was instituted, on 22 November 2023, when Kwinana J granted an order in their favour which again interdicted the trustees from administering the respondents' insolvent estate and from holding a creditors meeting.

Trustees' Conduct

[34] On the facts, I have noted that the trustees had invited the respondents to meetings. The respondent's clearly refused to participate, and communicated

their non-attendance and further advised the trustees that they would not disclose the information requested.

- [35] The respondents indicated in writing that they will not provide the information requested in terms of the subpoena issued. In the report to the trustees, on 10 April 2017, it was recorded that they failed to provide the information regarding their assets.
- [36] The trustees attempted to convene the creditors' meetings. The first and second meetings of creditors were held, namely on 15 November 2016 and 9 May 2017 respectively. At the first meeting of creditors the proven claims against the insolvent estate were in the region of over R74 million.
- [37] Thereafter on 26 May 2017, the Master consented to convene the private enquiry in terms of Section 152 of the Insolvency Act. The trustees were, however, unable to convene the meeting due to the respondents once more instituting an urgent application to interdict the trustees from holding the special meeting.
- [38] The trustees made provision for a special meeting to be held on 31 October 2023. To obstruct this meeting an urgent application was instituted on 25 October 2023. The trustees nevertheless managed to convene the special meeting of creditors on 31 October 2023, as the said application was unsuccessful.
- [39] Another meeting was arranged for 7 December 2023. Again the respondents instituted an application to interdict the trustees from convening this meeting as well.

[40] The Kwinana J order was also challenged by the trustees and with leave of the Supreme Court of Appeal a reconsideration application was permitted. Such application has as yet not been ventilated. As things stand currently the trustees remain interdicted from administering the estate of the first and second respondents.

[41] In response, the respondents contended that:

- 41.1. they should not be faulted for the delay of the 5 years where the *curator bonis* had custody of their assets. They played no role in this delay. They can further not dispute that, in this time, even the trustees had no access to their assets;
- 41.2 their argument that although Maumela J's order interdicted the trustees from disposing the estate's assets the trustees could still comply with their responsibilities, is unmeritorious. Although the Maumela J order interdicted the trustees from administering the insolvent estate, the *curator bonis* had custody and control of the insolvents' assets until September 2022;
- 41.3 their argument that the trustees had every opportunity to proceed with the investigation, but they opted not to do so, also devoid of merit. The trustees clearly did not sit back for 9 years. Apart from the 5 years when their insolvent estate vested with the *curator bonis*, the respondents attempted to comply with their obligations. The facts clearly illustrate that every attempt of the trustees to carry such obligations was met with

adverse applications, where either their appointments were opposed, or where they were interdicted from administering the estate, or convening meetings;

41.4 the respondents pointed out that after Maumela J's order was set aside by the full bench, that is from 24 June 2022 until the Kwinana J's order, that is until 31 October 2023, the trustees could have continued with the administration of the estate. The reference to the brief window periods in which the trustees could continue with their tasks, is meritless. On the facts and the correspondence referred to it was evident that they attempted to engage with the respondents and the creditors in this time;

41.5 the consequence of Kwinana J's order was also that they were interdicted from administering the insolvent estate. The President of the Supreme Court of Appeal had only on 7 July 2025 granted the applicants permission to file their reconsideration application. This matter has as yet not been ventilated;

41.6 their contentions- that the delay in the appeal court proceedings of Maumela's order is not their fault, is again in my view, unassailable. They were *dominus litis* and initiated the interdicts.

[42] It is glaringly evident from the facts that the trustees were obstructed either by the respondents or by circumstances beyond their control in effectively administering the estate.

Discretion of the court

- [43] The objective of sequestration proceedings must be appreciated. It allows for the insolvent's assets to be accounted for and equally distributed to the creditors to the extent they can be paid. This process is entirely for the benefit of the creditors. The trustees were unable to compile a written report for the Master and creditors in terms of Section 81(1) of the Act.
- [44] Apart from the 5 years where the curator bonis had control of the insolvent's assets, the trustees with the cooperation of the insolvents could have finalized the insolvency proceedings and filed their reports.
- [45] A rehabilitation order is further not granted at the mere request of an insolvent. Although the rehabilitation was anticipated in terms of Section 127A(1) of the Act, the enquiry in determining whether a rehabilitation order is justified is the same as when an application is made to court.
- [46] The test is whether the insolvents ought to be rehabilitated and ought to be allowed to trade in the public as ordinary honest persons. Simply put, whether the insolvent is a fit and proper person to participate in commercial life without any constraints and disabilities.⁷

⁷ R Engelbrecht and Others v Naidoo at par 26 with reference to the authorities cited therein
Ex Parte Harris (Fairhaven Country Estate (Pty) Ltd as intervening party [2016] 1 ALL SA 764 WCC at par 84

- [47] The granting of a rehabilitation order is a matter which lies entirely in the discretion of the court and is not a right which the insolvent is entitled to.⁸
- [48] There are various instances where rehabilitation of insolvents would be refused. Our courts have refused rehabilitation in various justified instances. They include, inter alia, when insolvents were difficult and refused to cooperate with the trustees in the administration of the estate, where they are obstructive and make unfounded allegations against the trustees and where they fail to give a satisfactory account of the insolvency.⁹
- [49] The effect of rehabilitation is to fully restore the applicant to the marketplace and to obtain credit. Hence it is necessary for the applicant to disclose enough information to indicate that the insolvent learnt some lessons. An insolvent is required to prove as much financial advantage for the creditors during the period of sequestration. This is clearly not the case here¹⁰.
- [50] On the plain facts, the trustees remain interdicted from administering the insolvent estate, none of the proven creditors have had their claims dealt with, resulting in none of them receiving any dividends. The proven claims against the insolvent estate has been proved to be over R74 million. On the respondents' own version their debts exceed over R5 million. Disputes of this nature could have been ironed out if the insolvents furnished the requested information and cooperated with the trustees. A court is also required to have regard to the various reports which

⁸ Ex parte Hittersay 1974 (4) SA 326 SWA 328

⁹ See also Mars Law on Insolvency, 9th edition p 586 to 558

¹⁰ Ex Parte Le Roux 1996 (2) SA 419 CPD

includes the Master's and trustees' reports. Clearly the Section 81 report could not be finalized.

- [51] In the circumstances of this matter I find that the refusal of their rehabilitation is justified.

Interim relief

- [52] At this stage of the proceedings, the relief sought is interim in nature. There would be no lasting injustice as the respondents will be afforded an opportunity to state their case on the return day, that is Part B of this application.

- [53] Orders of this nature are designed to protect the rights of the complainant pending the final outcome of the matter. The effect is to maintain the status of the respondents until then.

- [54] The applicants have satisfied the requirements for the interlocutory relief, namely:

54.1 they have established that they have *prima facie* rights to seek the court's intervention at this stage of the proceedings;

54.2 there is a well-grounded apprehension of irreparable harm if the interim relief is not granted. They have demonstrated that the creditors in the main would be prejudiced;

54.3 the balance of convenience is in their favour. The respondents will not be prejudiced by the delay in their rehabilitation. The trustees and the creditors stand to suffer severe prejudice if the relief is not granted;

54.4 moreover the applicants have no alternative recourse. Section 127A(1) of the Act makes provision for the court's intervention before the 10 (ten) year period expires. There is no other satisfactory remedy in the circumstances.

Consequently the interim relief in Part A is granted.

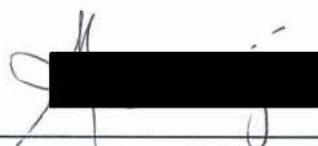
Costs

[55] The issue of costs is to be determined firstly in respect of the 4 November postponement and secondly, the costs of Part A of this application.

[56] The applicants wanted to proceed on 4 November 2025. The respondents contended that they had not been consulted on the date allocated at the applicants' behest.

[57] Consequently, the respondents sought an indulgence in order to respond to the replying affidavit. The applicants argued that the further affidavit was merely repetitive and did not raise new matter. I nevertheless allowed both the further affidavit as well as the applicants' subsequent reply to the further affidavit on the principle of fairness and in the interests of justice. I therefore deem it appropriate that each party bear their own costs.

[58] In respect of the costs of Part A of this application, there is no reason not to follow the general principle- namely that costs follow the result. The applicants as the successful parties, are entitled to their costs. Consequently, costs are awarded in favour of the applicant's consequent upon the employment of two counsel.



H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the applicants:

Adv. S Tsagarakis

Adv. Z Schoeman

Instructed by:

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Counsel for the respondents:

Adv. T Ncongwane SC

Adv. N Matidza

Instructed by:

Ledwaba Mazwai Attorneys

Date heard:

12 November 2025

Date of Judgment:

28 November 2025