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

Case numbers: 2025-003969 and 2025-202949

Date of hearing: 19 November 2025

Date delivered: 4 December 2025

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) ~~REVISED~~
DATE 4/12/25
SIGNATURE

Case no: 2025-202949

In the application between:

**F AND CATAI TRANSPORT SOLUTIONS
(PTY) LTD (IN LIQUIDATION)**

First Applicant

KAREN FORTEIN N.O.

Second Applicant

CLIFFORD THABANG MAREDI N.O.

Third Applicant

RICHARD MASOANGANE N.O.

Fourth Applicant

and

LEBOGANG GRACE MPAKATI

Respondent

Case no. 2025-003969

In the application between:

**F AND R CATAI TRANSPORT SOLUTIONS
(PTY) LTD (IN LIQUIDATION)**

First Applicant

KAREN FORTEIN N.O.

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CLIFFORD THABANG MAREDI N.O.

Third Applicant

RICHARD MASOANGANE N.O.

Fourth Applicant

and

**INDALO BUSINESS CONSULTING CC
(Reg. no. 2011/037334/23)**

Respondent

This judgment is handed down electronically by the Judge whose name is reflected herein, and is submitted to the parties or their legal representative by email. This order is further uploaded to the electronic file of CaseLines by the Judge or his Registrar. The date of this order is deemed to be 4 December 2025.

JUDGMENT

SWANEPOEL J:

[1] The second, third and fourth applicants are the joint liquidators of the first applicant (“Catai”), a company currently in liquidation. They urgently seek both the winding up of the respondent (“Indalo”) under case number 003969-2025 and the sequestration of the respondent (Ms. Mpakati) under case number 202949-2025. Both applications were heard simultaneously by agreement between the parties.

[2] I shall set out the facts relevant to both applications, and I will then deal with each application separately, as the elements of each application differ.

[3] Catai was placed under business rescue by order of the High Court on 7 August 2018. Ms. Mpakati was appointed as business rescue practitioner. During the period between August 2018 and January 2019, Ms. Mpakati received business rescue fees in the sum of R 3 633 736.65 for her work in the Catai business rescue. The fees of a business rescue practitioner are prescribed in the Companies Act, 2008. Applying the tariffs, it is clear that Ms. Mpakati received R 2 341 311.85 more than she was entitled to. These monies were paid to the account of Indalo, and were monies that were due to Catai.

[4] On 18 February 2020 Catai was wound up, and during March 2023 the applicants launched an application against both Ms. Mpakati and Indalo for the repayment of the R 2 341 311.85. In the application Indalo was described as a company registered in terms of the Companies Act, 2008 ("the Companies Act"), whilst in fact it is a close corporation under the Close Corporations Act ("the Close Corporations Act"), 1984. On 11 December 2024, despite not having filed opposing papers, both Indalo and Ms. Mpakati were represented, and notwithstanding their opposition to the application, the disposition to Ms. Mpakati and Indalo (as a company) was set aside, and judgment was granted against them jointly and severally.

[5] On 12 December 2024 a notice of demand in terms of section 69 of the Act was sent to Indalo, demanding payment of the judgment debt within 21 days. The debt remained unpaid, and on 15 January 2025 the applicants applied for Indalo's winding up. That application became opposed on 6 August 2025.

THE SEQUESTRATION APPLICATION AGAINST MS. MPAKATI

[6] On 12 August 2025 a writ of execution was issued against Ms. Mpakati. Upon attempting to execute the writ at Indalo's business premises on 25 August 2025, Ms. Mpakati confirmed to the Sheriff telephonically that she had no disposable assets with which to satisfy the writ at Indalo's premises. On 16 October 2025 the Sheriff again attempted to execute the writ at Ms. Mpakati's home address. She again declared that she had no money, moveable or disposable property to satisfy the writ. Ms. Mpakati did state that she owned a bonded immovable property. The result was that the Sheriff rendered a *nulla bona* return.

[7] Ms. Mpakati says that the order in terms of which judgment was granted against her is the subject of an application for leave to appeal. The application for leave to appeal is dated 21 January 2025. The application was due to be filed within 15 days, and was thus delivered out of time. On 18 March 2025 Ms. Mpakati delivered a request for reasons for the judgment. The reasons were provided in early April 2025.

[8] Ms. Mpakati contends that the matter is still under appeal. That is not so. The time for filing an application for leave to appeal lapsed on 7 January 2005. No condonation has been sought for its late filing. Ms. Mpakati cannot deliver a request for reasons weeks later, and argue that the request extended the time for filing the application. If that were so, then a party can deliver a request for reasons years later and rely thereon to argue that the application for leave to appeal is not out of time. In my view the appeal has thus lapsed.

[9] It is also significant that after receiving the reasons in April 2025 Ms. Mpakati did not amend her application for leave to appeal, nor has she pursued the appeal. The argument that the matter is under appeal is, in my view, a red herring. Ms. Mpakati's counsel argued that the fact that the judgment was rendered jointly and severally with an entity that doesn't exist renders the judgment void as far as Ms. Mpakati is

concerned, because she would be unable to recover any monies from her co-debtor. I reject the argument. The fact is that the Court granted judgment against Ms. Mpakati, and she can be held liable for the entire debt. There is thus a judgment ordering Ms. Mpakati to repay the monies, and when the Sheriff demanded payment she was unable to satisfy the writ. Consequently, Ms. Mpakati has committed an act of insolvency by virtue of the provisions of section 8 (b) of the Insolvency Act, 1936.

[10] Of some significance is Ms. Mpakati's explanation for receiving the monies in the first place. She does not deny that the amount that she appropriated for fees far exceeds the tariff laid down in the Companies Act. Ms. Mpakati's explanation is that she was paid for work done as agreed with the board of the Industrial Development Corporation ("IDC"), which then paid the fees to her by agreement as post-commencement finance. Ms. Mpakati does not provide any evidence of the so-called agreement, and she does not attach the draw-down applications.

[11] The agreement between the IDC and Catai does not mention that Ms. Mpakati was entitled to additional fees. On the contrary, the agreement says that the loan was intended to purchase raw materials, labour, and to pay overheads related to the Transnet RRV Project, recapitalizing its branches and payment of outstanding creditors. There is thus not a shred of evidence that such an agreement ever existed. Had there been, one would have expected Ms. Mpakati to provide evidence thereof. In my view the inescapable conclusion is that Ms. Mpakati was not entitled to the monies that she paid into Indalo's account. I say so in full recognition of the test in *Plascon-Evans*¹. In my view, Ms. Mpakati's version can be rejected on the papers as clearly untenable.

¹ *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)

[12] Ms. Mpakati says that she is not insolvent, and that she owns two immovable properties, the values of which exceed the claimed amount. Further of significance is that Ms. Mpakati told the Sheriff that one of the properties is bonded, and she never mentioned the second. In these papers Ms. Mpakati put up a valuation and a bond statement in respect of Erf 2[...] E[...] which show that there is likely sufficient equity in the property to satisfy the debt. However, there is no indication what other debts there may be. The averment that Ms. Mkapati is not insolvent is not borne out by the papers, and must be seen against her statement that she has no disposable assets to satisfy the debt.

[13] As the applicant argued, in *Absa Bank Ltd v Rhebokskloof and Others*² the Court said:

“Even, however, where a debtor has not committed an act of insolvency and it is incumbent on his unpaid creditors seeking to sequester the former’s estate to establish actual insolvency on the requisite balance of probabilities, it is not essential that in order to discharge the onus resting on the creditor if he is to achieve this purpose that he set out chapter and verse (and indeed figures) listing the assets (and their values) and the liabilities (and their values) for which he may establish the debtor’s insolvency inferentially. There is no exhaustive list of facts from which an inference of insolvency may be drawn, as for example an oral admission of a debt and failure to discharge it may, in appropriate circumstances, which are sufficiently set out, be enough to establish insolvency for the purpose of the prima facie case which the creditor is required to make out. It is then for the debtor to rebut this prima facie case and show that his assets have a value exceeding the sum total of his liabilities.”

[14] Two principles from the above passage are applicable in this case. Firstly, even if I were to disregard the judgment against Ms. Mpakati, the fact is that the applicants have proven a liquidated debt in excess of R 100. They thus have locus standi in terms of the Insolvency Act. The second principle is that where an applicant proves a

² 1993 (4) SA 436 (c) at 443D

debt, and in circumstances in which Ms. Mpakati has on two occasions stated that she is unable to satisfy the debt, there is an evidentiary burden on Ms. Mpakati to show that she is not insolvent. She has failed to do so. Ms. Mpakati should thus be sequestrated.

WINDING UP OF INDALO

[15] I accept that there is no enforceable judgment against Indalo. For the reasons set out in paragraphs 10 and 11 above, I accept, however, that the applicants have proven the underlying debt that Indalo owes to the first applicant.

[16] In terms of section 69 (1) (c) of the Close Corporations Act, 69 of 1984 a close corporation is deemed to be unable to pay its debt if it is proven to the satisfaction of the Court that the corporation is unable to pay its debts. Section 69 is essentially identical to section 345 (1) (c) of the Companies Act, 61 of 1973, and the same principles apply to both companies and close corporations that stand to be wound up.

[17] In *Koekemoer v Taylor and Steyn NNO and Another*³ the Court held that a company is unable to pay its debts if it is “*unable to meet its current liabilities, including contingent and prospective liabilities as they become due.*” The same principle was applied in *Rhebokskloof (supra)*⁴:

“The primary question which a Court is called upon to answer in deciding whether or not a company carrying on business should be wound up as commercially insolvent is whether or not it has liquid assets or readily realizable assets available to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry on normal trading- in other words, can the company meet current demands on it and remain buoyant?”

³ 1981 (1) SA 267 (W) at 271 B

⁴ At 440 F

[18] I accept that service of the writ, and the resultant *nulla bona* return did not trigger the deeming provision in section 69 (1) (b). However, I see no reason why Ms. Mpakati's statement, that there were no disposable assets available to satisfy the debt, cannot be considered to be evidence of Indalo's inability to pay its debts as they fall due. As was pointed out in *Rhebokskloof (supra)* the clearest indication that a company or close corporation is able to meet its debts is that it actually does pay. Consequently, it is my view that Indalo should be wound up as it is unable to pay its debts as they fall due.

URGENCY

[19] Although I have dealt with the merits above, it is necessary to say something on urgency. Counsel for Ms. Mpakati and Indalo argued that both applications were not urgent. He says that there is no indication that Ms. Mpakati avoided service of the writ, as applicants allege, nor that she has tried to move assets. Therefore, it is argued, the applicants would receive substantial redress were the applications to be brought in the normal course.

[20] Counsel is correct, that there is no evidence that Ms. Mpakati is hiding assets. I also do not believe that she was avoiding the Sheriff. However, applications for winding up and sequestrations have a measure of urgency inherent in their nature. It is often important to establish a concursus creditorum as soon as possible. I must, however, not be understood to say that all winding up and sequestration applications are urgent. There must be something more than the mere fact that the application is for winding up or sequestration.

[21] In this case, not only is there prima facie evidence that Ms. Mpakati appropriated Catai funds to her close corporation, she has also put up flimsy explanations for her conduct. Ms. Mpakati also admits that in another business rescue matter, that of Seratime, she caused the sum of R 2 806 800, belonging to Seratime, to be paid into Indalo's account. Even if one were to accept that the monies were subsequently

repaid to Seratime, as Ms. Mpakati suggests, the fact is that Ms. Mpakati made an irregular payment of Seratime monies to her own close corporation, instead of holding the monies separate from her own funds. That is a serious breach of her fiduciary duties.

[22] I find Ms. Mpakati's explanation in the case of Seratime to be as dubious as her explanation for appropriating Catai funds. For that reason it is, in my view, a matter of urgency that the affairs of both Ms. Mpakati and Indalo be investigated.

[23] Consequently, I make the following order:

IN CASE NO: 2025-202949:

[23.1] The estate of the respondent is provisionally sequestrated, and her assets are placed in the hands of the Master of the High Court.

[23.2] A rule nisi is issued in terms of which the respondent, and any affected party, is called upon to show cause, if any, on 20 February 2026 why the order should not be made final.

[23.3] Costs of the application shall be costs in the administration of the respondent's insolvent estate on Scale C.

IN CASE NO. 2025-003969

[23.4] The respondent is placed under provisional liquidation.

[23.5] A rule nisi is issued in terms of which the respondent, and any affected party, is called upon to show cause, if any, on 20 February 2026 why the order should not be made final.

[23.6] Costs of the application shall be costs in the administration of the respondent's estate on Scale C.

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the Applicants:	Adv. MP Van der Merwe SC
Instructed by:	Jaco Roos
Counsel for the respondents:	Adv. H Smith SC
Instructed by:	MAA Inc
Heard on:	19 November 2025
Judgment on:	4 December 2025