

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025-122252

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>19 January 2026</u>	<u>[Signature]</u>
DATE	SIGNATURE

In the matter between:

AHMED HUSSAIN SULIMAN

Applicant / Respondent

and

**VHONANI DENG RAMUEDZISI AND
ZIYAD SONPRA, NNO**

First Respondent

(the liquidators of Azochem Laboratories (Pty) Limited, in liquidation)

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

Second Respondent

THE MASTER OF THE HIGH COURT

Third Respondent

WORKFORCE STAFFING (PTY) LIMITED **Fourth Respondent / Applicant**

Summary

Application to strike out under Rule 6(15) – circumstances and the grounds on which application is brought indicating that a hearing of the application to strike out is premature.

JUDGMENT

DANIELS AJ

[1] Mr. Ahmed Hussein Suleiman seeks an order for the company, Azochem Laboratories, to be placed under supervision and for business rescue to commence. The relief is sought in terms of section 131(1) read with 131(4)(a) of the Companies Act 71 of 2008 and I will, in what follows, refer to this as the “business rescue application”.

[2] Azochem is in final liquidation in terms of an order of Court under case number 2024-128830. The liquidators of Azochem are respondents in the business rescue application and in this application, and Workforce Staffing (Pty) Limited sought and has been granted leave to intervene. It is effectively a co-respondent in the business rescue application and it is the applicant in this application to strike out certain paragraphs of, and certain annexures to the founding affidavit in the business rescue application.

[3] The application to strike out is supported by a notice of motion and a founding affidavit. It is wide-ranging and it is aimed at various paragraphs of the founding affidavit and a number of annexures to it, on the basis that the paragraphs and, where applicable, read with the appropriate annexures include matter that is scandalous, vexatious and or irrelevant as contemplated in Rule 6(15) of the Uniform Rules. It is accepted that Rule 6(15) also covers instances where matter may be struck out because it constitutes hearsay, and it is understood that this application to strike out also covers, in part, matter contained in the founding affidavit on this basis.

[4] For the applicant in the business rescue application (in other words, the respondent in the strikeout application), it is contended in the first instance that the application to strike out

is being prematurely made, at least in the sense that it ought to be heard together with the business rescue application and accordingly by the Court ultimately seized of the business rescue application.

[5] In support of this proposition, I have been referred to certain authorities, most notably that of Ehler (Pty) Limited v. Silver 1947 (4) SA 173 (W), and emphasis was placed specifically on the passage at 176, which I quote for the sake of completeness:

'In view of this attitude on the part of the petitioner, I think that the application to strike out is premature. Such an application must, in my opinion, be made to the Court that tries the application at the time the application is before the Court for a decision on the merits. The course now taken of objecting in a preliminary application to strike out would lead to the very greatest inconvenience and difficulty.'

After all, what is the real nature of the objection? This is not an objection to a pleading, it is an objection to evidence which is proposed to be tendered to the Court that hears the application. How can a Court which is not hearing the application disallow evidence which it is proposed to tender later on as irrelevant to the merits of the dispute? The Court which ultimately decides the application may have quite a different view as regards the relevancy of some of the passages when all the evidence is presented to it and the matter has been fully argued.'

[6] I was also referred to Shephard v. Tucker's Land and Development Corporation (Pty) Limited (1) 1978 (1) SA173 (W) and in particular the following passage, at 177D:

'I did not understand Mr. Morris to dispute this. Quite clearly the allegation in question, being based as it is on investigations which were made, is hearsay. Mr. Morris' submission was that the respondent had waived its right to complain, because the respondent without reserving his right filed an answering affidavit which, inter alia, dealt with para. 9 of the founding affidavit. I have already referred to the relevant part of the respondent's answering affidavit. The deponent does not admit the correctness of the contents of the letter which is annexure B. Nor in my view does annexure C, the letter in reply, in any way admit the correctness of those contents. Nor, in my view, does the fact that the respondent did not immediately

apply to strike out or, at least reserve its rights, matter. Indeed it would have been premature for the respondent, before filing its answering affidavit, to apply to strike out. Applications to strike out must be made when the matter is before the Court on its merits, and if made prior thereto the application will be premature.'

[7] Club Mykonos Langebaan Limited v. Langebaan Country Estates JV & Another 2009 (3) SA 546 (C) at [65] is to the same effect.

[8] Mr. Alli, for the applicant in the application to strike out, referred me to the decision of this division in the case of Millu v. City of Johannesburg Metropolitan Municipality and another 2024 JDR 1329 (GJ). That decision, by Sutherland DJP, in my understanding, suggests that the approach to be adopted is one that may be determined effectively on a case by case basis. I say that because the decision, as I understand it, is to the effect that the merits of an application need not be taken into consideration when an application to strike out is considered. Whilst this would suggest a departure from the approach that is recommended in Ehler as I referred to it above, and later, in Shephard and in Club Mykonos, I do not see that a hard and fast rule exists and Millu is not, as I see it, to the effect that applications to strike out must always be determined separately from the merits.

[9] There is certainly merit in considering an application to strike out as and when the merits of the substantive relief being sought in the main application arises for consideration, and it may be, depending on the circumstances, that that is a sensible, prudent approach. Certainly I should be careful, sitting in an interlocutory Court, to decide without being fully conversant with, nor seized of the merits of the main application, to pre-emptively exclude certain evidence and I am alive to the possibility that the Court ultimately seized of the business rescue application may take a different view on, for instance, as one issue, the question of relevance.

[9] The important consideration is that I am not, in this application, seized of the merits of the business rescue application. I am not suggesting that I am to ignore or disregard the merits completely, but, fundamentally, I am not asked to make a determination on any of the substantive issues that might impact on the outcome of the business rescue application.

[10] Against that background, the founding affidavit in the business rescue application, as I

see it, is meant to make a case, broadly stated, for why business rescue is a better approach and why it is preferable to liquidation. It tries, as I see it, to explain why a reasonable prospect exists of Azochem being rescued and why business rescue will yield a better outcome than the existing liquidation. I mention this because I think it gives a clear sense of the nature and the extent of the inquiry to be undertaken by the Court that will in due course hear and decide the merits. It also illustrates, I think, that it will be unwise, if not inappropriate, for me, at this stage, to exclude evidence by striking it out, and more so where, in the business rescue application, a replying affidavit is yet to be delivered. Whether it will or whether it won't remain to be seen, but it is similarly not something that I am seized with in this application.

[11] When I look somewhat further and I consider the application to strike out, I am fortified in my view that striking out passages, paragraphs or annexures at this stage might be premature.

[12] That is informed principally by the nature of certain of the complaints that are ultimately embodied in the application to strike out. Whilst I had the benefit of being addressed by both counsel on the application to strike out, it seems that certain of the complaints are in reality aimed at the weight and sufficiency of the evidence sought to be adduced by the applicant in the business rescue application. As a second consideration, certain of the portions of the founding affidavit targeted by the application to strike out have been identified or singled out to be struck out because they are said to be factually incorrect or a factual position might not, according to the application to strike out, have been accurately, or correctly stated.

[13] I have some difficulty in seeing how complaints of that nature properly resort under Rule 6(15). Allegations that are factually incorrect do not become scandalous, vexatious or irrelevant for that reason and similarly, merely because something might at this stage not be considered to be of sufficient weight or have sufficient evidentiary value to satisfy the ultimate onus that the applicant in the business rescue application may have to satisfy, does not translate to a reason for it to be struck out. I do not believe it follows, and I think to that extent the application to strike out ought to be heard together with the merits of the business rescue application.

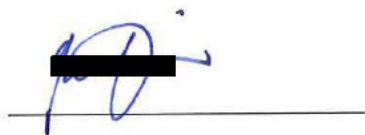
[14] That leaves the question as to the order to be made. For precisely the same reasons that suggest that the application to strike out is prematurely argued today, the dismissal of the application to strike out, today, will be premature. I accordingly intend to remove the application to strike out from the roll and direct that it be argued as and when the (main) business rescue application is argued.

[15] As for the question of costs, there has been considerable debate about the procedure that was followed and whether or not the application ought to have been properly on an unopposed roll or not. There are difficulties and complaints that were directed in both directions about the timing of the notice of intention to oppose the interlocutory application and the absence of an answering affidavit. On any basis, the application was set down on the unopposed roll for Tuesday, 11 November 2025. On that date, as I understand it, the Court hearing that application directed that it ought to be heard in the Insolvency Court, where I was sitting. On the same day, and upon receipt of correspondence emanating from the applicant in the business rescue application, I was informed that the application is in fact opposed. The application then proceeded on an opposed basis, and that is the nature of the proceedings that we had today. I accordingly do not believe that much purpose will be served in departing from the normal approach to costs and the fact remains that today, an opposed application was heard, and whether or not it would have been notionally possible for the applicant in the striking out application to secure an unopposed order on 11 November 2025 is, for present purposes, neither here nor there.

Order:

I accordingly make the following order:

1. The application to strike out is removed from the roll and it stands over for determination together with the business rescue application under this case number, on a date and time to be allocated.
2. The applicant in the application to strike out (Workforce Staffing (Pty) Limited) is directed to pay the wasted costs occasioned by the application (and those costs will be paid on scale C and includes the costs of one counsel, not two).



J. DANIELS

Acting Judge of the High Court

GAUTENG DIVISION, JOHANNESBURG

This judgment was given ex tempore on 12 November 2025. The transcript has been reviewed and corrected by Acting Judge Daniels. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 12 November 2025.

HEARD ON: 12 November 2025

DELIVERED ON: 12 November 2025

REASONS: 19 January 2026

For the applicant in the application to strike out:

Adv. N. Alli

Instructed by:

Hunts (Inc. Borkums) Attorneys.

For the respondent in the application to strike out:

Adv. M. Henning

Instructed by:

S P Attorneys Inc.

