

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024/034960

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES/NO
23/1/26	
DATE	SIGNATURE

In the matter between:

VIP STEEL CONSTRUCTION CC

Applicant

and

MADE WITH RURAL 1 (PTY) LTD

Respondent

JUDGMENT

P F LOUW, AJ

- [1] This is the extended return day of a rule nisi that was issued on 4 June 2024 placing the respondent in provisional liquidation. The respondent delivered a notice of intention to oppose on 18 July 2024 and then filed an answering affidavit on the 31st of July 2024.

- [2] The applicant argued that the answering affidavit was delivered out of the time limit set by the Uniform Rules of Court and that the respondent accordingly must seek condonation to which it is not entitled. For this reason, the applicant argued, the court may not consider the answering affidavit and the affidavits consequential thereon. It was pointed out that the answering affidavit is a response to the rule nisi and that anyone, including the respondent, had the right to provide reasons why the provisional order should not be made final on the return day, which is precisely what the respondent did by delivering the answering affidavit. The applicant did not persist with its argument that the respondent required condonation. I therefore do not have to consider this aspect of the case. Insofar as it may be necessary to do so, I allow the answering, replying and supplementary answering affidavits into evidence.
- [3] The application was brought on the basis that the respondent is indebted to the applicant in a sum of some R1,1 million. The sum is reflected in an invoice annexed to the founding affidavit. The application is also based on a letter of demand under section 345(1)(a)(i) of the Companies Act 61 of 1973. Given the conclusions to which I have come, it is not necessary for me to consider the validity of the letter of demand.
- [4] The respondent's answer to the case made out in the founding affidavit is that it is not the respondent who is indebted to the applicant for the payment of the sum reflected in the invoice. The debtor is another entity, namely Retail Market Farm (Pty) Ltd. The only issue in the case is whether the applicant has established on a balance of probabilities that the respondent is the entity indebted to the applicant. Given the nature of the relief sought (i.e. that it is final), the Plascon-Evans methodology must be applied. I must consequently consider whether the applicant can succeed on the respondent's version on the crucial issue or whether the respondent's version can be rejected as patently improbable. In my view the respondent has provided a cogent answer to the applicant's assertion that the respondent is liable for the debt. The respondent's version is in my view not improbable and does not stand to be rejected.
- [5] The facts that cannot be disputed as they appear from the answering affidavit are that the company to which I referred above, Retail Market Farm, had two

directors namely the deponent to the answering affidavit, Ms Leeko Lynette Mokoene (to whom I refer as Ms Mokoene) and a Mr Ronnie McKenzie. Ms Mokoene referred to Mr McKenzie as her erstwhile partner. The respondent had, and has, one director namely Ms Mokoene. Retail Market Farm had (and still has) a funding relationship with the National Empowerment Fund, referred to as the NEF in her affidavit. Turning to the applicant, its business is to construct steel structures. What happened was that Ms Mokoene saw the applicant erecting a structure on a property in the vicinity of a piece of land owned by Retail Market Farm. She requested the applicant to give a quotation for a steel structure on Retail Market Farm's property, which the applicant did. The quotation was made out for Ms Mokoene but she required the applicant to issue the quotation to Retail Market Farm because the name on the invoice had to correspond to that of the NEF lender (evidently because the NEF would provide funds for the improvement). The applicant obliged and it issued a second quotation to Retail Market Farm. Ms Mokoene accepted the quotation on behalf of Retail Market Farm. Ms Mokoene then paid a deposit on behalf of Retail Market Farm and the applicant commenced with the construction which it completed at some point before 24 May 2023. The applicant issued a tax invoice to Retail Market Farm on this day for the outstanding balance (i.e., the amount referred to in the third paragraph hereof). The invoice was not paid. The applicant's version of what happened next (which the respondent cannot dispute) is that during July 2023 Mr McKenzie instructed the applicant to amend the tax invoice to show the respondent as the party liable for payment. Neither party delivered an affidavit by Mr McKenzie. The only proof of Mr McKenzie's instruction is a WhatsApp message which was sent to Ms Mokoene attaching the invoice reflecting the respondent as the party liable for payment together with the following text: "As per conversation with Ronnie [i.e. Mr McKenzie] today he asked me to change the name of the company. I did send the invoice to your email address. He also said that he will release payment. Thank you." The WhatsApp message was sent on 17 July 2023. Ms Mokoene said she received it but did not respond thereto. She did not deal with what appears to be the next message: "Can you put the 1 after Made With Rural. Made With Rural 1 (Pty) Ltd." The respondent's name is indeed Made With Rural 1 (Pty) Ltd and not Made With Rural (Pty) Ltd, without the number 1. In an affidavit dealing with the applicant's replying affidavit,

Ms Mokoene made it plain that Mr McKenzie did not act on behalf of the respondent – he was after all not a director thereof – and that the respondent did not agree to pay the debt of Retail Market Farm. Ms Mokoena also said that she and Mr McKenzie separated (which I understand to be a reference to their partnership having terminated and not, as the applicant suggested, that they were married and separated as spouses). She annexed a letter by Mr McKenzie dated 17 March 2024 addressed to the NEF in which he inter alia stated that Retail Market Farm was indebted to the applicant. The purpose of the letter was to ask for financial assistance for Retail Market Farm. The letter flat out contradicts that the respondent replaced Retail Market Farm as debtor. Ms Mokoene made clear in her supplementary affidavit that the lending relationship was between Retail Market Farm and the NEF. Moreover, Retail Market Farm is the owner of the land on which the structure was constructed by the applicant, and it was enriched by the improvement. It is highly improbable that the respondent would stand in for another company's debt. Ms Mokoene did not deal expressly with the response to the WhatsApp message and the question for decision is whether the response (assuming that Ms Mokoene wrote it) ineluctably implies that the respondent substituted itself for Retail Market Farm as the applicant's debtor.

- [6] In my view the WhatsApp response of Ms Mokoene (if she was indeed the author thereof) does not lead to the conclusion that the respondent substituted itself as debtor. Ms Mokoene's version is that Retail Market Farm was always the debtor. That it was the original debtor is common ground. That Mr McKenzie could not bind the respondent is common ground. That only Ms Mokoene could do so is also a common cause fact. Whether she in fact did so cannot in my estimation be deducted from the enigmatic WhatsApp response. It was not even purported to be written on behalf of the respondent.

- [7] The applicant's frustration with the situation is understandable. But the applicant decided to proceed against respondent when the applicant was fully aware that the respondent denied liability (the respondent's attorneys set out the facts in a letter sent on 15 April 2024, a month before the application was issued). This appears from a comprehensive response which the respondent's attorneys

addressed to the applicant after the demand to which I referred above was made. The respondent's denial of liability is not bold, unsubstantiated or untethered. There is no indication that the respondent as legal entity resolved to be bound in the place of Retail Market Farm, and on the facts set out in Ms Mokoene's affidavits it would make no commercial sense for it to do so. Perhaps Mr McKenzie mendaciously attempted to pass the buck from Retail Market Farms of which he was a "partner" and perhaps faced ultimate liability to the respondent where he faced no potential liability.

[8] For these reasons I have concluded that the respondent is not proven to be a creditor of the applicant and that the latter cannot seek the liquidation of the respondent as a creditor. The rule should accordingly be discharged. I can see no reason why the normal rule that cost should follow the event should not apply. In my view the case is uncomplicated and I consequently do not order that the costs be on scale C.

[9] The following order is made:

- a. The rule issued by this court on 4 June 2024 is discharged.
- b. The applicant is ordered to pay the respondent's costs.

A handwritten signature in black ink, consisting of a large, stylized 'P' and 'L' with a horizontal line extending from the end of the 'L'.

P F LOUW
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 20 January 2026

Delivered on: 23 January 2026

Appearances:

For the Applicant: R. Robinson (adv)

Instructed by: Paul Barnard Inc 011 375-4052

admin@phlaw.co.za

For the Respondent: R. Erasmus (att)

Instructed by: Riekie Erasmus Attorneys 082 775 8028

Office@riekieerasmus.co.za