



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case No: 2025-039841

In the matter between:

STEPHEN MARK VAN ROOYEN

FIRST APPLICANT

PATRICK MARCO HAUSOTTER

SECOND APPLICANT

JONAS HANDEKYN

THIRD APPLICANT

and

GARY DONOVAN WALLACE N.O.

FIRST RESPONDENT

In his capacity as provisional liquidator of K2022504463

(South Africa) (Pty) Ltd (in voluntary liquidation) &

The Beach Country and Safari Collection (Pty) Ltd

(in voluntary liquidation)

RISCHARD CASSIM N.O.

SECOND RESPONDENT

In his capacity as provisional liquidator of K2022504463

(South Africa) (Pty) Ltd (in voluntary liquidation)

ZAHEER CASSIM N.O.

THIRD RESPONDENT

In his capacity as provisional liquidator of The Beach

Country and Safari Collection (Pty) Ltd

(in voluntary liquidation)

MARCEL YVON MARIE DE

FOURTH RESPONDENT

MAUDAVE BESTEL

SHERIFF FOR THE HIGH COURT FOR

FIFTH RESPONDENT

THE DISTRICT OF BONNIEVALE (HL)

THE MASTER OF THE HIGH COURT

SIXTH RESPONDENT

CAPE TOWN

THE COMPANIES AND

SEVENTH RESPONDENT

INTELLECTUAL PROPERTY COMMISSION

Neutral citation: Stephen Mark Van Rooyen and 2 Others v s Gary Donovan
Wallace *and Others* (Case no 2025-039841)

Coram: O'Brien,AJ

Heard: 03 December 2025

Delivered: 29 January 2026

JUDGMENT IN LEAVE TO APPEAL

O'BRIEN, AJ:

1. The applicants challenge the full order issued on 23 September 2025, which dismissed the main application with costs. They allege a misapplication of principles concerning voluntary liquidation as opposed to compulsory liquidation.
2. Section 17(1) of the Superior Courts Act 10 of 2013 ("the Act") stipulates the following:

"Leave to appeal may only be granted when the judge or judges concerned are of the opinion that -

 - a. (i) The appeal would have reasonable prospects of success; or
 - b. (ii) There is some other compelling reason why the appeal should be heard ...
3. The Act has raised the threshold for granting leave to appeal. Applicants now face a higher and more stringent standard. In *S v Smith* 2012 (1) SACR 567 (SCA) at para 7, the court said:

"What the test of reasonable prospects of success postulates is a dispassionate

decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to establish than that there is a mere possibility of success, that the case is arguable on appeal, or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal." (Footnote omitted)

The present facts fall short of this benchmark; thus, the application does not meet the criteria for leave to appeal.

4. The applicants listed twenty-nine grounds of appeal in their application for leave to appeal. These can be grouped into three main categories. First, the applicants argue that the court misapplied the legal principles for setting aside a winding-up, as the companies were placed in voluntary liquidation by a special resolution passed by the fourth respondent.

They contend the court erred in law by treating the application as one to set aside a winding-up order, rather than a voluntary winding-up.

The principles for setting aside a voluntary winding-up differ from those for a winding-up order.

5. The applicants further allege that the court failed to apply the principle that if the special resolution and accompanying statement of affairs are found invalid and declared void ab initio, the winding-up must be set aside.

They also argue the court erred by not finding that the requirements for a special resolution under Section 363 of the Companies Act 1973, including those regarding the statement of affairs, are mandatory.

According to the applicants, failure to comply with the statement of affairs requirement renders the special resolution void and its registration invalid.

6. The applicants rely on *Enyuka Prop Holdings (Pty) Ltd v United Merchants CC (in liquidation) & Others* (2021/30511) [2025] ZAGPJHC 559 at para 97. However, unlike in *Enyuka*, the applicants in this case did not challenge the resolution taken by the fourth respondent. There was no dispute that the special resolution was defective due to a defective statement of affairs. In *Enyuka*, the special resolution was directly challenged and found defective.
7. In this case, I considered the unique nature of the companies, noting their classification as domestic companies similar to partnerships, which required a higher standard of good faith from directors. Furthermore, the *Enyuka* case involved an explicit challenge to the special resolution, whereas here the applicants neither disputed its validity nor proposed an alternative. This lack of dispute over the special resolution distinguishes this matter from *Enyuka*.
8. Secondly, I have addressed the disputed facts in my judgment and will not repeat them here. The applicants also argue that the court failed to consider less drastic remedies than liquidation, but they did not specify what those remedies were. The applicants, in their heads of argument, contend that Mr Bestel should have pursued other options under section 163 of the new Companies Act. Strangely, they did not plead what those options were.

9. Given the hostility between the applicants and the fourth respondent, including allegations of fraud and impropriety, I found it just and equitable not to set aside the liquidation.
10. The applicants argued that the fourth respondent, Mr Bestel, should not have appeared in person to oppose the application for leave to appeal. In my view, this procedural challenge is without merit, as nothing prevented the fourth respondent from appearing in person.
11. For these reasons, the applicants have not shown a reasonable prospect of success or a compelling reason for a higher court to consider the application. The application does not demonstrate any realistic chance of success or present compelling grounds and therefore does not meet the required legal standard.
12. The application for leave to appeal is dismissed with costs on Scale A.

O' BRIEN, AJ
Acting Judge of the High Court of South Africa
Western Cape Division, Cape Town

APPEARANCES:

For the Applicants:

Adv G Elliott SC

Ashman Attorneys Inc

For the First, Second & Third Respondents: Adv M Filton

Koos van Rensburg Attorneys

For the Fourth Respondent:

In Person