IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case no: **D4690/2023**

In the matter between:

KRISHNA NAIDOO **APPLICANT**

Identity Number: 6[...]

and

GAYREGINA INVESTMENTS CC **FIRST RESPONDENT**

Registration Number: CK 1999/50826/23

GOVINDSAMY NAIDOO **SECOND RESPONDENT**

Identity Number: 5[...]

Coram: MOSSOP J

Heard: 4 February 2026

Delivered: 4 February 2026

ORDER

The following order is granted:

1. The provisional order of liquidation granted by Sibiya AJ on 16 August 2024 is discharged.

2. The application is struck from the roll.

3. The attorneys representing the applicant, Bala Naidoo and Company, and the second respondent's legal representative, advocate Selvan Naidoo, trust account advocate, are not entitled to derive any fees in respect of this application from their respective clients and to the extent that fees have already been charged by them and paid by their respective clients, those fees are to be refunded to their clients within 30 days of the date of this order.

JUDGMENT

MOSSOP J:

Introduction

[1] This is the extended return day of an opposed application in which the applicant seeks the liquidation of the first respondent, a close corporation. A provisional order of liquidation was previously granted by Sibiya AJ on 16 August 2024.

The parties

[2] The first respondent has two members who each own fifty percent of the membership interest in it. The applicant is one of the members, and the other member is the second respondent. Besides being linked to each other through their membership of the first respondent, the applicant and the second respondent are also linked to each other by familial ties: the applicant is married to the second respondent's sister, and they are thus brothers-in-law. They, and their respective families, however, are presently in dispute with each other. As F. Scott Fitzgerald, the acclaimed novelist, pointed out:

'Family quarrels are bitter things. They don't go according to any rules. They're not like aches or wounds, they're more like splits in the skin that won't heal because there's not enough material.'[1]

It appears that this dispute is such a dispute and is incapable of being healed.

The history of the matter before this court

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[1] F. Scott Fitzgerald: *'Short Stories of F. Scott Fitzgerald: Babylon Revisited'*, 1989, page 630.

[3] This matter has a long history before this court. In compiling a chronology in order to track that history fully, I have had to peruse an appallingly maintained physical court file. That I have had to prepare a chronology is indicative of the fact that neither party has complied with Practice Directive 9.4.1.[2] An examination of the papers reveals, further, that the indexed record of proceedings has been inadequately put together. None of the previous orders of this court have been included in the indexed bundle of documents, bar the previously mentioned order of 16 August 2024. Orders, of which there are a number, are scattered randomly throughout the court file in no proper sequence. After a tedious exercise of locating them and placing them in date order, I am now satisfied that I can provide an accurate narration of the journey of this matter through this court. I should, however, not have had to spend my time performing this exercise: it is the function of the applicant's attorneys to ensure that the court file is in order. In the fulfilment of this duty, they have spectacularly failed.

[4] On to the chronology. The application was first before this court on 13 July 2023. No order was granted on that date. It was then adjourned to 20 September 2023. On that date, it was adjourned sine die. Eleven months later, on 16 August 2024, it was resurrected and reinstated for hearing when, as mentioned at the commencement of this judgment, the provisional order of liquidation was granted by Sibiya AJ. The rule granted was returnable on 6 November 2024.

[5] On 6 November 2024, the matter was adjourned to 7 February 2025. On 7 February 2025, it was adjourned to 26 May 2025. On 26 May 2025, the application was adjourned to 9 October 2025. On that date, the matter was adjourned to 17 October 2025. On 17 October 2025, the application was adjourned to the opposed motion roll on 4 February 2026. That explains how the matter comes before me today.

[6] The just described odyssey covers nine different dates when the matter has appeared on this court's roll. It is reasonably safe to conclude that a significant

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[2] 'The heads of argument shall be delivered under cover of a typed note indicating:
(*a*) …
(*j*) in appropriate cases the applicant, excipient or plaintiff must annex to the note a chronology table, duly cross-referenced, without argument;'

amount of this court's time has been consumed by this matter. Certainly, the court file needed to be read by the presiding judge every time the matter appeared on the roll. But had the applicant's attorneys paused and thought for a moment and thoroughly researched the matter and considered the facts of the application, it would immediately have become obvious to them that the application was moribund and could never, no matter how many adjournments were granted, have led finally to the result that the applicant desired, namely the liquidation of the first respondent. Why this should be so is discussed next

The insuperable problem

[7] The applicant, ironically, himself mentions the insuperable problem that he faces but does not appear to recognise its consequences. At paragraph 22 of his replying affidavit, when dealing with allegations made by the second respondent at paragraph 18 of his answering affidavit, the applicant states:

'I am not surprised at Second Respondents allegations made in this paragraph as I have since established Second Respondent as the Principal member failed to:

22.2.1 Submit the financials to the South African Revenue Services.

22.2.2 Pay the annual returns.

22.2.3 Prevent the deregistration of the First Respondent.'

[8] In support of the submission in paragraph 22.2.3 mentioned above, the applicant attached to his replying affidavit a Windeed report, which was apparently compiled from the very latest data supplied by the Companies and Intellectual Property Commission (CIPC). That report confirmed that the first respondent had been finally deregistered by CIPC for failing to file annual financial returns. Notwithstanding this document, and this revelation, the applicant went on to conclude the replying affidavit with the following prayer:

'Wherefore I humbly pray this application to be granted with costs.'

[9] The applicant identified the insuperable problem facing him but was not able to comprehend its effect. A document from CIPC put up by the second respondent in a further affidavit that he delivered, I might add without seeking leave of this court to do so, indicates that the final de-registration of the first respondent occurred on 24

February 2011, nearly 15 years ago and long before the liquidation application was launched.

Deregistration and its consequences

[10] The promulgation of the Companies Act 71 of 2008 (the Companies Act) had significant consequences for the Close Corporations Act 69 of 1984 (the CCA). Certain of the CCA's provisions were repealed and others were amended. One of the sections of the CCA that was repealed was s 26, which entitled the registrar of close corporations to deregister a close corporation on certain grounds, including failing to deliver its annual financial statements. Notwithstanding this, the power to deregister a close corporation still exists, but it resides now in s 82(3) of the Companies Act, which reads:

'In addition to the duty to deregister a company contemplated in subsection (2)(b), the Commission may otherwise remove a company from the companies register only if -

(a) …

(i) has failed to file an annual return in terms of section 33 for two or more years in succession; and

(ii) on demand by the Commission, has failed to -

(aa) give satisfactory reasons for the failure to file the required annual returns; or (bb) show satisfactory cause for the company to remain registered; or …'[3]

[11] Section 83(1) of the Companies Act is of equal importance on this issue and reads:

'A company is dissolved as of the date its name is removed from the companies register unless the reason for the removal is that the company's registration has been transferred to a foreign jurisdiction, as contemplated in section 82(5).'

[12] There is no suggestion here of a transfer to a foreign jurisdiction. The effect of this section is that upon being finally deregistered, a close corporation's existence as a legal person terminates. This was confirmed by the Supreme Court of Appeal in

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[3] The reference to a 'company' is deemed to also be a reference to a close corporation in terms of s 26 of the Close Corporation Act.

Miller and Others v Nafcoc Investment Holding Company Ltd and Others,[4] where Cloete JA observed that:

'Deregistration, on the other hand, puts an end to the existence of the company. Its corporate personality ends in the same way that a natural person ceases to exist on death. Once there has been deregistration there is obviously no purpose in a corporate post mortem and no-one would have the authority to conduct one.'

[13] As a consequence of deregistration, ownership of all the assets of the close corporation, both movable and immovable, because they are now considered to be *bona vacantia*,[5] passes automatically to the State without any formalities being required.[6] It is common cause that the principal, indeed, the only asset owned by the first respondent, is an immovable property. It has the formal description of;

'Portion 412 (of 362) of Erf 49 No. 862, Registration Division FU, Province of KwaZulu-Natal, in extent 2.0234 (two comma nought two three four) hectares.'

The applicant brought the liquidation application in the first instance because he wished to sell a dwelling that he had constructed on his portion of the first respondent's immovable property. For the applicant, the unpleasant fact is that ownership of that immovable property has passed to the State as a consequence of the final deregistration of the first respondent.

[14] By virtue of its final deregistration, the first respondent no longer exists.[7] It has not existed for the past 15 years. It cannot therefore be wound up, as the applicant entreats the court to do, for there is nothing to wind up.

[15] Because the deregistration of the first respondent preceded the formulation and bringing of this application, it appears to me that there is, in truth, no valid application before me. As was observed in similar circumstances in *Silver Sands*

[4] *Miller and Others v Nafcoc Investment Holding Company Ltd and Others* [2010] ZASCA 25; [2010] 4 All SA 44 (SCA); 2010 (6) SA 390 (SCA) para 11.
[5] Garner: *Black's Law Dictionary*, 9th Ed, West Reuters: Ownerless property; goods without an owner. *Bona vacantia* often resulted when a deceased person died without an heir willing and able to make a claim. The property either belonged to the finder or escheated to the Crown; See also *Rainbow Diamonds (Edms) Bpk en Andere v Suid-Afrikaanse Nasionale Lewensassuransiemaatskappy* 1984 (3) SA 1 (AD).
[6] *Walker Engineering CC t/a Atlantic Steam Services v First Garment Rental (Pty) Ltd* 2011 (5) SA 14 (WCC) para 6.
[7] *Miller and Others v NAFCOC Investment Holding Co Ltd and Others*, supra, para 11.

Transport (Pty) Ltd v SA Linde (Pty) Ltd,[8] the proceedings in that matter had been null and void from their very inception. So too in this matter. The court in *Silver Sands* therefore held, correctly in my view, that the appropriate order in the circumstances was to strike the matter from the roll. There is, however, a provisional order of liquidation in this matter. It, too, is a nullity, for as the Latin maxim goes, *ex nihilo nihil fit*.[9] For the avoidance of any doubt, it is probably prudent to discharge the provisional order notwithstanding that it is a nullity.

Costs

[16] As a consequence of what the papers revealed, I wrote to both sides legal representatives on 30 January 2026, several days before the matter was due to be argued on 4 February 2026. In my letter, I requested both sets of legal representatives to be prepared to deal with the question of whether they should be personally required to pay the costs of the application *de bonis propriis*.

[17] That the applicant's attorneys are at fault for bringing an entirely pointless application is not difficult to comprehend. They conceptualised the application and fed and sustained it for several years. So much is plain. Why should the applicant have to pay for such ineptitude? Does this release the respondent's legal representatives from the possibility of any costs order being made against him? I think not. It may, however, at first blush seem to be harsh to paint he second respondent's legal representatives with the same brush used to paint the applicant's legal representatives. After all, did the second respondent not simply meet the case that he was required to meet? I do not believe that it is as simple as that. I explain why I have that view next.

[18] The second respondent has delivered three answering affidavits in this application. The first was attested to on 12 July 2023 (the first affidavit). The second was attested to on 14 October 2024 and, significantly, was identified as being the 'First and Second Respondents' Answering Affidavit' (the second affidavit). The third was deposed to on 15 October 2025 (the third affidavit). The latter two affidavits were simply delivered, bereft of any application in terms of the provisions of Uniform

[8] *Silver Sands Transport (Pty) Ltd v SA Linde (Pty) Ltd* 1973 (3) SA 548 (W) at 549C and E.
[9] Nothing comes from nothing.

Rule 6(5)(*e*).[10] The Uniform Rules are in place to provide structure and certainty in the busy sphere of litigation, and they are to be observed lest what was designed to be an orderly process descends into a free for all with parties delivering documents as and when they please.

[19] In the second answering affidavit, the second respondent states the following:

'I am duly authorised to depose to this affidavit on behalf of the First Respondent, being a member of the First Respondent. **(See Annexure "GN1").**'

That, of course, cannot be correct, because a further consequence of deregistration is that any person who previously was the lawful agent of the deregistered entity loses that authority. It follows that any person, including a legal representative, who continues to act for the deregistered entity after deregistration may consequently be held personally liable for the costs of the application from the date of deregistration.

[20] As has already been established earlier, the act of deregistration preceded the bringing of the liquidation application. Perhaps appreciating this at the eleventh hour, the second respondent stated in his third answering affidavit that he wished to correct an 'omission' that appeared in the second answering affidavit, namely:

'Paragraph 2 of the Answering Affidavit is hereby retracted as I am a member of the First Respondent, and do not represent the First Respondent.'

The paragraph 2 referred to is the paragraph mentioned in paragraph 19 above. I do not detect the presence of any omission. The statement sough to be retracted is a positive assertion. The answering affidavit is, in any event, styled as the answering affidavit of both respondents.

[21] It is a notorious fact that litigation in the High Court is expensive. In the light of that the least that the clients of legal representatives can expect is that the attorney that they have instructed properly and soberly considers the facts of the case in respect of which the instruction has been given, performs the necessary research where knowledge is lacking, knows and understands the law relating to that matter and is familiar with the requirements of the Uniform Rules of Court. In my view, when litigating over incorporated entities, especially where the issue of status

[10] Uniform Rule 6(5)(*e*) reads as follows: 'Within 10 days of the service upon the respondent of the affidavit and documents referred to in subparagraph (ii) of paragraph (d) of sub-rule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.'

is in issue, the very first step that a legal practitioner should take is to ascertain that the incorporated entity factually exists. I would go so far as to state that there is a duty upon them to do so. To ascertain this is not a difficult thing to do: the CIPC website provides information online at the click of a mouse to registered users. Checking the CIPC records as a first step is such an elementary proposition that it hardly bears mentioning. Yet, in this instance, that elementary step was not taken. By either side. As a consequence of this failure, this court has been required to deal with this application over a period of two years when it could have spent that time on matters of true legal merit.

[22] An aggravating feature insofar as the applicant's legal representative's conduct is concerned, is that once it finally dawned upon them that the first respondent had been deregistered (this was first mentioned in the replying affidavit), the applicant still demanded at the end of that affidavit that the first respondent be liquidated. In other words, not only did the applicant's legal representatives not research the matter adequately, they also did not know the law. Such conduct is simply intolerable.

[23] After my letter to both legal representatives, I received replies from both. Neither now appeared enthusiastic to have the matter argued. Understandably so. But the disturbing aspect of the applicant's reply was the following paragraph:

'Further to our client not persisting in having the matter argued on 4 February 2026, our client is hopeful that the parties can agree on the further conduct of the matter, failing which it may be necessary for our client to seek the necessary relief from the Court, regarding the further conduct of the matter.'

It would appear that the applicant's attorneys still do not realise the legal position: there can be no further conduct of the matter because of the final deregistration of the first respondent.

[24] The conduct of the second respondent's legal representative is scarcely better. When delivering the second respondent's first and second answering affidavits, there was no suggestion of CIPC's records having been consulted. Indeed, as previously mentioned, the second respondent stated in the second answering affidavit that he was authorised to represent the first respondent and he

purported to deliver an answering affidavit on its behalf. The liquidation application was opposed on a number of factual grounds, but never on the grounds that the first respondent no longer existed. The second respondent ought to have been aware of this as according to the applicant, he was the dominant member of the first respondent and would have received all communications from CIPC concerning its threatened, and then its final, deregistration.

[25] This matter has been poorly and slovenly handled from inception by both sides. This type of approach will no longer be tolerated. All of this has been to the financial detriment of the parties and to the detriment of the court, whose diminishing resources, already under severe strain, have been needlessly consumed. It seems to me that there must be consequences for this conduct, but I do not see the clients of the legal representatives as having to bear such consequences, for they have not been well served by those that they have paid to properly represent them. In my view, it is the legal representatives who should bear the consequences.

[26] I have heard this morning from those legal representatives regarding what they say should occur. After consideration, I have concluded that they should not be entitled to benefit financially from what they have done or failed to do.

Order

[27] I accordingly order that:

1. The provisional order of liquidation granted by Sibiya AJ on 16 August 2024 is discharged.

2. The application is struck from the roll.

3. The attorneys representing the applicant, Bala Naidoo and Company, and the second respondent's legal representative, advocate Selvan Naidoo, trust account advocate, are not entitled to derive any fees in respect of this application from their respective clients and to the extent that fees have already been charged by them and paid by their respective clients, those fees are to be refunded to their clients within 30 days of the date of this order.

MOSSOP J

APPEARANCES

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Counsel for the second respondent:	Mr S Naidoo
Instructed by:	Advocate Selvan Naidoo Trust account advocate 1st Floor 400 Palmview Drive Palmview Phoenix
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