IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

(1) REPORTABLE: NO/YES

(2) OF INTEREST TO OTHER JUDGES: NO/YES

(3) REVISED

[redacted]

6/01/2026

SIGNATURE. DATE

CASE NO. 2433/2022

In the matter between:

THE EMPLOYEES OF BOTHANGANA TRADING (PTY) LTD (IN LIQUIDATION)	**FIRST APPLICANT**
SIPHO GIVEN MBAMBA	**SECOND APPLICANT**
and	
BOTHANGANA TRADING (PTY) LTD (IN LIQUIDATION)	**FIRST RESPONDENT**
SESFIGILE PLANT HIRE (PTY) LTD	**SECOND RESPONDENT**
KARIEN FORTEIN N.O. (In her capacity	**THIRD RESPONDENT**

as Final Liquidator of the First Respondent)

THE MASTER OF THE HIGH COURT MIDDELBURG	**FOURTH RESPONDENT**
THE STANDARD BANK OF SOUTH AFRICA	**FIRST INTERESTED PARTY**
FIRST NATIONAL BANK	**SECOND INTERESTED PARTY**

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time of hand-down is deemed to be 6 January 2026 at 14:00

JUDGMENT ON LEAVE TO APPEAL

BAM, AJ

[1] On 3 February 2025 I upheld the First and Third respondents' point in limine and dismissed the Applicants' application for rescission. This application for leave is against my order in this regard and is premised on the provisions of Section 17(1)(a)(i) of the Superior Courts Act No. 10 of 2013 which provides that leave to appeal may be granted where in the judge's opinion, "*the appeal would have a reasonable prospect of success."* A brief ventilation of the issues is necessary as the order was made *ex tempore.*

[2] The First Respondent Bothangana Trading ("the company") was placed in final liquidation on 14 November 2022 per the order of Mthimunye AJ. The Third Respondent was appointed liquidator of the company by the Master and is

opposing the rescission application in her official capacity and on behalf of the company in liquidation.

[3] The First Applicants are the erstwhile employees of the company while the Second Applicant is its director and has joined up with them to bring the recission application. The Second Respondent is the creditor in whose favour the final liquidation order was made. The two interested parties, namely Standard Bank of South Africa and First National Bank, are cited in their capacities as the only two creditors of the company disclosed by the director Mr Mbamba and do not oppose the rescission application, neither are they opposing this application for leave to appeal. In view of the foregoing, I shall refer to the First and Second Applicants collectively as “the applicants” and individually as “the employees” and “Mr. Mbamba” respectively. The Third Respondent will be referred to as “the respondent” or ‘the liquidator” which reference shall include the company where the context dictates.

[4] At the hearing of the application for rescission, the respondent’s counsel, Advocate Jolindie Ferreira, raised a point in limine of non-joinder in respect of creditors for which she blamed the failure or refusal by Mr. Mbamba to complete and submit the statement of affairs form (“Annexure CM 100”) in which amongst other things he is supposed to disclose all the company’s creditors to enable the liquidator to give them proper notice of the liquidation process. Whether these creditors decide not to oppose the rescission application is a different matter, but they must be aware of the process and especially the litigation. Much as the liquidator had discovered some of the creditors through her own efforts, it was imperative that the director submits the completed statement of affairs. Section 355 of the old Companies Act provides that creditors must be notified in the event that a liquidation order is being reviewed. The section provides that notice to the liquidator shall be deemed to be notice to the creditors. It is this task of the liquidator which in this case is said to be hampered by the failure/refusal of Mr. Mbamba to cooperate. Counsel pointed out

that the situation is made worse by the conduct of Mr. Mbamba of entering into further credit agreements in the name of the company despite being aware since August 2023, according to him, that there is an order placing the company in final liquidation. He applied for credit with an entity called Westpac on 15 November 2023, which transaction came to the liquidator's attention only a year later, on 11 November 2024. He had essentially evaded the liquidator for a period of three years.

[5] Counsel had added that there was a prior rescission application that was also opposed by the liquidator and was subsequently withdrawn by Mr. Mbamba without tendering costs incurred by the liquidator. The court could not therefore entertain the rescission application in the absence of proper notification to the creditors and a provision for their claims should the rescission succeed, including for the liquidator's wasted costs. Incidentally, there is a counterclaim to the rescission application in which these issues are raised. There is also Sesfigile, the second respondent, which brought the liquidation application. Its debt was paid after the order for final liquidation was made, and that money was reclaimed by the liquidator due to the fact that it had become a subject of distribution to all creditors and the payment was therefore an impeachable disposition by Bothangana / Mr Mbamba.

[6] Later on during the hearing Ms Ferreira took instructions and informed the court that they were abandoning the counterclaim; the liquidator will instead launch an application in terms of section 155 of the Companies Act.

[7] In response to the above, attorney for the applicants, Mr Ashley Seckel, averred that Mr Mbamba had already disclosed to the liquidator that the company had transactions only with Standard Bank and First National Bank. The applicants' position is that firstly, the company has got no creditors and secondly, that it should

not have been liquidated at all in the first place. If the liquidator has discovered more creditors as alleged in her supplementary affidavit, the question would be why then she did not notify them of the liquidation order and of the rescission application. The two banks cited by the applicants as interested parties are not opposing the application in any event.

[8] Mr Seckel argued that the section 363 form is not designed to replace the liquidator's role to go out there and establish the existence or otherwise of creditors. Thus far, not much had been done towards the process of liquidating the company. The liquidator has not convened the second meeting of creditors and in the first meeting no claims were lodged. It was disingenuous for her to state in her supplementary affidavit that she had discovered some creditors of the company and yet not disclose them to the court or give them notice of this litigation as she is supposed to.

[9] I decided to uphold the point in limine particularly when Mr Seckel, in response to a question I asked, indicated that there was no particular reason stopping or preventing Mr Mbamba from completing and delivering the Annexure CM 100. His contention was that it would not make any difference even if he submitted the form because the company had no other creditors other than the two banks already known to the liquidator. The applicants had accused the liquidator of not performing her duties diligently and prolonging the process, whereas it appears that there is a recalcitrance to provide her with the necessary information to enable her to proceed.

[10] It is noteworthy that at the hearing of this application for leave, I was informed that Mr Mbamba has since complied with the Act and submitted the form. This shows that there was no obstacle from the outset preventing him from complying, he chose to ignore the court order and continued to trade. It lends credence to Ms

Ferreira's contention that the applicants are approaching the court with unclean hands. Ordinarily, under such circumstances, the court would be justified in dismissing the application, except that in this case an error was made.

[11] In my ruling upholding the point in limine, I had mentioned that I had not considered the merits of the rescission application. I was of the view though, that the failure or refusal by Mr Mbamba to cooperate with a process prescribed by statute and sanctioned by a court order was serious enough to justify the prevention of the applicants' application from proceeding. I did not agree with the proposal by Mr Seckel that I should adjudicate the rescission application and then issue a *rule nisi* for compliance with section 363.

[12] The dismissal of the application therefore goes against the intention to afford Mr Mbamba the opportunity to comply. To this end, I agree with Mr Seckel that I should not have dismissed the rescission application itself as it had not been adjudicated even though mention was made to it during argument on the point in limine. The application cannot proceed as any further step will be susceptible to attack based on the principle of *res judicata*. To this end, I am of the considered view that there are prospects of success in the appeal.

[13] In the result, the following order is made:

1. The application for leave to appeal to the Full Bench of this Division is granted.
2. Costs shall be those in the appeal.

[redacted]

L J BAM
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA (MIDDELBURG LOCAL SEAT)

APPEARANCES:

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DATE OF HEARING: **14 November 2025**

DATE OF JUDGMENT: **6 January 2026**