IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,

(MIDDELBURG LOCAL SEAT)

CASE NUMBER: 2025-237542

(1) REPORTABLE: **YES**
(2) OF INTEREST TO OTHER JUDGES: **YES**
(3) REVISED **YES/NO**

[redacted]

4 FEBRUARY 2026 — DATE

H.F. FOURIE — SIGNATURE

In the application between:

IGOR JOHAN PINTO	**APPLICANT**
AND	
IPP EQUIPMENT (PTY) LTD	**RESPONDENT**
COMETA ASSETS (PTY) LTD	**INTERVENING RESPONDENT**

JUDGMENT

FOURIE AJ

INTRODUCTION:

[1] This is an application seeking the provisional liquidation of the Respondent. The application, by way of an amended Notice of Motion, was set down to be heard on the Urgent Roll of 3 February 2026 on the facts as the Applicant highlighted in the Supplementary Founding Affidavit.

[2] The application is not opposed by the Respondent, who, in essence, if the supporting affidavit by their sole director is to be understood, supports the application for provisional liquidation of the Respondent.

[3] It is the submissions made by the Respondent in their supporting affidavit that, on the Applicant's version, render the application urgent and to be dealt with as such.

[4] As has almost become the norm in liquidation applications, on the day of trial, the Court is faced with an application for intervention, postponement and/or ancillary relief. This matter has proven not to be the exception.

[5] On 20 January, the application in its converted form as an urgent application for the provisional winding-up of the Respondent was brought and served on all the respective and interested parties, and on the intervening party at the latest on 22 January 2026.

[6] The intervening and postponement applications by the proposed intervening party were uploaded to the Case Line System on 2 February 2026 at 5:02 pm, after close of business.

[7] The Intervening Respondent seeks not leave to file papers to oppose the liquidation application, either provisional or final, but wishes, if the postponement is granted, to pursue the filing of a business rescue application placing the Respondent under business rescue in terms of Section 131(1) of the Companies Act, 71 of 2008.

[8] At the time the application was heard, it was generally accepted that the proposed business rescue application had already been drawn up and provided to the Applicant by the Intervening Party. This Court has, however, not had sight of such an application, nor is such an application served before me. The Court is, however, satisfied that, for purposes of Section 131(6) of the Companies Act, *supra,* the application is not yet "made" specifically if regard is had to the principles of when an application is "made" as enunciated in the matter of **Lutchman N.O v African Global Holdings [1]**. Absent proof that such an application has been sufficiently made, this court is not precluded from dealing with the matter.

URGENCY:

[9] This Court shall not be tied down to an academic evaluation on the principles of urgency. During the hearing of the matter the Court found and conveyed same to the parties that the very nature of the relief sought together with the submissions made by the respective parties in their papers justify this Court dispensing with the normal timeframes and to adjudicate the respective matters as urgent, not to do so, given the facts of the matter would not only be impractical but it would be to the detriment of the Respondent.

PROPOSED COURSES TO BE FOLLOWED:

[10] The parties' submissions on how the matter ought ultimately be dealt with provide insight into the order this Court is requested to make.

[11] The Applicant seeks the Court's dismissal of the postponement application and the provisional winding-up of the Respondent. The Applicant submits that they acknowledge the Intervening Party's right to bring a business rescue application, but that the position of the Respondent ought to be safeguarded pending such an application.

[12] The Intervening Party seeks the Court to hold over on an adjudication pertaining to the liquidation of the Respondent until such time as the proposed business rescue application is made as, so the Intervening Party contends the starting position from which the Court ultimately hearing the matter would differ and the provisional liquidation of the Respondent would have a detrimental effect on the ultimate success of the business rescue application.

[13] On the submissions made by the respective parties, I am convinced that, prior to the ultimate hearing on the liquidation of the Respondent, a business rescue application shall be made and that ultimately at some time such an application for either the final liquidation or the business rescue of the Respondent shall be heard. The conundrum that this Court is seized with is whether, as an interim measure, the Company ought to be provisionally liquidated or not. This is the crux of the issue serving before this Court.

INTERVENTION APPLICATION:

[14] The intervention of the Intervening Respondent was not opposed by the Applicant nor the Respondent, and the intervention of Cometa Assets (Pty) Ltd as an intervening Respondent was granted when the matter was heard.

POSTPONEMENT APPLICATION:

[15] For the reasons that follow, if the Court does not grant the postponement application of the Intervening Party, the provisional liquidation of the Respondent stands to succeed. The provisional liquidation application remains in all aspects unopposed and is supported by the Respondent themselves. Accordingly, the submissions made by the Applicant in the provisional liquidation application ought to, at the very least, be accepted for the purpose of the provisional liquidation application.

[16] Although the submissions made by the Intervening Respondent deal with certain aspects of the submissions made in the founding papers of the Applicant, they do

not serve as an Answering Affidavit to the liquidation application. Similarly, the relief sought by the Intervening party does not seek the dismissal of the provisional liquidation. It seeks the postponement and the implementation of business rescue procedures after such an application has served.

[17] Any attack or contrary position taken by the intervening party to the founding papers of the Applicant, for purpose of the matter serving before me, is only in as far as the Court is requested to utilise same to grant the Intervening Respondent the relief they seek being the postponement of the matter to allow for the application for the business rescue of the Respondent to be made.

[18] During argument, neither counsel appearing for the Applicant nor counsel appearing for the Intervening Respondent seriously addressed the general principles pertaining to a postponement. It seemed as if the parties were generally concerned rather with the effects of a business rescue application compared to a provisional liquidation application.

[19] The Court accepts that the Courts ought not apply a formalistic and rigid approach to postponements, as matters have differentiating facts, but the guidelines and norms developed by the Courts over the years still serve as guiding principles within which the Courts are to consider applications for postponement.

[20] What is, however, clear throughout the legal principles relating to postponement applications, is the principle that the postponement of a matter cannot be claimed as a right **[2]** and ought not to be granted at a particular party's mere say so.

[21] The principles this Court believes necessary to apply in evaluating whether an application for postponement ought to be granted are at least the following:

[21.1] An application for a postponement seeks an indulgence **[3]**.

[21.2] The Applicant must furnish a complete and satisfactory explanation of the circumstances that give rise to the application for postponement **[4]**.

[21.3] The Applicant for the postponement must present strong reasons **[5]**.

[21.4] The postponement application must be *bona fide* and must not be used as a tactical manoeuvre to obtain an advantage to which the Applicant is not entitled **[6]**.

[21.5] The application for postponement must be timeously made **[7].**

[22] As is so often the case in the development of legal jurisprudence in our country, the interest of justice and the broader public interest will, in most matters, have an overarching principle to be applied to issues such as condonation or postponements, such as in the current matter.

[23] Usually, a postponement being granted can be cured by the granting of an appropriate cost order, and no real prejudice will befall the litigants if such an order is made. When Courts are, however, faced with an application for the liquidation of a company or to place a company in business rescue, the underlying principles pertaining to such an application not only make those matters inherently important and urgent to be dealt with, but they also affect not only the litigants present in Court. These types of applications have a far-reaching effect on the *concursus creditorum* of the company against whom they are made, its employees, its directors, its shareholders, and many other affected parties. The effectiveness of a cost order in applications of this nature cannot be regarded as sufficient and effective as in other matters, for instance, dealing with mere economic interests or the repayment of a debt.

[24] In matters such as liquidation applications or applications for business rescue, the Court, knowing that a Cost order would not, in most instances, be soothing balm, must consider whether the interests of justice and the prevailing facts nonetheless justify granting such an order.

[25] The principal remedy of costs not generally being a sufficient soothing balm, according to me, places a higher burden on a party seeking a postponement, knowing full well that a costs order would either not be sufficient nor effective in a particular matter.

[26] Knowing that Courts generally take a lenient approach to intervening parties such as employees or other affected parties, unfortunately, it ever so often happens that litigants seeking a delay in the finalisation of a liquidation application utilises the tactic of, at the eleventh hour, usually on the night before or the morning of the hearing, seeking a postponement of the application in order for such a party to partake in the proceedings. Although there is no doubt certain instances where a last-minute application for postponement or intervention would be warranted, the Courts should be mindful not to grant such applications at the Applicant's mere say so. To step into this trap would lead to the undesirable practice of employing unsubstantiated, time-delaying tactics for an ulterior motive, with the court condoning them.

[27] Knowing that the Court will generally be sympathetic to employees and intervening parties and that the postponement will often not have the effect of an adverse cost order against such intervening parties, litigants continue to employ these tactics without giving due consideration to the remaining and necessary requirements for a postponement application to be granted.

[28] During argument, the Court requested clarification from the respective legal representatives on the dates on which the intervening party obtained knowledge of the current urgent liquidation application and the initial liquidation application.

[29] It is generally accepted that the initial application came to the Intervening Respondent's knowledge in early December 2025, and that the current urgent liquidation application came to the Intervening Respondent's knowledge on about 22 January 2026.

[30] On 22 December 2025, the Intervening Respondent made an application for the Respondent to be placed under business rescue, which was set down for hearing on 13 January 2026.

[31] I do not intend to deal with the first business rescue application, as the Intervening Respondent has withdrawn it, but the existence thereof remains important insofar as it relates to knowledge of the pending proceedings.

[32] The Respondent seeks leave, in essence, for the provisional liquidation application to be stayed whilst they prepare their business rescue application, and although not phrased as such, that is the effect of the order the Intervening Respondent seeks.

[33] Whilst the Court accepts that the anticipated business rescue application was being drawn up in the meantime, the timing of the ultimate notice of such a business rescue application can only be regarded as curious.

[34] Counsel for the Intervening Respondent was further requested to indicate what engagement followed between the Intervening Respondent and the Applicant since obtaining knowledge of the application, as set down for hearing on the 3rd of February 2026. The papers filed on behalf of the Intervening Respondent were silent on any engagement between the respective parties, an aspect which the Court finds perplexing. The Intervening Respondent conceded that no interaction was made between the respective parties, nor was any prior indication given by the Intervening Respondent to the Applicant of the intention of the Intervening Respondent to make the business rescue application, the intervention application, or the application for postponement. The difficulty in accepting the *bona fides* of the timing of the application to a great degree turns on this point as it was evident to the Intervening Respondent on the moment the urgent liquidation application was received that they would proceed with the current application for postponement and intervention, yet despite this fact, they elected for a period of nearly 2 weeks to remain silent on their proposed actions, without any engagement

with the Applicant only to, at the last available junction and after close of business on the evening before the matter was ultimately set down, to serve the application.

[35] Even if the application was still in the making, the Intervening Respondent had no reason not to inform the Applicant of its intention to make the application and to convey to the Applicant the relief it would ultimately seek. The only effect that the timing of the postponement and intervention application had was that it left the Applicant without proper time to consider the application and to answer thereto or to rebut any of the averments as made by the Intervening Respondent. Under circumstances where the giving of notice of the intended application at the very least could be considered as reasonable, by failing to do so, the Intervening Respondent gained a strategic advantage when the application was ultimately heard.

[36] The identities of the respective parties and the legal representatives were by 22 January 2026, known to all the respective parties, and the Court fails to accept that a letter or telephone call conveying the intention of the Intervening Respondent could be regarded as an unreasonable measure to be expected of the Intervening Respondent.

[37] If the Court were to refuse the postponement application, it would not preclude the Intervening Respondent from making its business rescue application; the only difference the granting of the postponement would make would be that the Intervening Respondent would have the strategic advantage of having the business rescue application tried while the Respondent is not provisionally wound-up.

[38] The Applicant, the Respondent, and the Intervening Respondent are at least in agreement that some form of financial distress exists within the Respondent and that the Respondent ought either to be wound up or placed in business rescue.

[39] The Intervening Respondent states, per their Founding Affidavit, that the grant of a provisional liquidation application before the business rescue application is

considered will undermine the prospect of successful business rescue. The Intervening Respondent states that a provisional liquidator will incur immediate administrative costs, the business bank account will be frozen, and market players and service providers will stop trading with the Respondent. Without pronouncing on this point, the court cannot accept that a company with the enormous assets and tradables such as the Respondent, more than R1 billion, and the prospects of its recovery, can be on this delicate knife-edge.

[40] Whilst the Court accepts that the placing of the Respondent under provisional liquidation will no doubt have specific immediate effects, the business rescue application or the ultimate placing of the company under business rescue will no doubt also have a similar and far-reaching impact on the Respondent. The fact that the Respondent, on all accounts, is to be regarded as at the very least financially distressed and owing, on the intervening Respondent's own account as per their proposed business rescue plan, at least approximately R 300 Million, cannot be overlooked and indicates the financial strain on the Respondent. The Applicant states that the debts of the Respondent are in excess of R 1 Billion, and it can be accepted that somewhere in between those two values lies the actual indebtedness towards the creditors of the Respondent.

[41] The Respondent themselves agreed that the company ought to be wound up at least provisionally, and although this does not dispose of the matter, much can be gleaned from this position. The Court agrees that, under appropriate circumstances, external parties may convince the Court that business rescue would be a more suitable avenue for a financially distressed company than liquidation but it cannot be overlooked that at the very least the *prima facie* position should be that the company itself has the best possible information pertaining to their finances and the possibility of recovering from financial detriments. Irrespective of this *prima facie* view, the Court ultimately dealing with these matters will no doubt evaluate the submissions by the respective parties objectively.

[42] The Applicant, in his founding and supplementary papers, states that the Intervening Respondent is the cause of the financial distress of the Respondent,

as the Intervening Respondent mismanaged the Respondent and embarked on what the Applicant calls a plundering of the Respondent. At the hearing of the matter, the intervening Respondent tendered that, pending the date on which the matter is ultimately to be heard and if the postponement is granted, the Intervening Respondent would not make any payments from the Respondent to the Intervening Respondent. This tender is noted in good faith, but insofar as it relates to any control the Intervening Respondent might have over the Respondent, it does not cure mismanagement of the Respondent, nor does it cure the misappropriation of funds to any other creditors not being the Intervening Respondent.

[43] The Intervening Respondent states that the claim by the Applicant against the Respondent ought to be placed under a magnifying glass, but under circumstances where no evidence exists before this Court indicating that the Applicant is not some creditor of the Respondent, which is also not denied by the Respondent, these averments do not preclude the Court from currently dealing with the matter.

[44] The Intervening Respondent's legal representative urged the Court to take a cautious and conservative approach by allowing the postponement to have the business rescue application made. This Court disagrees that that might be the cautious approach where the Court remains uncertain by which date such an application will ultimately be made if indeed it is ultimately made, and by which date the business rescue application is ultimately heard. To leave a company of the magnitude of the Respondent with such significant assets, tradables and debts hanging in the hopes that the business rescue application is indeed ultimately made is not a position that can be regarded either in the interest of justice nor in the interest of the concursus of the Respondent.

[45] Given the magnitude of seriousness of the matter, even a single moment where the Respondent is not managed correctly and cared for might lead to fatal effects for its *concursus creditorum* of which the Intervening Respondent is part. As such, immediate intervention is required. Whether that immediate intervention by way of provisional liquidation is ultimately converted into business rescue remains to be seen.

[46] The further complexity in the matter is that, at the time this application was heard, there were at least 4 pending applications for the winding up of the Respondent by different Applicants in separate applications, all to be heard by this court in the near future. The court was urged to consolidate all of those matters. I do not see the need to do so. If any of those applicants want to join issue or take issue, they are welcome to do so as the matter progresses.

[47] This Court finds that the application for postponement was not timeously made. The Intervening Respondent knew for a considerable period that the application would be made, yet, for reasons known only to them, decided to make it at the last available junction; they did so at their own peril. The postponement of the application cannot be cured suitably by an order as to costs not only insofar as it relates to the Applicant but also to all the affected parties already stated in this Judgment.

[48] The application for postponement is also made exclusively in order for the Intervening Respondent to gain a strategic advantage, in that it would allow the business rescue application to be effectively made and for the workings of Section 131 of the Companies Act to become applicable. The timing of the application and the strategic advantage the Intervening Respondent would gain from it if granted negatively affect the prospects of success in the current application for postponement.

[49] The only remaining question is whether the interest of justice nonetheless permits the application to be granted. For all the reasons as stated herein and in order to avoid the abuse of Court process to gain unfair strategic advantage, which this Courts evaluates together with the rights of the Applicant, the views of the Respondent company itself, and the need for the protection of the *concursus creditorum* all being balanced against the request of the Intervening Respondent to make the business rescue application the question needs to be answered in the negative. The fact that the business rescue application can still be made sways

the Court in finding that the strategic advantage that would be gained from granting the postponement would not be in the interest of justice.

[50] The change in the status that the provisional liquidation of the Respondent brings and the effect thereof on the business rescue application that is to be brought has not been proven on such a grave scale that moves the application in favour of the Intervening Respondent, and for all these reasons, the application for postponement cannot succeed.

PROVISIONAL LIQUIDATION APPLICATION:

[51] After evaluating the papers filed, the court is satisfied that all the statutory requirements have been met, as would be necessary for the Court to consider granting a provisional liquidation order.

[52] The claim by the Applicant as creditor of the Respondent, the submissions made by the Applicant pertaining to the need for liquidation of the Respondent coupled with the confirmation by the Respondent that it would be in their best interest to be at the very least provisionally wound-up all lead to this Court finding that it would under the circumstances be appropriate for such an order to be made.

COSTS:

[53] Ordinarily, when dealing with liquidation applications, costs merely form part of the liquidation of a company. In the current matter, however, the Court has been requested to adjudicate upon an intervention and a postponement application. Although the Intervening Respondent was unsuccessful in seeking a postponement, they were successful in obtaining relief as an intervening party, and, to a great degree, the issues between the Applicant, the Respondent, and the Intervening Respondent remain alive. The Court is similarly mindful not to make an adverse cost order against a party where it is evident that significant litigation will follow between the parties currently before the Court. Whether either the Applicant or the Intervening Respondent achieves ultimate success in their litigious

endeavours remains to be seen, and as such this Court finds it just to Order that costs be cost in the application.

ORDER:

[54] For all the above-stated reasons, the following Order is made:

[54.1] The Intervening Respondent is granted leave to intervene as a Respondent in the main application for the liquidation of the Respondent.

[54.2] The application by the Intervening Respondent for the postponement of the matter as set down for 3 February 2026 is dismissed.

[54.3] The Respondent is placed under provisional liquidation in the hands of the Master of the High Court of South Africa.

[54.4] *Rule nisi* is issued calling upon the Respondent, the Intervening Respondent or any other interested parties to show cause, if any to this Court on ____ 30 March 2026___ at 10h00 as to why:

[54.4.1] A final liquidation order should not be granted against the Respondent.

[54.4.2] Costs of the application should not be costs in the liquidation of the Respondent.

[54.5] It is ordered that the service of this Order shall be effected as follows:

[54.5.1] On the Respondent at its registered address and principal place of business.

[54.5.2] On the Intervening Respondent at their legal representatives.

[54.5.3] On the employees of the Respondent and or any Trade Unions to which the employees might be affiliated, if any, at the Respondent's registered address and principal place of business in terms of the statutory provisions necessitated by the Applicant.

[54.5.4] At the office of the South African Revenue Service.

[54.5.5] On the Master of the High Court.

[54.5.6] By publication in the Citizen and Die Burger newspapers.

[52.6] Costs shall be cost in the cause.

[redacted]

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Counsel for the Applicants:	Adv Bothma SC and Adv Van der Merwe
Counsel for the Intervening Respondent:	Adv Patrick SC and Adv Robertson
Counsel for the Respondent:	No appearance

Judgment reserved on: 3 February 2026
Date of delivery: 4 February 2026

---

[1] Lutchman N.O v African Global Holdings 2022 (4) SA 529 (SCA) at paragraph 28

[2] National Police Service Union and Others v Minister of Safety and Security and Others 2000 (4) SA 1110 (CC) at paragraph 4

[3] Grootboom v National Prosecuting Authority 2014 (2) SA 68 (CC) at 75 F – G

[4] National Police Service Union and Others v Minister of Safety and Security and Others *supra* at 1112 C – F

[5] Grootboom v National Prosecuting Authority *supra* at 76 C – D

[6] Myburgh Transport v Botha t/a SA Truck Bodies 1991 (3) SA 310 (NMS) at 315 E

[7] Physiological Society of South Africa v Qwelane and Others 2017 (8) BCLA 1039 (CC) at paragraph 31