REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2024-056679

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

13 February 2026 [redacted]

DATE SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED Applicant

and

KDO GROUP (PTY) LIMITED Respondent

JUDGMENT

<u>WANLESS J</u>

Introduction

[1] This is an opposed application by FirstRand Bank Limited *("the Applicant")* for the final winding-up of KDO Group (Pty) Ltd *("the Respondent")*, in terms of subsection 344(f) read with section 345 of the Companies Act 61 of 1973 *("the Act"),* further read with Schedule 5 to the Companies Act 71 of 2008 *("the new Companies Act")*. The Applicant is a creditor of the Respondent. The application is founded on the contention that the Respondent is unable to pay its debts.

Background

[2] The Applicant advanced R 3 062 215.00 to the Respondent in terms of a written loan agreement *("the agreement")*. It is common cause that the Respondent defaulted on its obligations under the agreement by, *inter alia*, failing to pay municipal charges on its property and by defaulting on a separate overdraft facility with the Applicant. These defaults constituted an *"Event of Default"* under clause 14 of the agreement, entitling the Applicant to accelerate the debt.

[3] A certificate of balance confirms that, as at 14 May 2024, the Respondent was indebted to the Applicant in the sum of R 2 536 196.47 *("the debt"*). The Respondent does not dispute the existence or the quantum of the debt.

[4] In accordance with subsection 345(1)(a)(i) of the Act, a demand for payment of the debt was served on the Respondent at its registered office on 15 April 2024 and again on 22 April 2024. More than three weeks have elapsed since such service and the Respondent has neglected to pay or to secure the debt to the reasonable satisfaction of the Applicant.

[5] The Respondent opposes the application on the principal ground that it is commercially solvent. It alleges that it has secured tenants, receives steady income and owns immovable property. No documentary evidence, such as lease agreements, financial statements or bank records, have been produced to substantiate these bare assertions.

The applicable legal principles

[6] It is trite that the relevant winding-up provisions of the Act find application by virtue of Schedule 5 to the new Companies Act. Subsection 344(f) of the Act provides that a company may be wound-up by the court if it is *"unable to pay its debts".*

[7] A company's inability to pay its debts is established in two primary ways:

7.1. A company may be commercially insolvent. This is a question of fact. A company is commercially insolvent if it is unable to pay its debts as they become due in the ordinary course of business, irrespective of whether its assets exceed its liabilities. This is a *"cashflow test".*[1]

7.2. Also, a company may be deemed to be insolvent. Subsection 345(1)(a) of the Act creates a statutory, deeming provision. If a creditor, to whom a company owes a liquidated sum of not less than R 100.00, has served a demand at the company's registered office and the company has, for three weeks thereafter, neglected to pay or secure the debt, it is *deemed* to be unable to pay its debts.

[8] Where a creditor is undisputed and the debt is liquidated the creditor is entitled, *ex debito justitiae*, to a winding-up order, save where the respondent raises a *bona fide* dispute on reasonable grounds or shows solvency.[2]

[9] A certificate of balance issued in terms of a loan agreement constitutes *prima facie* proof of the indebtedness. The evidentiary burden shifts to the debtor to adduce evidence to contradict it.[3]

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[1] *Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T)).*
[2] *Standard Bank of South Africa v R-Bay Logistics [2022] ZAGPJHC 404).*
[3] *Senekal v Trust Bank of Africa Ltd* 1978 (3) SA 375 (A)).

Provisional winding-up/final winding-up

[10] A provisional winding-up order is an interim order granted by way of a *Rule Nisi*. This is where a *prima facie* case has been made out. It places the company into provisional winding-up and calls upon all interested parties to show cause on a return date why a final order should not be granted. It serves to protect the estate pending a final determination.

[11] A final winding-up order is granted upon the return date if no sufficient cause is shown why such an order should not be granted. It, *inter alia*, definitively places the company into liquidation; terminates the powers of its directors and initiates the process of realising assets for the benefit of creditors.

[12] In an opposed application where the respondent's defence is found to be unsubstantiated and the statutory requirements for winding-up are conclusively met the court may grant a final order outright *(without first granting a provisional winding-up order).* This avoids unnecessary cost and delay, particularly where there is no reasonable prospect of the respondent rehabilitating its financial position. The practice directive of this Division in fact calls upon presiding Judges *(without limiting the court's discretion)* to grant a final-winding up order *(even in unopposed applications)* whenever possible.

[13] The Applicant in this matter submits that this Court should grant a final winding-up order without first granting a provisional winding-up order. This will be dealt with at the appropriate stage in this judgment. At this juncture, it is appropriate to note that when this Court heard the application for the winding-up of the Respondent, no provisional order had been granted by another Court and this Court did not grant such an order. In the premises, there has never been a *Rule Nisi* issued in the matter. For some inexplicable reason, pursuant to the application being heard, this Court purported to extend a *Rule Nisi*. Thereafter, same was extended by this Court on several occasions and is returnable on the 27th of February 2026. This, of course, was an error and amounts to a nullity, since, as set out above, no provisional winding-up order has ever been granted in this application and no *Rule Nisi* has ever been issued. Despite the aforegoing,

this Court orders. as a matter of caution and to avoid any confusion, that all orders made by this Court purporting to extend a *Rule Nisi* are set aside..

Discussion

[14] The following facts are established and largely common cause:

13.1. The Respondent is indebted to the Applicant in a substantial, liquidated amount.

13.2. The debt is due and payable.

13.3 A statutory demand in full compliance with section 345 of the Act was served and the debt has not been satisfied or secured. Consequently, the Respondent is *deemed* to be unable to pay its debts in terms of subsection 345(1)(a) of the Act.

[15] The Respondent's defence of commercial solvency is unsustainable. It consists of bald, unparticularised allegations of steady income and asset ownership, wholly unsupported by any documentary evidence. This falls far short of the evidentiary burden required to disturb the *prima facie* proof of indebtedness or to rebut the deeming provision of section 345. In contrast, the Applicant has provided a clear and unchallenged factual basis demonstrating the Respondent's default and inability to meet its obligations.

[16] The Respondent's further contention that the application is an abuse of process because there are *"less drastic remedies"* is without merit. A creditor's election to pursue its debtor via winding-up proceedings, where the debt cannot be genuinely disputed and remains unpaid, is a legitimate exercise of its rights. The existence of alternative claims and/or remedies does *not* render a liquidation application abusive.

Conclusion

[17] In the circumstances, the Applicant has established a clear case for the final winding-up of the Respondent on the ground of deemed insolvency, which is reinforced by strong evidence of commercial insolvency. No *bona fide* dispute or evidence of solvency has been presented. It is therefore in the interests of justice and of the Respondent's general body of creditors that a final winding-up order be granted. There is no reason why the liquidation process in this particular matter should be delayed. This would only, *inter alia,* increase costs and would not be in the interests of the general body of the Respondent's creditors. In the premises, as this Court is entitled to do, a final winding–up order should be granted.

Costs

[18] There are no reasons as to why the usual order that costs of this application be costs in the winding-up of the Respondent should be deviated from. This Court finds that such an order would be just and equitable.

Order

[19] This Court makes the following order:

1. The Respondent, KDO Group (Pty) Limited, is placed under final winding-up in the hands of the Master of the High Court.

2. The costs of this application shall be costs in the winding-up of the Respondent.

3. All orders made by this Court extending a *Rule Nisi* are set aside.

[redacted]

BC WANLESS

JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of Hearing: 29 July 2025

Date of Judgment: 13 February 2026

Appearances

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