IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 2026-030241

In the matter between:

PREFERENCE CAPITAL PROPRIETARY LIMITED **APPLICANT**

Versus

MICASA ASSET MANAGEMENT PROPRIETARY LIMITED **FIRST RESPONDENT**

MILNEX 587 PROPRIETARY LIMITED **SECOND RESPONDENT**

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant herein is seeking on an urgent basis that the general notarial bonds in respect of both First and Second Respondent be perfected and that the goods

which are listed and found at the premises be removed and also that they *inter alia* be sold.

[2] First Respondent's indebtedness to Applicant is in respect of a Trade Finance Loan Agreement in the sum of R10 000 000.00. First Respondent executed a general notarial bond in favour of Applicant under bond number B[...]4 in the sum of R15 000 000.00. On 30 May 2025 Second Respondent executed a general notarial bond in favour of Applicant under bond number B[...]5 in the sum of R10 000 000.00. The notarial bond of First Respondent was on 26 March 2024.

[3] It was submitted on behalf of Applicant that the nature of the application was such that it was urgent. Respondents are in a precarious financial position as appears from annexures AA3 and AA6 attached to the answering affidavit wherein they state and request a restructuring and also that money is being sought from other financial institutions. There are also other creditors and loan agreements and it is clear that they are financially distressed. Applicant was further informed by counsel for Respondents that this morning in the Durban High Court Nedbank had obtained an order perfecting a general notarial bond against Second Respondent by consent. This made it urgent as it is apparent that the situation is precarious and that other creditors are in the process of taking action against Respondents. It is therefore necessary for Applicant to secure its position. It was submitted that the defences raised by Respondents that Azalea was not joined is unsustainable as there is no guarantee or restructuring of the agreement and Respondents breached the arrangement and have no valid defence. Applicant cancelled the agreement on 3 February 2026 and accordingly Respondents have no right to be in possession of any of the goods.

[4] It was submitted on behalf of Respondents that as far as Second Respondent was concerned the relief sought could in actual fact not be opposed due to the relief which was granted in the Durban High Court by consent. It is submitted that there is no urgency and that Applicant has other means of redress. Further that the order of

execution is to take the equipment and also to sell it which there is no need for at this stage. Respondents challenge the breach which is alleged by Applicant and deals with this in its answering affidavit. It is submitted that it should have been brought as a Rule *nisi*. Further that Respondents are engaging an auditor but the auditor has not yet provided any documentation to show what the financial position of Respondents are.

[5] In reply it was submitted that the general notarial bond could be perfected as there was a breach of the terms of the agreements, thus large amounts were due. There was also a cancellation of the agreements. Accordingly Applicant was entitled to the relief claimed.

[6] A reading of the general notarial bonds indicates that it is in respect of all movables, debts etc of Respondents. Further a reading of the founding affidavit indicates that there is allegations that Second Respondent is in possession of such machinery certain of the machinery in respect of which the notarial bonds are to be effected. It is thus difficult to distinguish between First and Second Respondent and who is in possession of what machinery especially as it was conceded that the perfecting of the bonds in respect of Second Respondent cannot be opposed.

[7] It is apparent from a reading of the papers that indeed the agreements have been cancelled. Further that Respondents are in debt to Applicant for large sums of money. It is also not disputed that there are other creditors which could also take action and the basis for the general notarial bond is to secure the claim which Applicant may have. If this is not done then Applicant would lose the preferential claim which it would have and therefore it is necessary at this stage due to the precarious financial position of Respondents that the general notarial bonds be perfected.

[8] The bonds also provide that all the movables as set out therein can be removed and sold.

[9] As I have set out above these applications are of nature urgent because they are there to protect the interests of the bond holder and accordingly in this case especially in the light of what has transpired in the Durban High Court in respect of Second Respondent it is definitely urgent and to be dealt with on that basis.

[10] I am further satisfied that on the papers Applicants have made out a case for the relief which is claimed that no valid defence has been raised by Respondents which in actual fact is only First Respondent at this stage and that the relief should therefore be granted.

Accordingly I grant an order as follows:

1. Applicant, Applicant's duly authorised agent and/or the Sheriff of the High Court is authorised to:
   - 1.1 Perfect the general notarial bonds under bond numbers: B[...]4 ("Micasa GNB") and B[...]5 ("Milnex GNB"), respectively, and in particular to enter in and upon all of First Respondent and Second Respondents' premises and the premises of any third party where Respondents' assets may be found, and to take possession and hold in pledge all of the movable assets of Respondents, present and future, wherever situate.
   - 1.2 Take all reasonable steps required including the locking of Respondents' relevant business premises in which the movable assets of Respondents are stored or sold (including the removal of stock from one premises to another), with immediate effect, with the effect of ensuing that the movable assets and effects are duly protected.
   - 1.3 Take and retain, at the expense of Respondents, possession of the movable assets and effects referred to in paragraph 1.1.

1.4 Sell and dispose of the movable assets taken into possession as set out in paragraph 1.1, by public auction, public tender or private treaty on such terms as Applicant may decide to this end.

1.5 Collect and take receipt of t he purchase price which shall first be applied to defray all costs and charges relating to such sale and thereafter in settlement or reduction of amounts owing by Respondents to Applicant duly certified then to be due in terms of the relevant clauses of the Micase GNB and Milnex GNB, respectively, plus interest and legal costs thereon.

2. Applicant, alternatively, the Sheriff of the High court and/or Applicant's duly authorised agent, is authorised to serve and execute this order by way of an emailed copy.
3. Second Respondent is ordered to, within three (3) days of the order being granted, deliver the equipment set out in the schedules annexed hereto, marked "A", to the applicant.
4. In the event of Second Respondent failing to comply with prayer 3 above, then the Sheriff of t he High court or his lawful deputy is authorised, directed and hereby empowered to attach, seize and hand over to Applicant the equipment set out in the annexure A hereto.
5. Applicant is granted leave to approach this Court on these papers as may be amplified for further relief in respect of the Micasa GNB and the Milnex GNB and/or the vindicatory relief set out in prayers 3 and 4 above.
6. Respondents are ordered to pay the costs of this application on a scale as between attorney and own client, jointly and severally, the one paying the other to be absolved.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED: **19 FEBRUARY 2026**

JUDGMENT HANDED DOWN: **20 FEBRUARY 2026**

COUNSEL FOR APPLICANT: **L SWANDLE**

Instructed by: **Edward Nathan Sonnenbergs Inc.**

Johannesburg

Email: ckekana@ensafrica.com

Ref: C Kekana

c/o: Stowell & Co.

Pietermaritzburg

COUNSEL FOR RESPONDENTS: **M Z F SULEMAN**

Instructed by: **I Hoosen Attorneys Inc.**

Johannesburg

Tel: 064 516 9198

Cell: 082 8473441

Email: ibrahim@ihattorneys.co.za

Ref: IHA/IH/MIC-26-02

c/o: Hay & Scott Attorneys

Pietermaritzburg