REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Numbers: 24140/2019

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

20/02/2026 [redacted]
DATE SIGNATURE

In the matter between:

LADY LUCK TRADING 2 CC t/a WATERFORD CARRIERS Applicant

And

AFRICAN BORDER MANAGEMENT (PTY) LIMITED First Respondent

AFRICAN SPIRIT TRADING 103 (PTY) LIMITED t/a PXL FREIGHT AND LOGISTICS Second Respondent

BALLOT, JOHN GEORGE Third Respondent

BROWN, BERNICE Fourth Respondent

JUDGMENT

MALINDI, J

Introduction

[1] The applicant sought an order in terms of the Notice of Motion as follows:

"

1. Declaring that the second respondent is the same business operations as the first respondent.
2. The first and second respondents are jointly and severally liable to make payment to the applicant in the following amounts:
   2.1. $ 59 712.65 (Fifty-Nine Thousand, Seven Hundred and Twelve United States Dollars and Sixty-Five Cents); and
   2.2. R 413 550.00 (Four Hundred and Thirteen Thousand, Five Hundred and Fifty Rands and Zero Cents)
3. Declaring that the third and fourth respondents are jointly and severally liable, together with the first and second respondents to the applicant in the amounts set out in prayers, 2.1 and 2.2.
4. Costs of the suit.
5. Further and/or alternative relief."

[2] On 25 November 2019, Twala J granted prayers 1 and 2, with prayer 3 being postponed *sine die*. The first and second respondents were ordered to pay the costs of the application.

[3] The matter has been removed from the roll on several occasions after being set down to adjudicate prayer 3. I need not deal with the reasons therefor. An application by the respondents for the rescission of the Twala J's order was also withdrawn, adding to the long delay in the hearing of prayer 3.

[4] The matter finally came before me on 26 February 2024.

[5] The applicant seeks an order declaring the third and fourth respondents personally liable for the debts of the first and second respondents by piercing

the corporate veil. The applicant contends that the facts relied upon to justify disregarding the separate juristic personalities of the first and second respondents overlap substantially with those upon which personal liability is sought to be imputed to the third and fourth respondents.

[6] The third and fourth respondents oppose the application on the basis that the facts of the matter do not justify piercing the corporate veil or disregarding the separate juristic personality of the first and second respondents. The respondents submit that if the Companies Act[1] is properly applied, the application should be dismissed.

[7] Section 20(9) of the Companies Act provides as follows:

> "(9) If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the Court may –
>
> (a) declare that the company is to be deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and
>
> (b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph (a)."

[8] This remedy is available to a party that can demonstrate that a company subsumed its juristic personality under the control and person of its directors or person specified in the declaration.

[9] Twala J has already held in effect that the affairs of the first and second respondents "*were in material respects conducted in a manner that maintained no distinguishable corporate identity between the various constituent companies in the group*", and that such illegitimate use of the concept of juristic

[1] 71 of 2008.

personality should not be countenanced whenever it adversely affects a third party.[2]

[10] The woes of the first and second respondents were caused by the reckless conduct of their business by the third and fourth respondents.

[11] The first and second respondents share a director, financial manager, trading address, style of website, bank and employees.

[12] At paragraph 2.4 of the respondents' heads of argument, the following is stated:

> "2.4. The first and/or second respondents had previously run into temporary cashflow concerns regarding the applicant's account previously, which was subsequently remedied. Unfortunately, the situation arose where the first and/or second respondents' debtors' books had grown to an extent that they could no longer maintain payments to the applicant, who subsequently lost patience with the elapse in time.
>
> 2.5 The fact that cash flow concerns arose which impacted on the ability of the first and/or second respondents' ability to pay the applicant on more than one occasion during the first and/or second respondents' relationship with the applicant, has been conceded to by the applicant."

[13] In this context, the third respondent would order that invoices owed by one company be paid by the other and would promise the applicant that this process would be implemented to settle its outstanding claims. This conduct disregarded the separate legal personae of each of the companies, and this blurring of personality was done by the third and fourth respondents, without qualms.

[14] What the respondents term temporary cash flow concerns is part and parcel of the ebb and flow of commercial ventures, was in truth, a far more serious situation. On at least one occasion, the third respondent threatened to liquidate

[2] Twala J relying on *Ex Parte Gore and others NNO* 2013 (3) SA 382 (WCC).

the companies if the applicant persisted in demanding payment and refuse to condone deferments suggested by the respondents.

[15] The fourth respondent's title of director was more of a fronting than real. She abdicated her role and merely took instructions from the third respondent. The two of them were the controlling minds of the two companies, which were not run according to any corporate rules.

[16] It was reckless, if not fraudulent, of the third respondent to hold himself out as the managing director of both companies, whereas only the fourth respondent was the director of the first respondent.

[17] I agree with the learned authors, Cassim *et al*,[3] that the directors in this case should be held liable as principals for the debts of the first and second respondents by lifting the corporate veil. This is particularly so given that the first and second respondents have been previously held to be one and the same entity by Twala J.

Order

[18] I therefore make the following order.

1. It is declared that the third and fourth respondents are jointly and severally liable, together with the first and second respondents, to the applicant in the amounts set out in prayers 2.1 and 2.2 of the Notice of Motion, being $ 59 712.65 (Fifty-Nine Thousand, Seven Hundred and Twelve United States Dollars and Sixty-Five Cents) and R 413 550.00 (Four Hundred and Thirteen Thousand, Five Hundred and Fifty Rands and Zero Cents).

2. The third and fourth respondents are to pay the costs of this application, including costs of counsel, at scale B, jointly and severally, the one paying the other to be absorbed.

[3] Cassim et al *Contemporary Company Law* 3 ed (Juta, 2022) at 67- 68.

[redacted]

G MALINDI

Judge of the High Court,

Johannesburg

Appearances

For the Applicant:	Adv R Pottas
Instructed by:	Duff & Associates
For the 3rd and 4th Respondents:	Adv CM Rip
Instructed by:	Lautenberg Morris Attorneys
Date of Hearing:	26 February 2024
Date of Judgment:	20 February 2026