

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

CASE NO: 2024-109949

DATE: 26 FEBRUARY 2026

In the matter between:

ENERNET AFRICA (PTY) LIMITED

Applicant

and

IRONVELD SMELTING (PTY) LTD

Respondent

Neutral Citation: *Enernet Africa v Ironveld Smelting (2024-109949)* [2026]
ZAGPJHC --- (26 February 2026)

Coram: Adams J

Heard: 23 February 2026

Delivered: 26 February 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 26 February 2026.

Summary: Cession agreement – as continuing general covering security, respondent ceded to applicant *in securitatem debiti* all its rights, title and interest in and to its bank accounts and book debts ('ceded rights') – cession incorporated

a documents disclosure clause, obliging the respondent to disclose and produce to applicant relevant documentation on demand – application for specific performance to compel disclosure – respondent failed to comply with its obligation to disclose and produce –

The respondent raised defence akin to *lis pendens alibi* – applicant had issued summons for a monetary judgment based on primary agreement between the parties – those proceedings are still pending –

Respondent's defence of *lis pendens alibi* rejected – two of the requirements of this defence are not met – the causes of action are worlds apart and the relief claimed cannot possibly be said to be the same – the one cause of action is based on the settlement agreement and the applicant seeks a monetary judgment – the other proceedings are founded on the cession agreement which provided the security for the liability under the settlement agreement – the relief sought is for specific performance of the said agreement – those defences fly in the face of the accepted facts in the matter –

Relief sought by the applicant granted,

ORDER

- (1) The respondent be and is hereby ordered and directed, within five days of date of this order, to deliver copies of the following documents to the applicant: -
- (a) the bank account confirmation details / letters in respect of each and every bank account held by and/or in the name of the respondent;
 - (b) bank statements of each and every bank account held by and/or in the name of the respondent for the period 31 August 2023 to date;
 - (c) the respondent's Debtors' Book for the period 23 July 2023 to date, and which Debtors' Book is to include *inter alia* the following details and/or particularity:
 - (i). the identity of the debtor(s);
 - (ii). the cause of the debt(s);
 - (iii). the nature of the claim(s); and
 - (iv). the quantum of the claim(s):
 - (d) the source documents vis-à-vis the debt(s) forming the subject matter of the respondent's Debtors' Book referred to in paragraph 1(c) above, including, *inter alia*: -
 - (i). any and all agreements / contracts concluded between the respondent and its debtor(s);
 - (ii). any and all purchase order(s) concluded between the respondent and its debtor(s); and/or
 - (iii). any and all invoices issued by the respondent to its debtor(s);
 - (e) a list and/or schedule setting out, identifying and specifying each and every one of the respondent's claims, interests in, rights to, rights of action and receivables which the respondent has against and/or all obligations which are owed to the respondent by any third party;

- (f) any and all other document(s) evidencing any and all performance and receivables due to the respondent from its debtor(s) and/or third parties;
 - (g) the respondent's audited annual financial statements for the financial year ending February 2024;
 - (h) any and all other document(s) evidencing any of the Ceded Rights as referred to and as contemplated in clause 5.1 of the Cession of Claim, Debtors and Bank Accounts agreement concluded between the applicant and the respondent on 23 July 2023 and attached as annexure FA5 to the applicant's founding affidavit; and
 - (i) any and all document(s) evidencing the security (if any) that the respondent holds for any debt and/or obligation in respect of the respondent's rights to and interests in the Ceded Rights as referred to in paragraph 1(h) above
- (2) The respondent be and is hereby ordered and directed to permit the applicant access to, and inspection of the respondent's books, records and financial information referred to in paragraphs 1(a) to 1(i) above within five days from date of his order.
- (3) The respondent be and is hereby ordered and directed to notify its debtor(s) that payment, delivery or performance of the relevant obligations due to the respondent must be made to the applicant and that payment, delivery or performance to the respondent or to anyone else will not constitute valid payment, delivery or performance.
- (4) The respondent be and is hereby ordered and directed to provide written proof to the applicant that the notification(s) in paragraph (3) above has/have been duly given and/or provided to the respondent's debtor(s).
- (5) The respondent be ordered and directed to pay over to the applicant:
- (a) any interest dividend or other benefits of any nature, accrued and/or received in respect of the respondent's interest in and rights to the Ceded Rights held by it on and after 31 August 2023; and/or

- (b) any payment(s) received by the respondent from any debtor(s) and/or third-parties after 31 August 2023 in respect of the Ceded Rights, by depositing the same into a bank account as nominated by the applicant, and which payment(s) is to be effected within five days of the date of this order.
- (6) The respondent shall pay the applicant's costs of the application on the attorney and client scale, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C'.

JUDGMENT

Adams J:

[1]. This is an opposed application by the applicant ('Enernet Africa' or simply 'Enernet') for an order compelling the respondent ('Ironveld Smelting' or simply 'Ironveld') to make disclosure of and produce a number of documents. The application is based on a written contract between the parties dated 21 and 23 July 2023, titled 'Cession of Claim, Debtors and Bank Accounts' ('the Cession Agreement'). The claim by Enernet Africa is in fact coached as an application for specific performance in terms of the cession agreement. The said agreement serves as security in favour of Enernet Africa for Ironveld Smelting's indebtedness to it in terms of and pursuant to a settlement agreement concluded between the parties also on 21 and 23 July 2023. Some of the relief sought by Enernet Africa is in the nature of the perfection of a pledge.

[2]. The settlement agreement settled a dispute between the parties arising from Rental Agreements concluded between them during 2022 and which agreements Ironveld Smelting, according to Enernet Africa, breached. In terms of the settlement agreement, Ironveld agreed to pay to Enernet Africa by 31 October 2023 an amount of R5 686 578.96, plus interest thereon, in

settlement of any claims Enernet may have against Ironveld, which Ironveld failed to do.

[3]. Ironveld Smelting's indebtedness to Enernet Africa in terms of the settlement agreement was secured by the cession agreement, which, in sum, provided that Enernet would, on signature of the cession, acquire by cession certain of Ironveld Smelting's right, title and interest in and to its bank accounts and book debts, as well as any other claims in its favour ('the ceded rights'). The cession expressly provided as follows: -

'4 Cession in Security

4.1 As a continuing general covering security for the due, proper and timeous payment and performance by Ironveld of the Secured Obligations, Ironveld hereby cedes, transfers and makes over in securitatem debiti all its rights, title and interest in and to the Ceded Rights in favour of Enernet, with effect from the Effective Date.'

[4]. Under the heading 'Delivery of Documents and Consents', the cession reads as follows: -

'5.1 Where any of the Ceded Rights is evidenced by a document or when Ironveld holds security for any obligation in respect of such rights to and interests in the Ceded Rights and that security is evidenced by a document, Ironveld shall deliver a certified copy of that document to Enernet or such custodian as Enernet may in writing nominate. In addition, Ironveld shall on written demand deliver to Enernet any other documents which Enernet may require relating to the Ceded Rights.'

[5]. Accordingly, and as a consequence of the express terms of the Cession Agreement, Ironveld Smelting is contractually obliged to *inter alia*: - (a) deliver documents to Enernet Africa, evidencing the ceded rights; (b) provide Enernet with access to, and inspection of Ironveld Smelting's books of account, records and financial information in respect of the Ceded Rights; and (c) notify Ironveld Africa's debtors of the cession.

[6]. Ironveld Smelting, according to Enernet Africa, has breached the settlement agreement in that it has failed to make payment timeously of the amounts as and when they fell due. Legal proceedings have accordingly been

instituted by Enernet Africa to recover from Ironveld Smelting the total amount due under and in terms of the settlement agreement. Those proceedings were instituted out of this Court in a separate action under a different case number and is presently pending.

[7]. On the basis that Ironveld, in breach of its obligations in terms of the Cession Agreement, has failed, despite demand, to furnish to it certain documentation, Enernet Africa has brought this application to compel delivery of those documents. In other words, what is sought herein by Enernet is an order compelling Ironveld to comply with its disclosure obligations in terms of the Cession Agreement.

[8]. Ironveld opposes the application on the following bases: - (a) That the motion proceedings instituted by the applicant is premature; (b) the respondent denies the validity of the settlement agreement and the cession agreement; (c) the applicant, in bringing this application is abusing the court processes; and (d) this court does not have jurisdiction to hear this matter.

[9]. The issue that I need to decide is therefore whether there is merit in any of these 'special defences' raised on behalf of the respondent.

[10]. During the hearing of the application before me on 23 February 2026, Mr Kabinde, Counsel for the respondent, did not pursue with any vigour the defences raised by respondent, except for the grounds of opposition relating to the averment that the application is premature, which is closely related to the defence of *lis pendens*. The approach adopted by the respondent's Counsel is a prudent one. The other defences raised by the respondent in its papers are singularly without merit. I make short thrift of those defences and deal with them very briefly.

[11]. Ironveld contends that the settlement agreement and the cession agreement are invalid and unenforceable. It is contended by Ironveld that the agreements were concluded as a result of alleged 'undue pressure'. This

contention, if regard is had to all of the circumstances in the matter, needs only to be stated for it to be rejected. It is, as argued by Ms Dos Santos, who appeared on behalf of Enernet, that Ironveld makes a tenuous reference to undue pressure without alleging any objective facts (corroborated by any tangible evidence) necessary to sustain such a claim. Nor does Ironveld proffer any evidence – none whatsoever – in support of any of the essential requirements to prove undue pressure or influence.

[12]. Moreover, the lack of merit in these allegations is evidenced by the unchallenged and uncontradicted evidence relating to the negotiations and the sequence of event leading up to the settlement of the matter. It is also instructive that for a period of one and a half years, from 23 July 2023 to 18 December 2024, the respondent did not once challenge and/or dispute the validity of the settlement agreement or that of the cession agreement and only did so in this application for the first time in its answering affidavit.

[13]. The invalidity defence is therefore, in my view, stillborn.

[14]. As regards, the ‘abuse of process’ defence, Ironveld complains that this application is an attempt by Enernet to circumvent the pending action proceedings as a means to expedite payment from the respondent. This contention is without merit for the reasons mentioned above. The two legal proceedings are separate and discreet legal proceedings in which separate and discreet relief is sought. Accordingly, this defence is without merit and falls to be dismissed.

[15]. Lastly, there is the defence relating to jurisdiction which overlaps to a large extent the Ironveld’s claim that they have a counterclaim against Enernet for tens of millions of rands. In that regard, Ironveld alleges that this Court does not have jurisdiction to adjudicate this matter because clause 12 of the Energy Service Agreement (‘ESA’) – being an agreement between two separate entities, none of which are the applicant nor the respondent – contains an arbitration clause. Accordingly, this ground of opposition can and should be rejected out of hand.

[16]. It is for these reasons that I expressed the view that respondent's Counsel was prudent in not pursuing with much vigour these defences.

[17]. I now turn to deal briefly with the contention on behalf of Ironveld that this application is premature because Enernet's action proceedings for the money judgment are still pending. Those action proceedings, so the contention goes, need to be resolved first before the applicant can proceed with this application.

[18]. Ms Dos Santos submitted that its cause of action in the action proceedings is based on the settlement agreement – there Enernet is claiming payment of the full outstanding debt due by Ironveld. The relief claimed is for a monetary judgment. In this application, so the contention continues, the applicant's cause of action is based on the cession agreement and in terms of which the applicant wants to exercise its security rights. Moreover, the nature of the relief sought herein is specific performance of the respondent's contractual disclosure obligations, namely compelling the respondent to provide the applicant with, amongst other things, various documents and access to the respondent's books and records. In this application, the applicant does not seek any money judgment against the respondent – instead, the applicant merely seeks to give practical effect to its contractually entitled security rights in terms of the cession agreement.

[19]. For these reasons, so the argument on behalf of Enernet is concluded on this point, there is no merit in this ground of opposition to the application.

[20]. I find myself in agreement with these contentions on behalf of Enernet. The simple point is that Ironveld is contractually obliged to provide the applicant with the documentary disclosure and access irrespective of whether it is in breach of the settlement agreement. Ironveld's contractual disclosure arising from the cession agreement arose immediately upon conclusion of the said agreement. It therefore cannot possibly be that this application and the action proceedings should, as of necessity, run concurrently.

[21]. In any event, as I have already indicated, this defence raised by Ironveld is closely related and inextricably interlinked to its defence of *lis alibi pendens*. A plea of *lis alibi pendens* is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation.

[22]. It is trite that there are three requirements for a successful reliance on a plea of *lis pendens* and they are: (a) that the litigation is between the same parties; (b) that the cause of action is the same; and (c) that the same relief is sought in both proceedings. In that regard, see *Nestlé (South Africa) (Pty) Ltd v Mars Incorporated*¹, in which the SCA (per Nugent JA) held as follows: -

'[17] There is room for the application of that principle only where the same dispute, between the same parties, is sought to be placed before the same tribunal (or two tribunals with equal competence to end the dispute authoritatively). In the absence of any of those elements there is no potential for a duplication of actions.'

[23]. *In casu*, at least two of these requirements are not met – the causes of action are worlds apart and the relief claimed cannot possibly be said to be the same. As already indicated *supra*, the one cause of action is based on the settlement agreement and Enernet seeks a monetary judgment. The other proceedings are founded on the cession agreement which provided the security for the liability under the settlement agreement, and the relief sought is for specific performance of the said agreement.

[24]. Accordingly, the respondent's legal point that this application is premature and the one *in limine* of *lis alibi pendens* are without merit and fall to be rejected without more. And, for all of these reasons, I am of the view that the grounds of opposition as raised by the respondent are devoid of merit.

¹ *Nestlé (South Africa) (Pty) Ltd v Mars Incorporated* 2001 (4) SA 542 (SCA).

[25]. The applicant should therefore be granted the relief prayed for by it in its notice of motion. As regards costs, same should follow suit. And, in that regard, the agreements between the parties provided for the award of costs on the scale as between attorney and client in favour of the applicant.

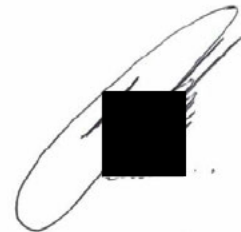
Order

[26]. In the result, I grant the following order: -

- (1) The respondent be and is hereby ordered and directed, within five days of date of this order, to deliver copies of the following documents to the applicant: -
 - (a) the bank account confirmation details / letters in respect of each and every bank account held by and/or in the name of the respondent;
 - (b) bank statements of each and every bank account held by and/or in the name of the respondent for the period 31 August 2023 to date;
 - (c) the respondent's Debtors' Book for the period 23 July 2023 to date, and which Debtors' Book is to include *inter alia* the following details and/or particularity:
 - (i). the identity of the debtor(s);
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 - (d) the source documents vis-à-vis the debt(s) forming the subject matter of the respondent's Debtors' Book referred to in paragraph 1(c) above, including, *inter alia*: -
 - (i). any and all agreements / contracts concluded between the respondent and its debtor(s);
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 - (iii). any and all invoices issued by the respondent to its debtor(s);

- (e) a list and/or schedule setting out, identifying and specifying each and every one of the respondent's claims, interests in, rights to, rights of action and receivables which the respondent has against and/or all obligations which are owed to the respondent by any third party;
 - (f) any and all other document(s) evidencing any and all performance and receivables due to the respondent from its debtor(s) and/or third parties;
 - (g) the respondent's audited annual financial statements for the financial year ending February 2024;
 - (h) any and all other document(s) evidencing any of the Ceded Rights as referred to and as contemplated in clause 5.1 of the Cession of Claim, Debtors and Bank Accounts agreement concluded between the applicant and the respondent on 23 July 2023 and attached as annexure FA5 to the applicant's founding affidavit; and
 - (i) any and all document(s) evidencing the security (if any) that the respondent holds for any debt and/or obligation in respect of the respondent's rights to and interests in the Ceded Rights as referred to in paragraph 1(h) above
- (2) The respondent be and is hereby ordered and directed to permit the applicant access to, and inspection of the respondent's books, records and financial information referred to in paragraphs 1(a) to 1(i) above within five days from date of his order.
- (3) The respondent be and is hereby ordered and directed to notify its debtor(s) that payment, delivery or performance of the relevant obligations due to the respondent must be made to the applicant and that payment, delivery or performance to the respondent or to anyone else will not constitute valid payment, delivery or performance.
- (4) The respondent be and is hereby ordered and directed to provide written proof to the applicant that the notification(s) in paragraph (3) above has/have been duly given and/or provided to the respondent's debtor(s).
- (5) The respondent be ordered and directed to pay over to the applicant:

- (a) any interest dividend or other benefits of any nature, accrued and/or received in respect of the respondent's interest in and rights to the Ceded Rights held by it on and after 31 August 2023; and/or
 - (b) any payment(s) received by the respondent from any debtor(s) and/or third-parties after 31 August 2023 in respect of the Ceded Rights, by depositing the same into a bank account as nominated by the applicant, and which payment(s) is to be effected within five days of the date of this order.
- (6) The respondent shall pay the applicant's costs of the application on the attorney and own client scale, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C'.

A handwritten signature in black ink, appearing to be 'L R ADAMS', is written over a solid black rectangular redaction box.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	23 February 2026
JUDGMENT DATE:	26 February 2026
FOR THE APPLICANT:	(Ms) S G Dos Santos
INSTRUCTED BY:	Cliffe Dekker Hofmeyr Incorporated, Cape Town
FOR THE RESPONDENT:	K I Kabinde
INSTRUCTED BY:	Motlatsi Seleke Attorneys, Sandton