Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case No: 23249/2024

In the matter between:

CAROL MARGARET WENTZEL	**First Applicant**
DAVID VAN DER MERWE	**Second Applicant**
NICK RICHARD WEGGELAAR	**Third Applicant**
LEON ALBERTUS DE MAN	**Fourth Applicant**
SAUL GEOFFREY RUDOLPH	**Fifth Applicant**
BAREND UYS VAN NIEKERK	**Sixth Applicant**
CORNELIA MAGDALENA HUMAN	**Seventh Applicant**
THEO JOHAN SCHOEMAN	**Eighth Applicant**
MARIANNA MARYNA DUVENHAGE	**Ninth Applicant**
ENGELBRECHT LENZZ NEETHLING	**Tenth Applicant**
MARLEEN SMIT	**Eleventh Applicant**
CHRISTIAAN THEODORE BRUYNS	**Twelfth Applicant**

And

BANXSO (PTY) LTD (IN PROVISIONAL LIQUIDATION)

Registration Number: 2021/119980/07

Registered Address:

S[...] Floor, H[...] Wing, 1[...] S[...] Street

De Waterkant, Cape Town, Western Cape **First Respondent**

THE FINANCIAL INTELLIGENCE CENTRE **Second Respondent**

FINANCIAL SECTOR CONDUCT AUTHORITY **Third Respondent**

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **Fourth Respondent**

HASSEN KAJIE

(In his capacity as the curator bonis of First Respondent in terms of Section 42 of POCA) **Fifth Respondent**

JUDGMENT ON RETURN DAY: 2 MARCH 2026

LE GRANGE, J:

Introduction

[1] This is the return day following the provisional winding-up order granted against the First Respondent, Banxso (Pty) Ltd ("Banxso"), on 22 August 2025. The Applicants are now seeking a final order of liquidation. Banxso opposes the application.

[2] The Applicants are all investors who traded in Contracts for Difference ("CFDs") on Banxso's platform and suffered substantial losses. They allege that Banxso operated an illegal and fraudulent scheme, rendering it just and equitable to wind up the company. They further contend that Banxso is insolvent and unable to pay its debts.

Background

[3] Banxso was a licensed financial services provider ("FSP") until its license was provisionally withdrawn by the Financial Sector Conduct Authority ("FSCA") on 15 October 2024 and finally withdrawn on 4 July 2025. The FSCA found that Banxso had materially contravened financial sector laws and posed a risk to the public.

[4] The Applicants, like many others, alleged they were lured to invest via "deepfake" advertisements featuring prominent individuals such as Elon Musk, promising unrealistic returns. They deposited funds into Banxso's accounts, often on the advice of Banxso's "success managers," and suffered near-total losses.

[5] In my judgment of 22 August 2025, I found that the Applicants had *prima facie* established a case for winding-up on the grounds of illegality and insolvency. A provisional order was granted.

Legal Framework

[6] The Applicants seeking a final winding-up order, are relying on section 344(h), 345 of the Companies Act 61 of 1973, read with item 9 of Schedule 5 of the Companies Act 71 of 2008. The Applicants advanced three primary grounds for a final winding up order: Firstly, Banxso's inability to pay its debts (commercial insolvency); secondly, that it is just and equitable to wind up Banxso due to its illegal business model and fraudulent conduct; and thirdly, the disappearance of its substratum.

[7] The test for a final winding-up order is trite. The onus is on the Applicants to satisfy the court on a balance of probabilities, that it is indeed just and equitable within the meaning of 344 read with s 345 of the Companies Act, to finally wind-up Banxso. In addition, at this final stage the well-known Plascon-Evans rule applies, meaning the Court will accept the Respondent's version unless it is so far-fetched or untenable that it can be rejected. Equally, the Badenhorst principle is applicable. It holds that winding-up proceedings are not suitable for resolving a *bona fide* (genuine) and reasonably disputed debt[1].

---

[1] Electrolux South Africa (Pty) Ltd v Rentek Consulting (Pty) Ltd 2023 (6) 452 (WCC) 461A

[8] In applying these well-known tests to the facts of this matter, the following have emerged: Since the provisional order was granted, Banxso's financial and operational position took a turn for the worse. First, its liquidity provider, Flamingo Clearing House Limited ("Flamingo"), instituted a claim against it in the amount of R67,239,005. This liability was not previously disclosed, despite Banxso's sole shareholder, also being the shareholder of Flamingo. Furthermore, Flamingo has approached this court on an ex-parte basis, without notice to the provisional liquidators of Banxso, to authorize a commission of enquiry into the affairs of Banxso. Secondly, Banxso has been unable to trade legally since October 2024. It has no employees or business premises. Its investor trading positions have been closed, and access to trading platforms have been terminated. Thirdly, whilst preparing this judgment, the parties by agreement filed a joint practice note regarding further evidence. The further evidence relied on by the Applicants was a press statement by the FSCA on 9 December 2025 confirming that it has imposed severe administrative penalties of approximately R 2 billion on Banxso, in provisional liquidation, and two of its directors, Sekler and Sneider, jointly and severally. The FSCA has also imposed fines of R 20 million on a director De Andrade; R 10 million and R 5 million respectively on two key individuals of Banxso namely, Mr. Bux and Mr. Simpson. De Andrade and Bux were also debarred for a period of 30 years whilst Simpson was debarred for 10 years.

[9] According to the FCSA, in arriving at the administrative penalties, it considered the financial benefit that Banxso and its key persons derived from their unlawful conduct.

[10] Banxso has denied any wrongdoing and indicated that it will contest the FCSA's findings in the right forums. According to Banxso despite the fact it has no employees it retains solvency and its business as a service provider remains possible because the withdrawal of its licence is subject to a reconsideration application. Furthermore, Banxso's assets, in the form of its client book, remain valuable and a substantial asset which, if necessary, can be sold to another Financial Services Provider. Banxso has further recorded that its stakeholders remain committed to settle all legitimate claims asserted against it and is willing to provide liquidity. Banxso also persisted with the claim that the application is an abuse of process as the Applicants' attorneys M & B occupies an untenable position as they on the one hand represent the provisional liquidators and on the other hand the creditors whose claims need to be scrutinized. It was further recorded that consideration be given to re-visit the strike-out decision in the provisional proceedings.

[11] Turning to the three primary grounds advanced by the Applicants for a final winding- up order.

Inability to pay Debts

[12] The Applicants have established claims against Banxso totaling R70,371,175, based on Banxso's own refund policy and its admission that post-license withdrawal trades were simulated and funds are repayable.

[13] When Flamingo's claim of R67,239,005 is added, the total admitted liabilities exceed R137 million.

[14] Banxso's available funds in its bank accounts amount to approximately R 69.97 million, leaving a shortfall of over R 67 million.

[15] Banxso disputes the validity of the Applicants' claim and argued that they are not proven claims. Banxso has repeatedly offered to provide full security for the claims of Wentzel and the intervening parties. That security was to be held in its attorney's trust account pending the prosecution of the claims. According to Banxso, its offer of cash security was reasonable and demonstrates its ability to meet those specific liabilities.

[16] There can be no doubt that an offer of security is a significant factor to consider in matters of this nature. A solvent company is entitled to dispute a claim, and the offering of full security for the disputed amount is always a powerful indicator of commercial solvency in respect of that claim(s). But the bald statement by Banxso that

it retains solvency remains highly questionable. Its business has come to a complete standstill and has no premises and employees. In fact, one of its stakeholders has gone under oath, in the Flamingo ex-parte application to record that Banxso is unable to pay its debts. The latter is therefore of no assistance to Banxso that stakeholders remain available to settle legitimate claims asserted against it. If one has regard to the comprehensive analysis of the FSCA, the Applicants' rejection of the security in this instance cannot be faulted. On a balance of probabilities and applying the Plascon-Evans principle, Banxso's is factually and commercial hopelessly insolvent.

Just and Equitable Ground: Illegality and Fraud

[17] Banxso's contentions that it operated lawfully as an STP broker, interposing itself between clients and offshore LPs; that the enrichment derived from client losses vests in the LP and not in Banxso itself; that the LPs are separate *juristic persons* and that the corporate veil ought not to be pierced; its denial of any affiliation with IM, characterising it as a "parasitic" cyber-attack from which it also suffered; and the fact that it has reimbursed over R14 million to clients identified as emanating from the IM scheme and has taken steps to regularise its operations—including new policies for agent oversight, recruitment, and the handling of vulnerable clients, as well as engaging with the FSCA—carry little weight in light of the FSCA's forensic analysis of its bank accounts. The evidence of alleged illegality and fraudulent conduct is overwhelming in this instance. The FSCA's analysis was comprehensive and provides compelling proof that its business was not conducted as represented to the public. The

co-mingling of funds, the utilisation of client money for operational expenses, and the channeling of substantial sums into cryptocurrency wallets under its control, rather than to genuine, independent LPs, fundamentally undermines the so-called Straight Through Processor (STP) model. Furthermore, the relationship with Flamingo, a connected LP, effectively rendered the trading a zero-sum game between the client and an entity under common control, which is at first glance deceptive.

[18] Furthermore, the connection between the Immediate Matrix (IM) scheme's deepfake advertisements and Banxso's client onboarding process was too direct, and too lucrative for Banxso, for it to plausibly claim the status of an innocent victim. The evidence indicates that Banxso knowingly benefitted from this fraudulent marketing long after becoming aware of it. What is also disturbing is Banxso's representatives provided false information to clients concerning its license and interest rates, and continued to solicit business even after its license was withdrawn. By way of example, David Hoffman made the following false statements to the first applicant: that he had been employed full-time by Banxso for the past five years; that Banxso held the same license as a bank and, like a bank, provided 8.7% interest to clients; and that there was no difference between Banxso and companies such as Sanlam, Capitec, and Absa. Banxso further conceded that, following the provisional suspension of its license on 15 October 2024, one of its representatives, Lexi Hadid, informed a client on 8 November 2024 that Banxso's license was no longer suspended. Another representative, Henrik Pedersen, on the same day informed a different client that Banxso anticipated resuming

its usual business operations the following week. In view of these facts, the Applicants has advanced strong evidence of alleged contraventions of financial sector laws, including the Financial Sector Regulation Act (operating without a license), and inter alia the Banks Act (offering interest like a bank without being registered).

[19] The requirements for the claim under the *Condictio ob Turpem* have on a balance of probabilities been met. There is strong *prima facie* case that the underlying agreements were illegal due to multiple statutory contraventions and fraudulent misrepresentations. On the issue of enrichment, while Banxso argues the LP was enriched, the related-party structure and the flow of funds to crypto wallets linked to Banxso's operations suggest that the Banxso group, as a whole, was unjustly enriched at the expense of investors.

[20] The scale of the alleged illegality here—affecting thousands of investors and involving hundreds of millions of Rands—is vast. The "regularisation" efforts by Banxso are unconvincing in the face of the systemic fraud and illegality that characterised the business. The existence of alternative regulatory remedies does not preclude a creditor from seeking liquidation where, as here, the company's activities have been so egregious. It is further evident the public interest in protecting investors and the integrity of the financial system is a factor that cannot be ignored.

Loss of Substratum

[21] The Applicants argument that Banxso's has lost the foundation of its business (substratum) has considerable merit. Banxso has disappeared as it has no licence, no premises, no employees, and is inactive. It is trite that a company's substratum is lost when it becomes impossible to achieve the main object for which it was formed. Banxso's main object was to act as a licensed financial services provider. Its licence has finally been withdrawn, its operations have ceased, and its assets (the client book) are frozen. While Banxso is challenging the withdrawal, this is a speculative future event. The current reality is that it cannot legally or practically conduct the business it was established to perform. This gives further support to a finding that it is just and equitable to wind it up.

Abuse of Process

[22] Banxso is adamant that that the provisional winding-up order is an abuse of process and that the finding regarding the allegations made by Banxso against the Applicants’ attorneys be revisited due to new facts. Banxso vigorously argued that the application has largely been driven by the Applicants' attorneys, Mostert & Bosman ("M&B"), for their own financial gain and that of "friendly" liquidators. Banxso persisted with the claims that M&B engaged in "touting" by creating a website to solicit Banxso clients. It also argued that M&B has a serious conflict of interest, by representing both the provisional liquidators (who must scrutinize claims) and the creditor-clients whose

claims are being scrutinized. Banxso further contended that its offer of full security shows that the liquidation is not in the creditors' best interests, as a liquidation would see their funds depleted by legal and liquidation fees, as allegedly happened in the Mirror Trading International (MTI) matter.

[23] While the allegations concerning M&B's conduct and potential conflicts are serious and may warrant scrutiny by the relevant professional bodies, they do not, in themselves, invalidate the substantive grounds for liquidation, as each matter must be determined on its own facts[2]. The Court's primary concern is whether the company should be wound up based on its financial state and conduct. The compelling evidence of widespread illegality and fraud presented by the Applicants, much of it from independent regulators like the FSCA, exists independently of M&B's actions. In my view, if the grounds for liquidation are made out, the application should not be dismissed merely because there are allegations that the attorneys advancing it may have ulterior motives. The remedy for any abuse lies in an appropriate cost order or professional discipline, and not in allowing an allegedly unlawful enterprise to continue. The suggestion that reconsideration be given to re-visit the earlier strike-out decision is in my view also without merit.

[24] For all these stated reasons, the Applicants have convincingly established on a balance of probabilities that Banxso should be placed into final liquidation.

---

[2] Swart and Others v Fourie and Others (2488/2017 [2017] ZAWCHC 58 (22 May 2017: para 39

[25] In the result the following order is made:

1. Banxso (Pty) Ltd is placed under final liquidation.

2. The Applicants' costs of this application, including the costs consequent upon the employment of two counsel, shall be costs in the liquidation.

Le Grange, J