IN THE HIGH COURT OF SOUTH AFRICA
KWAZULI NATAL DIVISION, PIETERMARITZBURG

CASE NO: 13720/2024P & 14437/24P

In the matter between:

AFROPULSE 477 (PTY) LTD	**APPLICANT**
and	
THEODORE WILHELM VAN DER HEEVER N.O	**FIRST RESPONDENT**
TANIA OOSTHUIZEN N.O	**SECOND RESPONDENT**
PETER MASKELL	**THIRD RESPONDENT**
THE REGIONALN COURT MAGISTRATE FOR THE DISTRICT OF KWADUKUZA N.O – MS G PIKELELI	**FOURTH RESPONDENT**
MINISTER OF POLICE	**FIFTH RESPONDENT**
SASOL OIL (PTY) LTD	**SIXTH RESPONDENT**

Coram: Matlamela AJ

Heard: 31 October 2025

Delivered: 27 February 2026

ORDER

The following order is granted:

1. In the application to set aside the search warrant (case no 14437/24P):

1.1 The decision by the fourth respondent to issue and authorise the document titled: 'Warrant – in terms of Section 69 of Act 24 of 1936 as read with Section 21 of Act 51 of 1977: To search for and take possession of property in the liquidated estate of Sherpa Trade and Investments 71 (Pty) Ltd (in liquidation)' is reviewed and set aside.

1.2 The execution of the warrant is reviewed and set aside.

1.3 The first and second respondents are directed to forthwith restore possession of the business premises situated at Erf 1[...], corner of Green and White Streets, Isithebe, Kwa-Zulu Natal to the applicant, which premises comprises a forecourt and convenience store known as Sasol Isithebe and Sasol Delight, respectively with immediate effect.

1.4 In the event of the first and second respondents not restoring possession as aforesaid immediately upon service on them/their attorneys of this order, then the sheriff is authorised to do all that is necessary and incidental to restoring possession of the abovementioned business premises, stock and contents therein to the applicant, including using the services of a locksmith to cut off/otherwise remove the chains and locks affixed to the doors, gates and the like at such premises.

1.5 The first and second respondents, jointly and severally, the one paying the other to be absolved, to pay the costs of the application on scale C.

1.6 As between the applicant and six respondent, each party is to pay its own costs.

2. In the counterapplication by the first and second respondent (case no 14437/24P):

2.1 The first and second respondents are authorised in terms of s 386(5), as read with s 386(4)(a) of the Companies Act 61 of 1973, to bring this counterapplication and to oppose the relief sought by the applicant.

2.2 The applicant, together with those persons or parties acting under or through it, are ejected from the property, more fully descried as Portion of ERF 1[...], I[...] I[...] Estate, comprising approximately 9 000 square meters and situated at the corner of White and Green Streets, Mandeni, KwaZulu-Natal.

2.3 Should the applicant and those persons or parties referred to in the above paragraphs 2.2 hereof, fail to vacate the said premises by 30 March 2026, the sheriff of the high court with jurisdiction is directed to eject the applicant and the further persons or parties from the premises by preventing access thereto and by removing the applicant's movable property from the premises.

2.4 The applicant is directed to pay the first and second respondents' costs of the counterapplication on scale C.

2.5 In respect of the urgent interdict application, it is ordered that each party is to pay its own costs.

3. In the counterapplication by the sixth respondent (case no 14437/24P):

3.1 The applicant and all those occupying the property through or under the applicant are ejected from the immovable property, being Portion of ERF 1[...], I[...] I[...] Estate, comprising approximately 9 000 square meters and situated at the corner of White and Green Streets, Mandeni, KwaZulu-Natal (the premises).

3.2 Should the applicant and all those occupying the property through or under the applicant fail to vacate the said premises by 30 March 2026, the sheriff of the high court with jurisdiction is directed to eject the applicant and the further persons or parties from the premises by preventing access thereto and by removing the applicant's movable property from the premises.

3.3 The applicant and/or their privies are interdicted and restrained from:

(i) conducting any activities associated with a service and filling station as contemplated in terms of the franchise agreement between the sixth respondent and the applicant from the property known as Portion of ERF 1[...], I[...] I[...] Estate, comprising approximately 9 000 square meters and situate at the corner of White and Green Streets, Mandeni, Kwazulu-Natal (the premises) by utilising and/or be associated with the Sasol brand, know how, marketing and comprehensive blueprint for the operation of a convenience center and related businesses, equipment and programmes, licences and/or trademarks and tradenames and/or intellectual property.

(ii) Sourcing and/or storing and/or distributing any third-party automotive fuel, automotive products, emission fluids and related products at or from the premises, which products were sourced from parties than the applicant.

3.4 The applicant is ordered to authorise the sixth respondent to gain access to the premises in order to effect an onsite disablement, which includes manual locking, where required, of the sixth respondent's system and equipment on site.

3.5 The applicant is ordered to pay the six respondent's costs of this counter-application, such costs to be taxed on the attorney and client scale.

4. In the application to confirm the rule nisi (case no 13720/24P):

4.1 The rule nisi, together with its interim relief issued on 6 September 2024 by Pitman AJ, is discharged.

4.2 The applicant shall pay the sixth respondent's costs of the rule nisi application on scale C.

4.3 The applicant and the first and second respondents are each to pay their own costs in the rule nisi application.

5. In the condonation application (case no 14437/24P):

5.1 The late delivery of the applicant's heads of arguments and practice note is condone.

5.2 The applicant is ordered to pay the wasted costs occasioned by the condonation application.

JUDGMENT

Matlamela AJ

<u>Introduction</u>

[1] On 30 October 2025, five applications came before me. The first application is by Afropulse 477 (Pty) Ltd (the applicant) against all respondents, except the third respondent and is for the setting aside of a warrant (the application to set aside the warrant).

[2] The second application is an unopposed application by the applicant for the late filling of its heads of argument.

[3] The third application, which was brought as a counterapplication, ('the ejectment application') is by first and second respondents against the applicant for the ejectment of the applicant (the ejectment application).

[4] The fourth application, which was also brought as a counterapplication ('the ejectment application') is by the sixth respondent against the applicant for its ejectment. All these applications were brought under case number 14437/24P.

[5] The fifth and final application deals with the confirmation of the rule nisi dated 6 September 2025 which had been obtained by the applicant. This application was brought under case number 13720/24P.

[6] All five applications were placed before me and argued simultaneously. I will deal with all five applications in one judgment. Save for matters that are common to all four applications, I shall structure this judgment accordingly and consider each application separately.

[7] For purposes of this judgment the rule nisi, in short, reads as follows:

(a) By consent, Sasol Oil (Pty) Ltd has been joined.

(b) Paragraph 2.2 of the rule nisi provided that that pending the outcome of proceedings to be instituted within seven days for the warrant to search for and take possession of the property issued by the Regional Court for the District of KwaDukuza on 27 August 2024 to be set aside, the respondents be and are hereby ordered to forthwith restore possession of the business premises situated at Erf 1[...], corner of Green and White Streets, Isithebe, Kwazulu-Natal to the applicant, which premises comprises a forecourt and convenience store known as Sasol Isithebe and Sasol Delight, respectively.

[8] Following the above order, an application for setting aside the warrant was instituted on 18 September 2024.

[9] What caused these applications will be dealt with later.

[10] The applicant under case number 13720/2024P is Afropulse 477 (Pty) Ltd, a limited liability company, duly registered and incorporated in accordance with the company laws of the Republic of South Africa and which has its principal place of business at Erf 4[...] , corner Green and White Streets, Isithebe, KwaZulu-Natal.

[11] The first respondent is Theodor Wilhem van der Heever NO, a joint provisional liquidator of Sherpa Trade and Investments 71 (Pty) Ltd, employed by D & T Trust (Pty) Ltd, 426/428 Ontdekkers Road, Florida Park, Gauteng.

[12] The second respondent is Tania Oosthuizen NO, a joint provisional liquidator of Sherpa Trade and Investments 71 (Pty) Ltd, employed by D & T Trust (Pty) Ltd, 426/428 Ontdekkers Road, Florida Park, Gauteng.

[13] The third respondent is Peter Maskell, an auctioneer, who engages in business under the style of Peter Maskell Auctioneers at 4[...] O[...] Road, Willowton, Pietermaritzburg, KwaZulu-Natal.

[14] The fourth respondent is the Regional Court Magistrate for the District of KwaDukuza.

[15] The fifth respondent is the Minister of Police.

[16] On 27 August 2024, the first and second respondents applied for a search warrant in terms of s 69 of Insolvency Act 24 of 1936 (the Insolvency Act), which the fourth respondent granted and issued.

[17] The fifth respondent's members or sheriff of the court entered and searched the applicant's premises and took into their possession property belonging to Sherpa Trade and Investments 71 (Pty) Ltd (Sherpa Trade) and property belonging to Sasol Oil (Pty) Ltd (the sixth respondent).

[18] The applicant's premises is described as Portion of Erf 1[...], corner of White and Green Streets, Isithebe, KwaZulu-Natal (the property), and is owned by the Ithala Development and Finance Corporation (Ithala).

[19] Ithala, in terms of a written agreement, leased the property to Sherpa Trade.

[20] Sherpa Trade further sub-let the property to the sixth respondent in terms of a notarial written agreement of lease duly executed on 19 April 2012 (the sub-lease).

The sixth respondent leased the property from Sherpa Trade for the sole purpose of establishing and operating a Sasol branded service and filling station.

[21] Finally, the sixth respondent further sub-let the property to the applicant in terms of a written franchise agreement as a retailer to operate the intended Sasol branded service and filling station.

[22] On 12 February 2024, Sherpa Trade was placed in final liquidation by an order of court and the first and second respondents were subsequently appointed as the liquidators of Sherpa Trade on 9 January 2024.

[23] The first and second respondents brought an application in terms of ss 69(2) and (3) of the Insolvency Act, authorising and directing the South African Police Service (SAPS) in terms of s 69 of the Insolvency Act, read together with s 21 of the Criminal Procedure Act 51 of 1977 (the CPA), to:

(a) Enter and search the property.

(b) To take into their possession the movable assets referred to in the warrant, which are found at the property.

(c) To deliver possession of the movable assets to the first and second respondents.

[24] In their affidavit for the issuing of the warrant, the first and second respondents alleged that Mr Amod, who is the sole director and shareholder of the applicant, did not honour his obligations to the sixth respondent, which resulted in it terminating the retail agreement with the applicant and the lease agreement with Sherpa Trade.

[25] They further indicated that after termination of the agreements, Mr Amod caused the business of the applicant to continue operating whilst no Sasol fuel has been supplied.

[26] The sixth respondent installed all movable assets, including pumps, tanks, convenience store equipment and shopfitting. In terms of the lease agreement, the sixth respondent remained the owner of the installed equipment. The sixth

respondent had, however, demanded that this equipment to be handed over by the applicant's liquidators.

[27] In that application, the first and second respondents alleged that they have a real and substantial interest in taking possession of the movable assets, except stock which was not supplied by the sixth respondent, situated on the property.

[28] The stock which was not supplied by the sixth respondent was not mentioned.

[29] The first and second respondents alleged that it would be for the benefit of the creditors that they immediately took possession of the assets, and that the sixth respondent was suffering untold damages because persons unknown are operating from the property.

[30] The first and second respondents only had a letter from the sixth respondent dated 20 September 2023 to Sherpa Trade which confirmed the termination of the agreement between it and the applicant. In the letter, the sixth respondent did not indicate whether it suffered substantial damages because of the continuation of the business, nor was there a confirmatory affidavit to such allegation.

[31] The fourth respondent issued a warrant in terms of s 69 of the Insolvency Act, as read with s 21 of the CPA. Paragraph 2 of the warrant read as follows:

'You are hereby authorised and directed to enter and search during the day or night the premises, and to take the abovementioned property into your possession if located, and then and there to hand same over to Theodor Wilhelm Van Der Heever N.O and Tania Oosthuizen N.O, in their personal capacities as duly appointed joint provisional liquidators of the company in liquidation, or to their authorised agents.'

[32] It is this search warrant which caused the urgent application dated 6 September 2024 to be brought by the applicant. Pitman AJ issued a rule nisi that pending the outcome of the proceedings to be instituted, within seven days, for the search warrant issued by the fourth respondent on 27 August 2024 to be set aside, the respondents were ordered to forthwith restore possession of the property.

[33] Following the rule nisi, the applicant issued an application on 18 September 2024 to set aside the search warrant authorised by the fourth respondent. In this

application, the parties were the same, except that Sasol Oil (Pty) Ltd was added as the sixth respondent.

[34] The sixth respondent is a company with limited liability registered and incorporated with the company laws of the Republic of South Africa and which has its principal place of business at Sasol Place, 5[...] K[...] Street, Sandton, Johannesburg, Gauteng.

[35] The application to set aside the warrant was opposed by the first, second and sixth respondents. In addition to the opposition, the first and second respondents and the sixth respondent brought counterapplications separately. I will deal with the counter-applications later in the judgment.

Condonation application

[36] Before dealing with the application to set aside the warrant, a preliminary issue needs to be dealt with. Due to a change of attorneys, the applicant only filed its heads of argument after 13 October 2025, which was the date of filing heads of argument.

[37] The applicant brought an application in terms of rule 27 of the Uniform Rules of Court in which it seeks condonation for the late filing of its heads of argument and practice note.

[38] This application was not opposed by the respondents.

[39] In *Grootboom v National Prosecuting Authority and Another*,[1] the following was said:

'It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default'.

[1] *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC) para 23.

[40] I am satisfied that the factual background contained in the condonation application is sufficient to grant such indulgence. The applicant undertook to pay the wasted costs of occasioned by the condonation application.

<u>Application to set aside the warrant</u>

[41] This application is only opposed by the first and second respondent. The six respondent does not oppose the setting aside of the warrant on the grounds that Sasol has no interest in the said relief. In challenging the warrant, the applicant argued that it was executed in such a manner that the applicant was affectively evicted from the property.

[42] The applicant contended that the fourth respondent erred in authorising the warrant as she violated the *audi alteram partem* rule as the applicant was not given notice of the application nor was it given the right to be heard. This failure, in itself, vitiates the proceedings and justifies the warrant being set aside.

[43] Section 69(2) of the Insolvency Act provides that if a trustee has a reason to believe that any property, book or document is concealed or otherwise withheld from him, he may apply to a magistrate having jurisdiction for a search warrant mentioned in s 55(3).

[44] Section 69 provides as follows:

'Trustee must take charge of property of estate

(1) A trustee shall, as soon as possible after his appointment, but not before the deputy-sheriff has made the inventory referred to in subsection (1) of section *nineteen*, take into his possession or under his control all movable property, books and documents belonging to the estate of which he is trustee and shall furnish the Master with a valuation of such movable property by an appraiser appointed under any law relating to the administration of the estates of deceased persons or by a person approved of by the Master for the purpose.

(2) If the trustee has reason to believe that any such property, book or document is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned in subsection (3).

(3) If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or

upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate's jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

(4) Such a warrant shall be executed in a like manner as a warrant to search for stolen property, and the person executing the warrant shall deliver any article seized thereunder to the trustee.'

[45] It appears clearly from the papers that the fourth respondent was approached in chambers with the application to authorise the issue of the warrant. No notice of the application was given to any person.

[46] The provisions of s 69 provide that there be an application and a statement on oath. The first and second respondents' application was supported by an affidavit. It this aspect, it complied with the requirements of the said provision.

[47] The fourth respondent authorised and issued a warrant with the following heading:

'WARRANT IN TERMS OF SEC 69 OF ACT 24 OF 1936 AS READ WITH SEC 21 OF ACT 51 OF 1977.
TO SEACH FOR AND TAKE POSSESSION OF PROPERTY IN THE LIQUIDATED ESTATE OF: SHERPA TRADE AND INVEST 71 (PTY) LTD (IN LIQUIDATION)
MASTER'S REFERENCE NO: N347/22…'

[48] The warrant authorised and instructed the SAPS and the sheriff of the court to enter and search during the day or night the premises and to take the abovementioned property into their possession, if located, and then to hand same over to the first and second respondents.

[49] The warrant was executed by one Sergeant Glover of the SAPS at the property, which was a Sasol service station operated by the applicant, comprising a forecourt (with fuel pumps) and a convenience store.

[50] According to the applicant, on Monday, 2 September 2024, at approximately 09h30, according to the manageress, Vasantha Harrysingh, who was at the

applicant's premises when approximately ten men arrived at the service station and some of them identified themselves. She was informed by one of the men that they were there to close down the service station. She was handed a warrant and was told that in terms of the warrant, they were entitled to close the service station down.

[51] The ten men proceeded to make an inventory of the assets. They blocked the entrance to the side by initially parking vehicles across the entrance and later locked the entrance gates by using a chain and locks. They also posted security guards at the gate to prevent people, including customers, from entering the property.

[52] They locked the nozzle of each pump to its cradle, thereby making it impossible to dispense fuel. The applicant's staff members were instructed to leave the property, which they did.

[53] These allegations contained in the founding affidavit were admitted by the first and second respondents. The first and second respondents answered that the provisional liquidators were acting within their rights when the warrant was executed on 2 September 2024. The applicant was invited on more than one occasion to remove its assets from the property.

[54] The sixth respondent did not answer to these allegations by the applicant, despite filing a notice to oppose.

[55] In *Naidoo and Others v Kalianjee NO and Others*,[2] the following was held: The underlying purpose of a seizure under s 69 of the Act is fundamentally different. As stated by Marais JA in *Cooper*:

> "[11] It is to disable the insolvent and anyone else who may be physically in possession of such assets from alienating or encumbering them to the prejudice of creditors. That purpose is achieved by, inter alia, providing for the trustee to have physical possession of them in the case of movables or, in the case of movables under attachment or immovables, by having the relevant functionaries place caveats against the assets.

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[2] *Naidoo and Others v Kalianjee NO and Others* [2015] ZASCA 102; 2016 (2) SA 451 (SCA) para 25.

[12] Despite all that, but for s 69, there would remain a window of opportunity for a third party in possession of a movable asset, the ownership of which is vested in the trustee, to alienate it in such a way that it could not be vindicated by the trustee. . . . The longer a third party can resist handing over the asset, the more extensive the opportunities of alienating the asset to another for value to the prejudice of creditors of the insolvent may be. . . . Hence the need for a provision such as s 69."'

[56] The sole aim of s 69 is to provide the first and second respondents with physical possession of goods which, upon reasonable suspicion, are believed to be owned by the insolvent, wherever such assets may find themselves. The aim is certainly not to close the business of the applicant, as was done by those executing the warrant in question.

[57] In Bruwil Konstruksie (Edms) Bpk v Whitson NO and Another[3], which described the section as draconian and proceeded to state the following at page 711:

'It seems to me that the purpose of the section is clearly to enable the liquidator or trustee to obtain speedy possession of goods belonging to an estate which he suspects, or believes on reasonable grounds, to be assets of the estate. The safeguard to the ordinary public lies in the words "reasonable belief" or "reasonable grounds" for suspecting. … whether the words "reasonable grounds" imply that it should amount to a prima facie case in a court of law. Unfortunately, there is no guidance or precedent on this particular section but, in my view, it contemplates a lesser burden than prima facie in a court of law, otherwise there would be hardly any purpose in the section. The section is obviously designed to enable a liquidator or trustee to obtain possession of assets speedily and to place the onus on the person in possession to prove his ownership or right of possession, and to remove the burden from an estate instituting action first and discharging the onus of proving that the estate is the owner. If this is so, it seems to me that it would be wrong to equate the duty resting on a liquidator or trustee under this section with that of a litigant in proving a prima facie case. It seems clear that sometimes less would suffice. However, he can never be free of a burden

[3] Bruwil Konstruksie (Edms) Bpk v Whitson NO and Another 1980 (4) SA 703 (T).

before he applies to the magistrate and makes the statement that he had reasonable grounds for suspecting that these are assets belonging to the estate.'

[58] In *Le Roux and Others v Viana N.O and Others*,[4] the following was held:

'The objective of s 69(3) contemplates nothing less than the seizure of property, books and documents relating to the insolvent estate wherever they may be. In this case the target of the warrant was the books and documents of the companies in liquidation contained on Caspian's hard drive. A reading of the warrant lists all that was to be seized consisting of financial, accounting and investment documents and records relating to the companies in liquidation. It is incorrect, as submitted on behalf of the appellants, that the objective of the warrant was the seizure of the hard drive. The magistrate was clearly alive to the fact that the hard drive did not belong to the companies in liquidation and that it also contained information relating to innocent third parties. Hence the warrant is couched in terms respecting the confidentiality of the other information on the hard drive and does not countenance the deputy sheriff having access to it.'

[59] A reading of the warrant in question reveals that it does not specify a list of items to be seized. Rather, it stated that on the grounds of a statement made upon oath, "there exist reasonable grounds for suspecting that property belonging to Sherpa Trade". The affidavit also does no list those assets to be seized. For this reason, this warrant is too eclectic.

[60] In *De Beer NO and Others v Magistrate of Dundee NO and Others*,[5] it was held that warrants that contain vague, unintentional or overbroad provisions may be found to be invalid in their entirety.

[61] Section 69 of the Insolvency Act must be read with s 21 of the CPA.[6] Section 21(3)*(a)* provides that '[a] search warrant shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night'. In the affidavit requesting the warrant, no basis was laid for the warrant to be executed by night. It was wrong for the fourth respondent to authorise it for execution in the day and night without basis in support thereof.

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[4] *Le Roux and Others v Viana NO and Others* [2007] ZASCA 173; 2008 (2) SA 173 (SCA) para 9.
[5] *De Beer NO and Others v Magistrate of Dundee NO and Others* [2021] 1 All SA 405 (KZP) para 28.
[6] See s 69(4) of the Insolvency Act.

[62] Another reason for setting aside a warrant is found in the matter of *Cooper v First National Bank of SA Ltd*[7] has stated that; "The purpose of sec 69(3) is to strengthen the hand of a trustee in carrying out the obligation to take charge of all the assets belonging to an insolvent estate which are being concealed or unlawfully withheld". The SCA however cautioned that; "Resorting to its provisions has the potential to infringe the rights of others in relation to both their property (at least to the extent of depriving them of something in their possession) as well as their privacy when it comes to search and seizure. In those circumstances, in my view, as a general principle, a warrant should not be issued without affording the person or persons affected, or likely to be affected (to the extent that their identities are ascertainable or reasonably ascertainable), an opportunity to be heard, unless it can be said that s 69(3) (the authorising provision) excludes that right either expressly or by necessary implication. An opportunity to be heard would require the giving of appropriate notice to the person or persons concerned."[8]

[63] In the circumstances, the warrant falls to be set aside.

<u>Counter-application by the first and second respondents and the sixth respondent</u>

[64] The first and second respondents issued a counter"-applications on 11 October 2024. In their application, these respondents seek the following relief:

"(a) That the First and Second Respondents be authorised in terms of Section 386 (5) as read with Section 386 (4) (a) of the Companies Act, 1973 to bring this counterapplication and to oppose the relief sought by the Applicant.

(b) That the Rule Nisi together with its interim relief, issued on 6 September 2024 by Acting Justice Pitman be discharged.

(c) That the Applicant together with those persons or parties acting under or through it, be ejected from the property more fully described as a Portion of Erf 1[...], I[...] I[...] Estate, comprising approximately 9000 square metres and situate at Corner of White and Green Streets, Mandeni, Kwa-Zulu Natal, on grounds that its, and their where applicable, continued occupation of the property is unlawful.

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[7] 2001 (3) SA 705 (SCA)

[8] Cooper v First National Bank of SA Ltd 2001 (3) SA 705 (SCA) at para 22

(d) That should the Applicant and those persons or parties referred to in the paragraph above hereof, fail to vacate the said premises by the ______ day of _________ 2024, the Sheriff of the High Court with jurisdiction, be directed to eject the Applicant and the said further persons or parties, from the premises by preventing access thereto and by removing the Applicant's movable property from the premises.

(e) That the Applicant pay the costs of the urgent application in terms of which the Rule Nisi was issued, the application to set aside the warrant issued on 27 August 2024 and the counterapplication on Scale B"[9].

[65] The sixth respondent also issued a counterapplication on 7 November 2024.

(a) It seeks an order for evicting the Applicant and all those occupying the property through or under the Applicant from the immovable property described above, on the grounds that its and their where applicable, continued occupation of the property is unlawful.

(b) That the Rule nisi, together with its interim relief issued on 6 September 2024 by Acting Justice Pitman be discharged.

(c) Authorising and directing the Sheriff of the above Honourable Court to take such steps as are necessary in order to give effect of the above prayer.

(d) Interdicting and restraining the Applicant and / or their privies from:

(i) conducting any activities associated with a service and filling station as contemplated in terms of the franchise agreement between the Sixth Respondent and the Applicant from the property described above, by utilising and / or be associated with the Sasol brand, know-how, marketing and comprehensive blueprint for the operation of a convenience centre and related business, equipment and programmes, licences and / or trademarks and tradenames and / or intellectual property.

(ii) sourcing and / or storing and / or distributing any third-party automotive fuel, automotive products, emission fluids and related products at or from the property, which products were sourced from parties other than the Applicant.

(e) Authorising the Sixth Respondent to gain access to the premises in order to effect on onsite disablement, which includes manual locking where required of Sasol is system and equipment on site.

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[9] Notice of Motion by first and second respondent-counterapplication

(f) Ordering the Applicant to pay the Sixth Respondent's costs of this counterapplication such to be taxed on the attorney and client scale.
(g) That the Applicant pay the costs of the urgent interdict application in terms of which the Rule Nisi was issued, the application to set aside the warrant issued on 27 August 2024 and the counter application on Scale C "[10].

[66] The sixth respondent's counterapplication is based on the following.

[67] The property forming the subject matter of the counterapplication is owned by Ithala. Ithala leased the property to Sherpa Trade. Sherpa Trade further sub-let the property to the sixth respondent in terms of a written notarial agreement of lease duly executed on 19 April 2012.

[68] The sixth respondent leased the property from Sherpa Trade for the sole purpose of establishing and operating a Sasol branded service and filling station. Finally, the sixth respondent further sub-let the property to the applicant in terms of a written franchise agreement as a retailer to operate the intended Sasol branded service and filling station.

[69] The sixth respondent indicated that the applicant obtained occupation of the property and the right to operate the Sasol branded service station by virtue of and in terms of the franchise agreement.

[70] The terms and conditions of the franchise agreement relevant to these proceedings are:
(a) The applicant undertook during the currency of the franchise agreement to purchase exclusively from the sixth respondent its entire requirements of petroleum products.
(b) The applicant shall not under any circumstances purchase for resale any other brand of fuel or petroleum products other than those defined under petroleum products in the franchise agreement, unless otherwise directed in writing by the sixth respondent (clause 12.3).

[10] Notice of motion by sixth respondent-counterapplication

(c) The franchise agreement may be terminated with immediate effect by the sixth respondent, *inter alia*, if the applicant purchased petroleum products from any other entity, and not directly from the sixth respondent, or if the applicant allowed the resale of any other brand of petroleum products from the premises not specifically agreed to by the sixth respondent (clause 22.2.16).

[71] The sixth respondent alleged that from 5 May 2021, the applicant commenced to source its fuel requirements from suppliers other than the sixth respondent. The last order placed and delivered by the sixth respondent was on 5 May 2021. This amounted to a breach of the franchise agreement.

[72] As a result of the aforesaid breach of the franchise agreement, the sixth respondent, on 30 March 2023, by way of a written notice, terminated the franchise agreement. Notwithstanding the termination of the franchise agreement, the applicant remains in occupation of the property, continues to source and distribute third party products to members of the public, uses the equipment and confidential information of the sixth respondent and conducts the business of a Sasol branded service and filling station, or at least as far as the general public is concerned, under circumstances where the sixth respondent has been excluded and locked out from the site by the applicant. The sixth respondent has no control over the fuel stored in its tanks, and it has no control over the quality of fuel that is being dispensed into the vehicles of customers.

[73] Upon termination of the franchise agreement, the following clauses are relevant:

(a) Clause 24.3.7: the applicant was required to return all equipment belonging to the sixth respondent or any third party that was loaned or hired from the sixth respondent or third parties in working condition, fair wear and tear expected.

(b) Clause 24.3.8: the applicant was required to immediately return operation manuals and written material issued or produced by the sixth respondent, such as marketing material, signage or other written or printed material containing or featuring any part of the intellectual property which the sixth respondent, its shareholders or members had in their possession, to the sixth respondent.

(c) Clause 24.3.9: the applicant shall place all material containing or embodying the sixth respondent's confidential information in the sixth respondent's custody, at a place to be specified by the sixth respondent, immediately upon the sixth respondent's request to this effect.

(d) Clause 22.3.13: should the sixth respondent employ legal representation to enforce compliance, the applicant shall be liable for such legal representation and other costs on an attorney and own client scale.

(e) Clause 22.3.14: the applicant agreed and undertook to vacate the property with immediate effect after the cancellation of the franchise agreement or after termination of the franchise agreement due to the expiry of its term, leaving the property in good order and condition.

[74] On the other hand, the first and second respondents' foundations of the counterapplication are follows.

[75] By notice dated 20 September 2023, the sixth respondent cancelled the sub-lease with Sherpa Trade. On the other hand, by notice dated 30 March 2023, the sixth respondent terminated the franchise relationship with the applicant for the latter's ongoing sale of third-party fuel products, while masquerading as a Sasol fuel station.

[76] According to the first and second respondents, the sixth respondent recorded the unjustifiable resistance in gaining access to their assets on the property, notwithstanding cancellation of the lease and the franchise agreements.

[77] The sixth respondent threatened legal proceedings should the assets owned by it not be returned by the provisional liquidators. It was further stated that the applicant continued to unlawfully use the sixth respondent's assets and to misrepresent to the market that it is operating as Sasol fuel station, thereby causing irreparable harm to its reputation and brand.

[78] The applicant's continued possession of the assets and the property is clearly unlawful and designed to permit the applicant to continue to trade from the property

without paying any royalties to the sixth respondent and without paying a cent towards municipal charges levied for the consumption of electricity and water.

[79] The applicant is also using Sasol branding, Sasol get-up, Sasol pumps and equipment and Sasol tanks without paying anything, whilst continuing to dispense third-party products under the guise that these are the sixth respondent's products.

[80] Most importantly, it was contended that the provisional liquidators were entitled to take possession of the property, as they did when the warrant was executed. Section 391 of the Companies Act specifically directs a liquidator to proceed forthwith to recover and reduce into possession the movable and immovable assets and property of the company.

[81] Upon the cancellation of the sub-lease by the sixth respondent, Sherpa Trade was entitled to be restored to possession of the property and the refusal to do so by the applicant is unlawful. The applicant remains in unlawful occupation of the property, and the provisional liquidators are entitled to an order for its ejectment.

[82] The applicant opposed both counterapplications and filed an answering affidavit.

[83] The applicant contented that Ithala is the registered owner of the property. Ithala leased the property to Sherpa Trade in terms of a registered long-term lease and Sherpa Trade constructed a service station. Sherpa Trade leased the property to the sixth respondent. The sixth respondent, in turn, appointed the applicant as a franchise to operate the service station and convenience store.

[84] The applicant raised the non-joinder of Ithala. It was further alleged that as the owner of the property, Ithala cancelled the lease with Sherpa Trade due to the non-payment of rent and utilities and instituted action out of the Durban High Court under case number D11549/2022 for the ejectment of Sherpa Trade.

[85] Regarding the first and second respondents, the applicant argued that they lack *locus standi* to launch the counterapplication for the ejectment of the applicant

and they were appointed in terms of s 386(1) of the Companies Act. The applicant alleged that these powers do not automatically afford the first and second respondents the necessary authority to institute civil proceedings on behalf of the company of which they are the liquidators. I find that the Master expressly gave the provisional liquidators such powers or at the very least, by implication bestowed such powers on them. As liquidators they had the powers 'to take such measures for the protection and better administration of the affairs and property'. In the case GCC Engineering & others v Lawrence Maroos & others[11], the court held that the functions of a provisional liquidator are essentially to take physical control and to manage the administration of the property and affairs of the company pending the appointment of a liquidator.

[86] In Jansen van Rensburg NO & another v Cardio-Fitness Properties (Pty) Ltd & others[12] Kgomo J, correctly, remarked that it is a fact that provisional liquidators of a company have the task of taking physical control of the company and its assets. Theirs is just to superintend or act as good shepherds over the affairs and assets of the insolvent company until a final or permanent liquidator is appointed. Only a permanent liquidator (not a provisional one) performs the actual processes and chores of liquidation. Normally, the powers of a provisional liquidator are restricted by the Master. However, it remains the prerogative of the Master or the court for that matter, to relax any restrictions that may be there or extend powers granted.

[87] The applicant admitted that the franchise agreement has lapsed but argued that it is an error of law on the part of the applicant's attorneys and the applicant cannot be held bound thereto. I must state that there is no confirmatory affidavit from the attorney confirming the allegation of an error of law. In *Saloojee and Another, NNO v Minister of Community Development*[13] the following is stated:

'There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Considerations *ad*

[11] (901/2017) [2018] ZASCA 178 (3 December 2018) at para 11
[12] [2014] JOL 31979 (GSJ) para 33
[13] *Saloojee and Another, NNO v Minister of Community Development* 1965 (2) SA 135 (A) at 141C-I.

misericordiam should not be allowed to become an invitation to laxity ... If he relies upon the ineptitude or remissness of his own attorney, he should at least explain that none of it is to be imputed to himself. That has not been done in this case.'

[88] The same issue of blaming legal representatives was dealt with in *Myeni v Organisation Undoing Tax Abuse NPC and Others*,[14] wherein the court dealt with a similar issue and held that:

'Applicant stated that she was unaware of the legal implications of these admissions and that her new legal representatives were entitled to give her different advice as to what should have been admitted. Different legal representatives may indeed give different advice, but that cannot imply that a litigant may not be bound by pleadings drafted on her instruction and after proper consultation. If a litigant seeks to blame their legal representatives for errors a full explanation must be given as to why no blame should be attributed to herself.'

[89] The applicant argued that the sixth respondent did not validly cancel the agreement between itself and the applicant. The source of this denial has not been explained and therefore the court will reject it. There is no pending application by the applicant wherein it challenged the cancellation of the agreement or any submission by counsel that such application is forthcoming on specific date. This means that the cancellation of the franchise agreement stands.

[90] The applicant cannot just provide a bare denial in circumstances where the applicant is in position to answer fully but failed. In *R Bakers (Pty) Ltd v Ruto Bakeries (Pty) Ltd*[15] the court held that:

'For matters for which motion procedure is prescribed by law, e.g. Petitions for sequestration, a bare denial, unsupported by facts, may be wholly inadequate and ineffective. The respondent is expected to set out, in some detail, his available evidence in support of the denial, as also where the defence is one of confession and avoidance. This is inevitable. In such cases, the Court deciding the issues, must arrive at a decision based on the preponderance of probability on the affidavits as best it can.'

[91] In the answering affidavit, the applicant did not answer the first and second respondents' allegations that the sixth respondent was obliged to restore vacant

[14] *Myeni v Organisation Undoing Tax Abuse NPC and Others* [2019] ZAGPPHC 565 (*Myeni*) para 44.
[15] *R Bakers (Pty) Ltd v Ruto Bakeries (Pty) Ltd* 1948 (2) SA 626 (T) at 630-631.

possession of the site to Sherpa trade, free of any occupants, such as the applicant, who had no contractual nexus with Sherpa Trade and no right to occupy the site. The court will thus accept these allegations as unchallenged.

[92] Regarding the notice dated 30 March 2023 wherein the sixth respondent terminated the franchise relationship with the applicant, the applicant argued that these allegations are hearsay and should be struck out. The letter from the sixth respondent dated 30 March 2023 confirmed the termination and this letter is not disputed by the applicant. The same letter is attached in the sixth respondent application, which is related to the first and second respondents' application. In the counterapplication by sixth respondent, this letter was not challenged as a hearsay.

[93] The applicant denied the allegations by the first and second respondents that the continued possession of the assets and the property are clearly unlawful. In answering to this, the applicant argued that these allegations are not relevant. I find these allegations relevant and they require answers from the applicant. In the absence of gainsay, these allegations are accordingly admitted.

[94] I further find that the applicant is using Sasol branding, Sasol get-up, Sasol pumps and equipment and Sasol tanks without paying anything as relevant for the purpose of ejectment.

[95] The applicant answered the sixth respondent's application as follows. In terms of the agreement between the sixth respondent and the applicant, the applicant was required to source its fuel requirement exclusively from the sixth respondent and it would not store or distribute fuel not sourced from the sixth respondent. In answering to this allegation, the applicant indicated that since December 2017, the applicant experienced fuel shortages due to the sixth respondent's inability to make deliveries timeously and regularly.

[96] On numerous occasions, the applicant complained to the sixth respondent and on occasion, sought the sixth respondent's permission to source fuel from third party suppliers to continue the applicant's business. The sixth respondent denied these allegations and regards them as a postscript.

[97] This request of permission to source fuel from a third party is against clause 12.3 of the franchise agreement that -The applicant shall not under any circumstances purchase for resale any other brand of fuel or petroleum products other than those defined under petroleum products in the franchise agreement, unless otherwise directed in writing by the sixth respondent.

[98] The difficulty I have with the applicant's answer is that there is no proof of these allegations in the form of a letter or email by the applicant to the sixth respondent seeking permission to source fuel from the third party. It has been tried that "In motion proceedings, the affidavits constitute both the pleadings and the evidence: Transnet Ltd v Rubenstein, and the issues and averments in support of the parties' cases should appear clearly therefrom."[16]

[99] Instead, the applicant admitted the source of fuel from the third party, which is a breach of contract. Therefore, the sixth respondent's termination of the franchise agreement by way of written notice on 30 March 2023 was justified. The respondent took the court into confidence and put all, the evidence needed to substantiate their case and which there is a possibility that their version might be true. On the other hand, applicant chosen not to place all the evidence needed before this court and the court can only work with what is before it. I agree with sixth respondent reply that this admission put end to any attempt to challenge the termination of the franchise agreement on the part of the applicant.

[100] Following from the termination, the applicant must surrender the equipment and the business back to the sixth respondent. I find that the applicant is and remains in unlawful possession of the property. The activities conducted by the applicant at the property is and remains unlawful. This continuation of unlawful activities cannot be allowed anymore. It is for this reason that the applicant must be given 15 days to pack and leave.

[101] The sixth respondent did demonstrate that the franchise agreement was validly cancelled. It follows that the applicant's continued occupation and operation of

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[16] Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others (171/06) [2007] ZASCA 153; [2007] SCA 153 (RSA); 2008 (2) SA 184 (SCA) (28 November 2007) at para 43

the property is unlawful. Since the applicant's only basis for occupying the property was the franchise agreement, once the franchise agreement was terminated, any entitlement the applicant had to occupy the property fell away.

[102] In *Sasol Oil and Another v Bitline SA 951 cc t/a Sasol Roodepoort West and Another*,[17] the court held the following:

'[17] Sasol Oil has a clear right, in the form of its ownership of the intellectual property, which requires protection and which Bitline SA presently uses without Sasol Oil's authority to do so. No more needs to be said about this requirement. Bitline SA and Mr Jassat continue to operate the site as a Sasol branded service station, without the consent of Sasol Oil, misrepresenting to the general public that the site is and remains a Sasol service and filling station. They are also using Sasol's equipment and intellectual property, on the unsubstantiated and contradictory contention that a valid and binding franchise agreement is and remains in place.

…

[21]. Both Sasol Oil and Amrich make application for the eviction of Bitline SA from commercial premises, being the property situate at corner Main Reef and Serfontein Roads, Roodepoort West ("the premises" or "the property") and from which premises Bitline SA conducts the franchise business as Sasol Roodepoort West. Amrich approaches the court for an eviction order in its capacity as owner of the premises and Sasol Oil's cause of action is based on its contractual and common law obligation(s) owed to Amrich as owner to return free and undisturbed possession of the premises to its owner.

[22]. As I have already found, the franchise agreement, at best for Bitline SA, came to an end by effluxion of time on 30 June 2022. This therefore means that it does not have any right to remain in occupation of the premises. Sasol Oil is therefore entitled to an eviction order against Bitline SA. The simple fact of the matter is that Bitline SA was granted the right to occupy the premises by Sasol Oil pursuant to and in terms of the Franchise Agreement and this is the only basis on which they could and in fact did occupy the said property. Once the Franchise Agreement was terminated, Bitline SA's entitlement to occupy the premises came to an end and Sasol Oil was entitled to ask for their eviction from the premises.

[23]. Amrich, on the other hand, as the owner of the property, is entitled to an eviction order against an unlawful occupier on the basis of the *rei vindicatio*. An owner is entitled to reclaim possession of its property with the *rei vindicatio* and is required only to allege and prove: (a) ownership of the premises; and (b) that the respondent is in possession of the said thing. Should the respondent claim a right to be in possession or occupation of the premises, the

[17] *Sasol Oil and Another v Bitline SA 951 CC t/a Sasol Roodepoort West and Another* [2023] ZAGPJHC 1437 (*Bitline*).

respondent must allege and prove such right. Accordingly, *in casu* the onus is on Bitline SA to justify its continued occupation of the premises in relation to Amrich as the owner thereof. This, Bitline SA has miserably failed to do, which, in my judgment spells the end of Bitline SA's case in opposition to the eviction application.'

[103] I agree with what was held in *Bitline*, and it is applicable to this judgment.

[104] Given the fact that the franchise agreement was terminated the applicant right to occupy the property and to operate the filing station ceased to exist, in *Bitline* the following was held,

> "[16]. In the circumstances, I am satisfied that Sasol Oil has made out a case for final interdictory relief sought in the first application. I am persuaded that Sasol Oil, as the applicant for interdictory relief, has fulfilled the requirements for such relief, to wit: (a) it has a clear right; (b) it has a reasonable apprehension of irreparable harm; and (c) it has no alternative remedy that would suitably address any harm suffered in the normal course of events.
>
> [17]. Sasol Oil has a clear right, in the form of its ownership of the intellectual property, which requires protection and which Bitline SA presently uses without Sasol Oil's authority to do so. No more needs to be said about this requirement. Bitline SA and Mr Jassat continue to operate the site as a Sasol branded service station, without the consent of Sasol Oil, misrepresenting to the general public that the site is and remains a Sasol service and filling station. They are also using Sasol's equipment and intellectual property; on the unsubstantiated and contradictory contention that a valid and binding franchise agreement is and remains in place.
>
> [18]. There can also be no doubt that Sasol Oil will suffer irreparable harm if the interdict is not granted. It is so, as contended by Mr Aucamp, Counsel for Sasol Oil, that in the case of a vindicatory or quasi vindicatory claims, it is factually presumed, until the contrary is shown, that Sasol will suffer irreparable harm if the interdict is not granted.

> [19]. Moreover, Sasol Oil does not have available to it any alternative remedy. Even where an injury may be capable of pecuniary evaluation and compensation, the court will generally grant an interdict if the injury is a continuing violation of an applicant's rights as is the case with Sasol Oil in casu.
>
> [20]. For all these reasons, the interdict application should succeed.

[105] I give the applicant thirty (30) days to vacate the property, more fully described as Portion of ERF 1[...] I[...] I[...] Estate.

[106] The applicant raised a defence of non-joinder of Ithala as the owner of the premises. The test for joinder of necessity was restated by Brand JA in *Bowring NO v Vrededorp Properties CC and Another:*[18]

'The substantial test is whether the party that is alleged to be a necessary party for purposes of joinder has a legal interest in the subject-matter of the litigation, which may be affected prejudicially by the judgment of the Court in the proceedings concerned…'

[107] The question is therefore whether Ithala might be prejudicially affected by a judgment in this application.

[108] The applicant did not demonstrate how this judgment will affect Ithala. The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder objection. I therefore find no merit on this issue of non-joinder.

[109] In *Myeni* the court held that:

'[65] In *Amalgamated Engineering Union*, the Appellate Division explained further that "*[t]he question of joinder should … not depend on the nature of the subject-matter of the suit … but… on the manner in which, and the extent to which, the Court's order may affect the interests of third parties.*"

[66] This means that the relief is decisive, not the facts or issues in dispute. Even where a Court may be called on to make findings that are verse to another party this does not

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[18] *Bowring NO v Vrededorp Properties CC and Another* [2007] ZASCA 80; 2007 (5) SA 391 (SCA) para 21.

establish grounds for non-joinder if the relief sought does not adversely impact on that party's interests.

[67] In this instance the Respondents seek relief only against the Applicant and not against the other Board Members. The relief claimed therefore does not impact on the other director them at all and as a result they do not have a direct and substantial interest in this matter.'

[110] In applying *Myeni* to the matter in question, I find that the ejectment relief does not impact on Ithala and as a result, Ithala has no direct and substantial interest in this matter.

[111] The first and second respondents seek relief that they be authorised in terms of s 386(5), as read with s 386(4)*(a)* of the Companies Act 61 of 1973 (Companies Act), to bring this counterapplication and to oppose the relief sought by the applicant.

[112] Section 386 of the Companies Act deals with the general powers of liquidators. More specifically, s 386(4)*(a)* states that the liquidator, with the appropriate authority, has the power:

'to bring or defend in the name and on behalf of the company any action or other legal proceeding of a civil nature, and, subject to the provisions of any law relating to criminal procedure, any criminal proceedings: Provided that immediately upon the appointment of a liquidator and in the absence of the authority referred to in subsection (3), the Master may authorize, upon such terms as he thinks fit, any urgent legal proceedings for the recovery of outstanding accounts.'

[113] In the counterapplication, the first and second respondents alleged that they were appointed by the Master of the High Court, Pietermaritzburg on 9 January 2024 in terms of a Certificate of Appointment with reference number N000347/2022.

[114] The first and second respondents submitted that Sherpa Trade was finally wound-up on 12 February 2024 with the order suspended until 13 May 2024. It has now become final.

[115] Section 386(5) provides that the court may grant leave to a liquidator to do anything which the court may consider necessary for winding-up the affairs of the company and distributing its assets. The court is granted wide powers to authorise anything necessary for winding-up the affairs of the company.

[116] It is tried that 'It is clear that a company being wound up never has standing; the locus standi is always conferred on the liquidator who litigates on the company's behalf."[19] I am satisfied that it is in the interest of the company in liquidation or its creditors to grant the leave they seek.

Confirmation of the rule nisi

[117] Regarding the rule nisi, the sixth respondent requested that the rule nisi, together with interim relief issued on 6 September 2024, be discharged. Likewise, the first and second respondents requested the rule nisi to be discharged. On the other hand, the applicant requested that the rule nisi granted on 6 September 2024 be confirmed with costs.

[118] Since the warrant has been set aside, I find no reason to confirm the rule nisi. Therefore, the rule nisi granted on 6 September 2024 is discharged.

Costs

[118] Regarding the issue of costs, the general rule relating to costs is that costs follow the result. Re-imbursing a successful party of his or her out of pocket expenses is a settled principle which brooks no further ventilation.

[119] In *Mkhatshwa and Others v Mkhatshwa and Others*,[20] the following was held about costs:

'Generally speaking, punitive costs orders are not frequently made, and exceptional circumstances must exist before they are warranted. In *SARB* this court affirmed the following guiding principles in relation to punitive costs, elucidated by the Labour Appeal Court in *Plastic Converters Association of SA*:

[19] Imperial Bank Limited v Hendrick Barnard NO (349/12) [2013]
ZASCA 42 (28 March 2013 at para 6

[20] *Mkhatshwa and Others v Mkhatshwa and Others* [2021] ZACC 15; 2021 (5) SA 447 (CC) para 21.

> "The scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible manner. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium."'

[120] The applicant was served with a termination letter of the franchise agreement on 30 March 2023. From this date, the applicant was in unlawful occupation of the premises. Most importantly, the applicant admitted that he sought fuel from a third party. This means that the applicant deprived the sixth respondent of profit. Despite this, the applicant joined the sixth respondent to the proceedings, and the sixth respondent incurred more costs, in circumstances that were unnecessary. Therefore, the sixth respondent is clearly entitled to be granted costs in its favour in the rule nisi application.

[121] In relation to the first and second respondents' requests of costs in the rule nisi, I already found that the applicant was justified in launching the rule nisi application to challenge a warrant. Therefore, the court will not grant costs order against the applicant in favour of the said respondents nor grant a costs order in favour of the applicant. Because the franchise agreement was terminated. Notwithstanding being so, the applicant continued to operate business and unlawfully so.

[122] In respect of the application to set aside a warrant, the applicant is successful. The costs will follow the event.

[123] The first and second respondents brought a counterapplication for the ejectment of the applicant based on reasons explained above. The general rule is that the successful party should be given its costs, and that rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances.

[124] Likewise, the sixth respondent brought a counterapplication against the applicant, which was successful and the costs must follow the event.

[125] I can think of no reason why I should deviate from these well-established principles of costs to follow the event.

The following order is accordingly granted:

1. In the application to set aside the search warrant (case no 14437/24P):

1.1 The decision by the fourth respondent to issue and authorise the document titled: 'Warrant – in terms of Section 69 of Act 24 of 1936 as read with Section 21 of Act 51 of 1977: To search for and take possession of property in the liquidated estate of Sherpa Trade and Investments 71 (Pty) Ltd (in liquidation)' is reviewed and set aside.

1.2 The execution of the warrant is reviewed and set aside.

1.3 The first and second respondents are directed to forthwith restore possession of the business premises situated at Erf 1[...], corner of Green and White Streets, Isithebe, Kwa-Zulu Natal to the applicant, which premises comprises a forecourt and convenience store known as Sasol Isithebe and Sasol Delight, respectively with immediate effect.

1.4 In the event of the first and second respondents not restoring possession as aforesaid immediately upon service on them/their attorneys of this order, then the sheriff is authorised to do all that is necessary and incidental to restoring possession of the abovementioned business premises, stock and contents therein to the applicant, including using the services of a locksmith to cut off/otherwise remove the chains and locks affixed to the doors, gates and the like at such premises.

1.5 The first and second respondents, jointly and severally, the one paying the other to be absolved, to pay the costs of the application, on scale C.

1.6 As between the applicant and six respondent, there is no order as to costs.

2. In the counterapplication by the first and second respondent (case no 14437/24P):

2.1 The first and second respondents are authorised in terms of s 386(5), as read with s 386(4)(a) of the Companies Act 61 of 1973, to bring this counterapplication and to oppose the relief sought by the applicant.

2.2 The applicant, together with those persons or parties acting under or through it, are ejected from the property, more fully descried as Portion of ERF 1[...], I[...] I[...]

Estate, comprising approximately 9 000 square meters and situated at the corner of White and Green Streets, Mandeni, KwaZulu-Natal.

2.3 Should the applicant fail to vacate the said premises by 30 March 2026, the sheriff of the high court with jurisdiction is directed to eject the applicant and the further persons or parties from the premises by preventing access thereto and by removing the applicant's movable property from the premises.

2.4 The applicant is directed to pay the first and second respondents' costs of the counterapplication on scale C.

2.5 In respect of the urgent interdict application, it is ordered that each party is to pay its own costs.

3. In the counterapplication by the sixth respondent (case no 14437/24P):

3.1 The applicant, together with those persons or parties acting under through it are ejected from the immovable property, being Portion of ERF 1[...], I[...] I[...] Estate, comprising approximately 9 000 square meters and situated at the corner of White and Green Streets, Mandeni, KwaZulu-Natal (the premises).

3.2 Should the applicant and those persons or parties referred to in paragraph 3.1, fail to vacate the said premises by 30 March 2026, the sheriff of the high court with jurisdiction is directed to eject the applicant and the further persons or parties from the premises by preventing access thereto and by removing the applicant's movable property from the premises.

3.3 The applicant and/or their privies are interdicted and restrained from:

(i) conducting any activities associated with a service and filling station as contemplated in terms of the franchise agreement between the sixth respondent and the applicant from the property known as Portion of ERF 1[...], I[...] I[...] Estate, comprising approximately 9 000 square meters and situate at the corner of White and Green Streets, Mandeni, Kwazulu-Natal (the premises) by utilising and/or be associated with the Sasol brand, know how, marketing and comprehensive blueprint for the operation of a convenience center and related businesses, equipment and programmes, licences and/or trademarks and tradenames and/or intellectual property.

(ii) Sourcing and/or storing and/or distributing any third-party automotive fuel, automotive products, emission fluids and related products at or from the premises, which products were sourced from parties than the applicant.

3.4 The applicant is ordered to authorise the sixth respondent to gain access to the premisses in order to effect an onsite disablement, which includes manual locking, where required, of the sixth respondent's system and equipment on site.

3.5 The applicant is ordered to pay the six respondent's costs of this counterapplication, such costs to be taxed on the attorney and client scale.

4. In the application to confirm the rule nisi (case no 13720/24P):

4.1 The rule nisi, together with its interim relief issued on 6 September 2024 by Pitman AJ, is discharged.

4.2 The applicant shall pay the sixth respondent's costs of the rule nisi application on scale C.

4.3 The applicant and the first and second respondents are each to pay their own costs in the rule nisi application.

5. In the condonation application (case no 14437/24P):

5.1 The late delivery of the applicant's heads of arguments and practice note is condone.

5.2 The applicant is ordered to pay the wasted costs occasioned by the condonation application.

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MATLAMELA AJ

Appearances:

Counsel for the Applicant: Adv F M MOOLA SC

Instructed by: M.N MOOLA Attorneys

Counsel for the Respondent 1st and 2nd Respondent: Adv R M Van Rooyen

Instructed by: COX YEATS ATTORNEYS

Counsel for the 6th Respondent: Adv S Aucamp

Instructed by: MATHOPO MOSHIMANE MULANGAPHUMA INCORPORATED

Heard on: 31 October 2025

Delivered on: 27 February 2026