REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: YES / NO	
(2)	OF INTEREST TO OTHER JUDGES: YES/NO	
(3)	REVISED: YES/NO	
	02-03-2026.	[redacted]
	DATE	SIGNATURE

Case Number: **2025-148228**

In the matter between:

CUCHRON (PTY) LTD
(In Provisional Liquidation) First Applicant

STEAMBOAT EXPLORATION (PTY) LTD Second Applicant

STEAMBOAT GRAPHITE (PTY) LTD Third Applicant

and

TCG PROJECT MANAGEMENT (PTY) LTD First Respondent

TITANIUM VC 1 (RF) (PTY) LTD Second Respondent

JUDGEMENT

HA VAN DER MERWE, AJ:

[1] This is an application for leave to appeal against the order I made on 8 December 2025 placing the first applicant[1] in provisional liquidation, on the basis that it is unable to pay its debts.

[2] The first question before me is a point of law: is a provisional liquidation order appealable? Mr Van der Merwe argued that it was, relying on the judgements in *City of Tshwane Metropolitan Municipality v Afriforum,*[2] and *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*.[3] In those judgements, the Constitutional Court found that the common law test for appealability of interim (or provisional) orders as reflected in judgements such as *Zweni v Minister of Law and Order*[4] is no longer the final word on the appealability of non-final orders. In consequence, so the argument went, when the interests of justice so demands, a provisional liquidation order could be appealable. (In *Zweni* it was found that, at common law, in order for an order to be appealable, it must be final in effect, meaning that if an order could be revisited by the court that granted the order, then it was not appealable. A provisional liquidation order would therefore not be appealable, because it could be discharged on the return day).

[3] Mr Van der Merwe also relied on the judgement in *Siyanda Sabelo Trading (Pty) Ltd v Twin Rivers Homeowners Association NPC (Leave to Appeal)*.[5] Mr Van der Merwe argued that *Siyanda* is authority for the proposition that a provisional liquidation order could be appealable, on the interests of justice test. With the greatest of respect, I have trouble with understanding the bases on which *Siyanda* was decided.

[4] In paras 3 to 6 the court refers to, among others, *Tshwane* and *Lebashe* where those judgements refer to the principle that an order that may be reconsidered by the same court that made the order, could be appealable if the interests of

[1] In the application for leave to appeal, being the first respondent *a quo*.
[2] [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC) at para 41 ("*Tshwane*").
[3] [2022] ZACC 34; 2022 (12) BCLR 1521 (CC); 2023 (1) SA 353 (CC) at para 43 ("*Lebashe*").
[4] 1993 (1) SA 523 (A) ("*Zweni*").
[5] [2025] ZAGPPHC 1079 ("*Siyanda*").

justice indicate that it should, but without expressly coming to a finding on the application of those judgements to a provisional liquidation order.

[5] In para 26 the court found, under the heading ‘Interests of justice’:

> “Is it, in any event, just and equitable that the provisional winding-up order should be considered appealable based on the facts? In my view, it is not.:”

[6] The court then found, on the facts it seems, in para 40 that:

> “Accordingly, I conclude that the provisional winding-up order is not appealable.”

[7] The facts would not be relevant unless it is accepted that a provisional order is appealable on the interests of justice test.

[8] Yet, *Siyanda* also considered the judgements in *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service*[6] and *Singh v Body Corporate of St Tropez*[7] and concludes that those judgements are not authority for the proposition that provisional liquidation orders are appealable. In para 56 Vivian AJ found:

> “The respondent sought punitive costs against the applicant's attorneys. I do not consider that to be justified in the circumstances. In respect of appealability, the applicant relied on [*Botes and Others v Tariomix (Pty) Ltd and Others* 2024 (6) SA 203 (NWM)]. It is hardly unreasonable for an applicant to rely on a reported case, even if the Court ultimately holds that the propositions that it relies on are incorrect”.

[9] In *Botes and Others v Tariomix (Pty) Ltd and Others,*[8] the court was concerned with the consequences of a purported withdrawal of an application after a provisional order was granted. The appealability of a provisional order was not in issue in that case. However, para 56 seems to suggest that the court regarded that judgement as having erroneously found a provisional order is appealable. If, as some parts of the judgement suggest, the court concluded that a provisional order is appealable, then it makes no sense to call the judgement in *Botes and Others v Tariomix (Pty) Ltd* erroneous so far as appealability is concerned.

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[6] [1996] ZASCA 2; 1996 (3) SA 1 (A).
[7] [2024] ZASCA 142.
[8] 2024 (6) SA 203 (NWM).

[10] Although *Siyanda* pulls in opposite directions, to some extent at least it could be read to mean that a provisional liquidation order is appealable if the interests of justice favour it. For purposes of this judgement, I shall take it that that *Siyanda* is authority for the proposition that a provisional liquidation order is appealable, as Mr van der Merwe submitted.

[11] On the grant of a final liquidation order, a company unable to pay its debts "is being wound up" and in consequence, section 339 of the Companies Act[9] (the old Companies Act) is triggered. In terms of section 339:

> "In the winding-up of a company unable to pay its debts the provisions of the law relating to insolvency shall, in so far as they are applicable, be applied *mutatis mutandis* in respect of any matter not specially provided for by this Act."

[12] Section 150 of the Insolvency Act[10] deals with appeals against sequestration orders. Once section 339 of the old Companies Act is triggered, section 150 of the Insolvency Act applies,[11] that is that the company must be (a) unable to pay its debts; and (b) "in winding-up". All of this is made clear in *Choice Holdings Ltd v Yabeng Investment Holding Company Ltd*[12] where Wunsh J found:

> "The crisp point in this case is the meaning in s 339 of the opening words 'In the winding up of a company' and their application in regard to an appeal against a winding-up order. The opening words of s 339 do not apply to the legal proceedings which lead or give rise to the grant or refusal of a winding-up order (*Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 961A-B).
>
> To decide whether s 150(3) has any operation where a company has been wound up because of its inability to pay its debts the question that has to be answered is whether you are dealing with a step in the legal proceedings which leads to a grant of the order or with 'the process of liquidation which commences when an order of winding up has been granted'. (*Kalil* case *supra* at 961A.)
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> In this case a final winding-up order was granted. As soon as that happened the process of liquidation commenced. What happened to the applicant thereafter happened in its winding up. By noting an appeal the applicant seeks to put a stop to

[9] 61 of 1973.
[10] 24 of 1936.
[11] The old Act does not deal with appeals against liquidation orders.
[12] 2001 (2) SA 768 (W) ("*Choice Holdings*").

the winding-up process which was then in operation and eventually to have it set aside. But s 150(3) says that the operation of the order remains despite the noting of the appeal.

Henochsberg on the Companies Act 5th ed (1994, updated to 30 September 1999) sets out the consequences of a winding-up order (at 734). This is done under 14 headings, the first two of which read:

> '(1) Commencement of winding up - On the grant of a winding-up order, including a provisional order, the winding up is deemed to have commenced at the time of the presentation to the Court of the application for winding up (s 348; see further the notes thereon).
>
> (2) Application of the law relating to insolvency - In the winding up of a company unable to pay its debts applicable provisions of the law relating to Insolvency apply mutatis mutandis in respect of any matter not specially provided for by the Companies Act (s 339; see further the notes thereon).'

In the *Kalil* case it was held that the refusal of a provisional winding-up order is not affected by s 339. I would have thought, with respect, that, where no winding-up order has been granted, it is not even arguable that the company is 'in winding up'."[13]

[13] The question then is whether there is any reason to treat a provisional liquidation order differently from a final one. In my view there is not. Section 150 is made applicable, as Wunsh J found in *Choice Holdings*, once a company unable to pay its debts is "in winding-up". *Pride Milling Co (Pty) Ltd v Bekker NO and Another*[14] and *Liberty Group Ltd v Moosa*[15] make it clear that also provisional order has the effect, as one would expect, of placing a company "in winding-up".

[14] Therefore, section 150 of the Insolvency Act applies and in terms thereof, the granting of a provisional sequestration order is not appealable. The refusal of a provisional sequestration order is appealable, but that is because the refusal of a provisional order is not an order in terms of the Insolvency Act.[16] Conversely, the granting of a provisional sequestration order is an order in terms of the

[13] Id at 771E – 772B.
[14] [2021] ZASCA 127; 2022 (2) SA 410 (SCA).
[15] [2023] ZASCA 52; 2023 (5) SA 126 (SCA) at paras 18 – 19 ("*Liberty Group*"). See also para 17.
[16] Id at paras 15 and 19.

Insolvency Act. By section 339 of the old Companies Act, these principles are made applicable to a provisional liquidation order.

[15] Therefore, a provisional liquidation order is not appealable, not, or at least not only, because it is not a final order at common law, but because it is not appealable in terms of the Insolvency Act. As such, so long as section 150 is not declared unconstitutional or repealed by the Legislature, a provisional liquidation order remains not appealable. As *Tshwane* and *Lebashe* dealt with appealability of non-final orders at common law, those principles do not apply to provisional liquidation orders.

[16] To the extent that *Siyanda* could be understood to be authority for the proposition that a provisional liquidation order is appealable, in my respectful view, it is clearly wrong and thus not binding. Neither Mr Van der Merwe, nor Ms Howard (who appeared for the respondents in the application for leave to appeal) could refer me to any other judgement that squarely deals with the appealability of a provisional liquidation order. My own research also did not yield a positive result. The dearth of authority on the point may well be because it was not until *Tshwane* and *Lebashe* that the appealability of a provisional liquidation order came into serious question.

[17] Mr Van der Merwe conceded that if a provisional liquidation order is not appealable as a matter of law, then his clients' application in terms of section 18(3) of the Superior Courts Act[17] does not come into play. Mr Van der Merwe's concession was well-made. Section 18 is concerned with orders that are the subject of an appeal. If an order is not appealable, then it cannot properly be the subject of an appeal.

[18] I make the following order:

1. The application for leave to appeal is dismissed on the ground that a provisional liquidation order is not appealable, with costs on scale C.

[17] 10 of 2013.

2. The application in terms of section 18(3) of the Superior Courts Act 10 of 2013 is dismissed on the same ground, with costs on scale C.

[redacted]

H A VAN DER MERWE

ACTING JUDGE OF THE HIGH COURT,

JOHANNESBURG

Appearances:

For the applicants:	Adv LK Van der Merwe
Instructed by:	Malan Kruger Inc
For the Respondents:	Adv K Howard
Instructed by:	Barter McKellar Attorneys
Heard on:	26 February 2026
Delivered on:	2 March 2026