IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

[redacted]

SIGNATURE DATE: 16 March 2026

Case No. 2024-077776

In the matter between:

KRUGER RANCH INVESTMENTS (PTY) LTD	Applicant
and	
ABSA BANK LIMITED	First Respondent
MASTER OF THE HIGH COURT, JOHANNESBURG	Second Respondent
JOHANNA MAHANYELE NO	Third Respondent
RENE WEBBER NO	Fourth Respondent
RANEL FINANCIAL TRUST (PTY) LTD	Fifth Respondent
SHERIFF OF THE HIGH COURT – KOSTER	Sixth Respondent

JUDGMENT

WILSON J:

1 On 5 February 2026, I gave judgment *ex tempore* in which I dismissed an application for leave to appeal against my refusal to suspend the implementation of an order winding up the applicant, Kruger Ranch.

2 Kruger Ranch was not represented at the hearing by the trust account advocate who instituted the application on its behalf, a Ms. Simelane. Ms. Simelane's absence from the hearing was not adequately explained. Ms. Makula, who placed herself on record for Kruger Ranch, first suggested that Kruger Ranch was represented by a firm of attorneys, which, despite never having placed itself on record, had briefed her to motivate the application for leave to appeal. Ms. Makula then changed tack and informed me that Ms. Simelane had in fact briefed her to appear. As a trust account advocate, Ms. Simelane was required to prosecute the application for leave to appeal personally, and could not have absented herself from the hearing without the prior consent of her client. Ms. Makula's apparent inability to explain why she was arguing the application instead of Ms. Simelane naturally raised the question of whether Ms. Simelane had improperly failed to appear.

3 Both the main application and the application for leave to appeal were wholly misconceived, and had been poorly litigated. I took Ms. Simelane's unexplained absence as another example of the very low standards to which Kruger Ranch's legal representatives had held themselves. I directed Ms. Simelane to explain her absence on affidavit by no later than 20 February 2026, and in doing so to show cause why she should not pay the costs of the application for leave to appeal *de bonis propriis*. I gave the respondents leave to file an affidavit in response by no later than 6 March 2026.

4 In due course Ms. Simelane filed her affidavit, and the respondents filed their answer. Then Ms. Simelane filed a further affidavit, without my leave, on 12 March 2026. I have not considered the contents of that affidavit, since it was

not provided for in my order of 5 February 2026, and no application to introduce it was brought.

5 In her affidavit of 20 February 2026, Ms. Simelane said that she had not appeared to argue the application for leave to appeal because of a “diary clash” with another court appearance, but that she had secured the consent of the person who had instructed her on Kruger Ranch’s behalf, a Mr. Clinton Kruger, to brief Ms. Makula to motivate the application. Mr. Kruger confirmed this on affidavit.

6 In light of this, and even though the confused explanation given for Ms. Simelane’s absence on 5 February 2026 created the reasonable impression that she might improperly have absented herself, there is no basis on which to conclude that Ms. Simelane acted unethically in passing on to Ms. Makula the brief to appear in the application for leave to appeal. In those circumstances, there is no reason to mulct Ms. Simelane in costs.

7 Both the first respondent, ABSA, and the third respondent, Ms. Mahanyele, urged me to conclude that Ms. Simelane’s absence, and the unfortunately befuddled explanation given for it, was yet another iteration of the poor judgement with which the main application and the application for leave to appeal were pursued. While I am sympathetic to that argument, I declined to order costs against either Mr. Kruger or Ms. Simelane on that basis in my judgment on the main application, and I do not think it would be right to do so now, simply because leave to appeal was sought against my order (in this respect see *Ferguson v Rhodes University* 2018 (1) BCLR 1 (CC), paragraph 26)

8 Ms. Mahanyele emphasises that the only alternative to an order *de bonis propriis* against Mr. Kruger or Ms. Simelane is that the costs of the application for leave to appeal will have to be costs in the winding up. That may effectively mean the reduction of the pool of resources available to pay Kruger Ranch's creditors.

9 Again, I have some sympathy for that complaint. But I must assume that the possibility that a company director may litigate in a liquidated company's name and incur costs orders against that company which may ultimately impoverish the company's creditors was foreseen when the Supreme Court of Appeal decided, in *WAA Gouws (Johannesburg) v HR Computek (Pty) Ltd* 2025 (6) SA 89 (SCA), that a liquidated company can, after all, bring an application to set aside orders for its own winding-up, and that its erstwhile directors may do so on its behalf without the consent or the assistance of the company's appointed liquidator.

10 It may seem, at first blush, that one of the purposes of 354 (1) of the Companies Act 61 of 1973 is to prevent such an occurrence, and to ensure that directors of a company themselves bear the risk of an adverse costs order if they elect to bring an application to set aside a winding up order. But the decision in *Gouws* now permits a director to do so, apparently at the company's risk. While a court retains the power to order a director to pay legal costs that would normally be payable by the company itself, that power is only exercised in extraordinary circumstances, such as the breach of a director's fiduciary duties, or where it can be shown that the director has acted in breach of the Companies Act itself, or where the litigation has been pursued for a

fraudulent purpose. That case has not been made out, and I am not aware of authority for the proposition that a director may be held personally liable merely for unsuccessfully pursuing in the company's name an application to set aside the company's winding up. Ms. Mahanyele clearly considers that situation to be untenable. Nevertheless, it is the law.

11 For all these reasons, I direct that the costs of the application for leave to appeal will be costs in the winding-up.

[redacted]

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 16 March 2026.

FURTHER AFFIDAVITS ON: 20 February and 6 and 12 March 2026

DECIDED ON: 16 March 2026