



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
JUDGMENT**

**Not Reportable**

Case no: 161/2025

In the matter between:

**SHANIE TALJAARD**

**FIRST APPELLANT**

**CURRO CONSULTANCY (PTY) LTD**

**SECOND APPELLANT**

and

**THE LAND AND AGRICULTURAL DEVELOPMENT  
BANK OF SOUTH AFRICA**

**FIRST RESPONDENT**

**MINISTER OF TRADE & INDUSTRY**

**SECOND RESPONDENT**

**MINISTER OF JUSTICE & CONSTITUTIONAL  
DEVELOPMENT**

**THIRD RESPONDENT**

**COMPANIES & INTELLECTUAL PROPERTY  
COMMISSION (CIPC)**

**FOURTH RESPONDENT**

**JOCHEN ECKHOFF N.O.**

**FIFTH RESPONDENT**

(In his capacity as provisional co-liquidator  
of Project Multiply (Pty) Ltd (in liquidation))

and

Velvet Cream 15 (Pty) Ltd (in liquidation)

(In his capacity as provisional co-trustee of the MERWEDE TRUST – IT1534/98, and in his capacity as co-trustee of the insolvent estate of CAREL ARON VAN DER MERWE)

**DEON MARIUS BOTHA N.O.**

**SIXTH RESPONDENT**

(In his capacity as provisional co-liquidator of Velvet Cream 15 (Pty) Ltd (in liquidation), and in his capacity as co-trustee of the insolvent estate of CAREL ARON VAN DER MERWE)

**JOHANNES ZACHARIAS HUMAN MÜLLER N.O.**

**SEVENTH RESPONDENT**

(In his capacity as provisional co-liquidator of Velvet Cream 15 (Pty) Ltd (in liquidation), and in his capacity as provisional co-trustee of the MERWEDE TRUST – IT1534/98)

**REFILWE TLHABANYANE N.O.**

**EIGHTH RESPONDENT**

(In her capacity as provisional co-liquidator of Project Multiply (Pty) Ltd (in liquidation))

**VIMBI ANGELA TSOPOTSA N.O.**

**NINTH RESPONDENT**

(In her capacity as provisional co-liquidator of Velvet Cream 15 (Pty) Ltd (in liquidation))

**ANGELENE POOLE N.O.**

**TENTH RESPONDENT**

(In her capacity as provisional co-trustee of the MERWEDE TRUST – IT1534/98)

**PHILEMON MAWIRE N.O.**

**ELEVENTH RESPONDENT**

(In his capacity as co-trustee of the insolvent estate of CAREL ARON VAN DER MERWE)

**AGRI SOUTH AFRICA NPC**

**TWELFTH RESPONDENT**

|                                                   |                          |
|---------------------------------------------------|--------------------------|
| MASTER OF THE HIGH COURT, KIMBERLEY               | THIRTEENTH RESPONDENT    |
| MASTER OF THE HIGH COURT, CAPE TOWN               | FOURTEENTH RESPONDENT    |
| AFFECTED PARTIES OF PROJECT MULTIPLY<br>(PTY) LTD | FIFTEENTH RESPONDENT     |
| AFFECTED PARTIES OF VELVET CREAM 15<br>(PTY) LTD  | SIXTEENTH RESPONDENT     |
| AFFECTED PARTIES OF MERWEDE TRUST                 | SEVENTEENTH RESPONDENT   |
| AFFECTED PARTIES OF CAREL ARON VAN<br>DER MERWE   | EIGHTEENTH RESPONDENT    |
| NATIONAL REAL ESTATE                              | NINETEENTH RESPONDENT    |
| PIETER BURGER                                     | TWENTIETH RESPONDENT     |
| PIET STEENKAMP                                    | TWENTY-FIRST RESPONDENT  |
| NARDUS SCHEEPERS                                  | TWENTY-SECOND RESPONDENT |

**Neutral citation:** *Taljaard and Another v The Land and Agricultural Development Bank of South Africa and Others* (161/2025) ZASCA 29 (17 March 2026)

**Coram:** MBATHA and SMITH JJA, MABESELE, DIPPENAAR and GOVINDJEE AJJA

**Heard:** 17 February 2026

**Delivered:** 17 March 2026

**Summary:** Civil Practice – appealability – application for interim relief pending finalisation of application to rescind liquidation and sequestration orders – test for appealability – no final and definitive effect – does not dispose of any portion of relief in rescission application – no factors supporting hearing of appeal in the interests of justice – order not appealable.

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## ORDER

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**On appeal from:** Northern Cape Division of the High Court, Kimberley (Williams J sitting as court of first instance):

The appeal is struck from the roll with costs, such costs to include the costs of the application for leave to appeal and the costs of two counsel, where so employed.

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## JUDGMENT

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**Smith JA (Mbatha JA, Mabesele, Dippenaar and Govindjee AJJA concurring)**

### Introduction

[1] The appellants appeal against the judgment of the Northern Cape Division of the High Court, Kimberley (the high court), delivered on 1 December 2023, which dismissed their urgent application for interim relief against the fifth to eleventh respondents. The appeal proceeds with the leave of the high court.

[2] The first appellant is Ms Sharnie Taljaard (Ms Taljaard), an adult businesswoman. The second appellant is Curro Consultancy (Pty) Ltd (Curro), a duly registered private company of which Ms Taljaard is the sole director. I also refer to them collectively as the appellants where the context so requires. The first to fourth respondents are the Land and Agricultural Development Bank of South Africa (the Land Bank); the Minister of Trade and Industry; the Minister of Justice and Constitutional Development, and the Companies and Intellectual Property Commission, respectively. No relief was sought against the second to fourth respondents. The fifth to tenth respondents are the respective co-liquidators of the insolvent estates of Project Multiply (Pty) Ltd (Multiply) and Velvet Cream 15 (Pty) Ltd (Velvet Cream), and the provisional trustees of the Merwede Trust, IT 1534/98 (the Trust). I also refer to them as the insolvent entities, where the context so requires. The Land

Bank and the insolvent entities oppose the appeal. The remaining respondents did not participate in the proceedings.

[3] Multiply and Velvet Cream were placed in provisional liquidation and the Trust in provisional sequestration on 12 October 2022. The appellants subsequently applied for the following interim relief pending the resolution of an application to rescind the relevant liquidation and sequestration orders: (a) an order restraining the fifth to eleventh respondents from proceeding with the liquidation and sequestration of the insolvent entities; and (b) interdicting the twenty-second respondent, Mr Nardus Scheepers, from altering any of the infrastructure or further dissipating or disposing of movable assets on the farm, Onverwacht (the farm).

[4] While the high court determined that the application did not warrant urgent consideration, it nonetheless proceeded to examine the merits in order to discourage further similar applications by the appellants. The high court concluded that the appellants did not possess the necessary legal standing to initiate the application. Conversely, it found that the Land Bank had established the requisite standing to apply for the liquidation and sequestration of the insolvent entities.

[5] Beyond alleging abuse of court process and asserting that the appellants failed to establish a *prima facie* right, the respondents additionally raised the following preliminary points:

- (a) First, the respondents assert that the order dismissing the application for an interim interdict is not appealable. They maintain that the order lacks finality, as the issues presented in the interim application will be fully addressed during the main rescission proceedings. They assert that the denial of the interim interdict does not cause harm that is serious, immediate, ongoing, or irreparable. Additionally, the respondents contend that there are no compelling grounds, in the interests of justice, to warrant hearing the appeal.
- (b) Second, they contend that the appellants lacked the necessary *locus standi* to bring the application for interim relief. The appellants relied on unsubstantiated

allegations that they are creditors of the insolvent entities and, in the case of Ms Taljaard, that she is employed by the insolvent entities. These assertions were denied by the respondents. Furthermore, contend the respondents, Ms Taljaard never submitted a claim in any of the creditors' meetings, and Curro's claim was rejected at the first meeting of creditors.

- (c) Third, the respondents maintain that the appeal is moot. They point out that the relief sought by the appellants in the interim application seeks to suspend the sale and transfer of assets by the liquidators pending an application for rescission of the relevant liquidation and sequestration orders. According to the affidavit submitted by the liquidators on 17 June 2025,<sup>1</sup> all movable and immovable assets formerly under their control, as well as those overseen by the trustees of the insolvent estates, have been sold and delivered to bona fide purchasers. The first and second creditors' meetings have been concluded, and the requested relief sought against Mr Scheepers to preserve the status quo at the farm cannot be granted, as the property has already been sold and transferred to another entity. It is, therefore, evident, they contend, that the order sought in this appeal would have no practical effect or outcome. The respondents further assert that the appeal does not present a distinct legal issue of public importance likely to influence future cases, nor does it merit the Court's attention in the interest of justice despite its mootness. The appeal should accordingly be dismissed solely on this basis.
- (d) Fourth, they contend that the dispute between the parties constitutes *lis pendens*. It is uncontroverted that the appellants have lodged at least two urgent applications seeking orders to interdict both the liquidation proceedings of Multiply and Velvet Cream, as well as the sequestration proceedings relating to the Trust. These prior applications sought identical relief and involved the same parties. Moreover, the notices of withdrawal allegedly filed by the appellants were not served with the consent of the opposing parties as mandated by rule 41(1)(a) of the Uniform Rules of Court and therefore have no legal effect. Consequently, the respondents argue, those applications remain unresolved and are still pending before the court.

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<sup>1</sup> Allowed into evidence at the hearing of the appeal.

**Factual background**

[6] The material facts are uncontentious and can be briefly stated. The Land Bank was the applicant in the liquidation and sequestration applications based on it being a major creditor of the insolvent entities. Significantly, the provisional liquidation and sequestration orders were granted by agreement between the parties. After the granting of the provisional orders, the insolvent entities did not oppose the final relief. In addition, the Trust did not file opposing papers in the sequestration application, and while Multiply and Velvet Cream delivered an answering affidavit, they did not dispute the Land Bank's claims.

[7] A series of applications were subsequently brought by the appellants, seeking to halt the liquidation and sequestration proceedings and requesting that the companies be placed under business rescue. Each application was denied, and the appellants' requests for leave to appeal were also rejected. A summary of these applications is provided below.

[8] On 8 June 2022, the appellants applied in the high court for the following relief: (a) that they be joined as intervening parties in the application for the liquidation of Multiply and Velvet Cream and the sequestration application of the Trust; (b) declaring certain provisions of the Companies Act 71 of 2008, relating to business rescue proceedings, unconstitutional; and (c) that the liquidation and sequestration applications against the insolvent entities be dismissed and that they be placed under business rescue.

[9] The high court (per Mamosebo J) dismissed that application on 11 October 2022, after the appellants abandoned their joinder application. The high court granted the conditional counter-application of the then provisional liquidators and trustees, extending their powers pursuant to s 386(4) of the Companies Act 61 of 1973 and s 18(3) of the Insolvency Act 24 of 1936. The provisional liquidation and sequestration orders were confirmed on the following day.

[10] On 12 October 2022, the appellants' application for leave to appeal against the order dismissing their application for the insolvent entities to be placed under business

rescue was dismissed by Mamosebo J. They subsequently unsuccessfully applied to this Court for leave to appeal. Their application for reconsideration under s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Superior Courts Act) was also dismissed.

[11] On 24 November 2022, the liquidators and trustees initiated an urgent application for a declaratory order confirming that the orders extending their powers remained in force pending the outcome of the application for leave to appeal, alternatively, for relief under s 18(3) of the Superior Courts Act. The appellants did not oppose that application. On 13 December 2022, Mamosebo J issued a declaratory order to that effect (the s 18 order).

[12] On 19 December 2022, the appellants filed an appeal against the s 18 order. That appeal was initially scheduled for hearing on 17 April 2023, but could not proceed for various reasons, which are not important for the purposes of this appeal. That appeal was subsequently set down for hearing on 17 July 2023, and at the time of the hearing of the present appeal, the judgment had not yet been delivered.

[13] In March and April 2023, the appellants launched two separate applications seeking interim relief closely aligned with the relief requested in the application that is the subject of this appeal. On 13 March 2023, they applied for an interim interdict against the liquidators, seeking an order preventing the fifth to eleventh respondents from proceeding with the liquidation of the insolvent entities, pending the final resolution of the application to rescind the winding-up orders for Multiply and Velvet Cream, as well as the sequestration order for the Trust. The appellants subsequently removed that application from the court roll. In April 2023, they again approached the high court on an urgent basis for substantively the same relief. However, that application was struck from the roll with costs and has not been formally withdrawn. As a result, both applications remain pending before the high court.

[14] On 29 June 2023, the appellants applied for rescission of the liquidation and sequestration orders. During July 2023, they launched the application for interim relief, the adjudication of which is the subject of this appeal.

### **The parties' contentions**

[15] The main basis of the appellants' rescission application is their challenge to the Land Bank's *locus standi* to institute liquidation proceedings against Multiply and Velvet Cream, as well as sequestration proceedings against the Trust. The appellants contend that the Land Bank either negligently or intentionally misrepresented its *locus standi* in the applications before the high court. Specifically, they allege that the Land Bank inappropriately sought the liquidation of the insolvent entities in terms of s 345 of the Companies Act 61 of 1973, asserting a creditor status in the amount of R75 million. According to the appellants, Land Bank is only a creditor to the extent of approximately R9 million. This argument is founded on the assertion that the Land Bank has not furnished the cession agreements concluded between itself and Unigro Financial Services (Pty) Ltd (Unigro) for debts allegedly owed by the insolvent entities in excess of the admitted R9 million. Instead, the Land Bank has relied solely on its own interpretation of the terms and import of those agreements.

[16] The appellants acknowledge that the Land Bank holds a direct claim against the insolvent entities amounting to R9 million. However, they assert that, given the livestock assets valued at no less than R26 million, these entities were capable of fully satisfying their debt to the Land Bank by liquidating those assets. In summary, the appellants argue that, had the high court been apprised of these circumstances, it would not have been persuaded that liquidation and sequestration of the insolvent entities were in the interest of the creditors and would consequently not have granted the orders.

[17] The appellants also advanced several arguments in support of interdictory relief. They maintained that, despite an undertaking by the legal representatives of the liquidators and trustees not to dispose of the assets of the insolvent entities until the conclusion of the appeal under s 18 of the Superior Courts Act, immovable property owned by the entities had nonetheless been sold to Mr Scheepers at an auction. Additionally, the appellants claimed that the liquidators and trustees continued the removal and disposal of livestock assets.

[18] According to the appellants, all cattle and approximately half of the flock of Boesmanlander sheep had already been unlawfully disposed of. They alleged that these assets were sold for less than their fair value and that the disposals occurred without the proper maintenance of inventories. The appellants further contended that it would be virtually impossible to recover the specific genetic material from the Boesmanlander sheep or to recover its corresponding value.

[19] The appellants argued that further disposal of assets would result in irreparable harm to the estates of the insolvent entities, especially if their rescission application or appeal under s 18 of the Superior Courts Act was ultimately successful. On this basis, they asserted that the balance of convenience favoured granting the relief sought, and that no alternative satisfactory remedy was available to them.

[20] Turning now to the respondents' submissions, the Land Bank, together with the liquidators and trustees, opposed the application on multiple grounds, including the various points *in limine* mentioned above. Additionally, they submitted a counter-application seeking an order to restrain or prohibit the appellants from initiating further litigation against them in their capacities as liquidators and trustees of the insolvent entities, without judicial oversight.

[21] In response to the appellants' challenge regarding its *locus standi*, the Land Bank relied on a cession it concluded with Unigro. It, however, did not attach the relevant agreements to its opposing affidavit. Instead, it attached the answering affidavit in the rescission application, which outlines the process by which Unigro's rights were ceded to the Land Bank. Both the Executive Manager of Legal Services for the Land Bank and the Chief Operating Officer of Unigro furnished supporting affidavits. These affidavits describe the transfer by Unigro to the Land Bank of its rights, title, and interest in the following: (a) the loan agreements entered into by Unigro as credit provider and Multiply and the Trust as borrowers; (b) the rights held by Unigro against Velvet Cream and

Mr Carel Van der Merwe,<sup>2</sup> as sureties and co-principal debtors for the obligations of Multiply and the Trust. The Land Bank contended that these rights were transferred to it as part of a series of agreements concluded between itself and Unigro, thereby establishing its standing to initiate the proceedings in question.

[22] The respondents further argued that it is undisputed that the insolvent entities owe the Land Bank at least R9 million. This fact, they contended, is sufficient to establish the Land Bank's *locus standi* in the proceedings. As a result, even if the Land Bank did not prove that it is owed the additional amount of R65 million, that sum would in any event be owed to Unigro. The respondents maintained that Multiply and Velvet Cream are commercially insolvent, and the identity of the creditor – whether Land Bank or Unigro – is irrelevant to the determination of insolvency.

### **The high court's findings**

[23] The high court determined that the appellants failed to demonstrate a sufficient interest in the subject matter of the application that could be adversely affected by the court's judgment. Consequently, the high court concluded that they did not discharge the onus of establishing *locus standi* to bring the application.

[24] In view of this finding, the high court considered it unnecessary to address the other requirements for an interim interdict, except to note that these had also not been established. The high court further commented that the appellants did not allege that they would suffer irreparable harm if interim relief were not granted, nor was any consideration given to the interests of other creditors when assessing the balance of convenience. While it considered the respondents' argument in respect of *lis pendens* 'arguable', the high court also found it unnecessary to decide that issue.

### **Discussion**

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<sup>2</sup> Mr Van der Merwe was a director of Multiply and Velvet Cream and trustee of the Merwede Trust. According to the appellants he was 'the controlling mind' of the insolvent entities.

[25] Before considering the other preliminary points raised by the respondents or the merits of the interim application, this Court must determine whether the impugned order is appealable. That inquiry is both anterior and jurisdictional. Absent an appealable decision, this Court lacks authority to entertain the appeal, notwithstanding that leave to appeal may have been granted.

[26] To establish appealability, two jurisdictional facts must ordinarily be present: (i) leave to appeal, and (ii) that the impugned ruling constitutes a ‘decision’ as contemplated by s 16(1)(a) of the Superior Courts Act. The grant of leave does not render a non-appealable order appealable.<sup>3</sup>

[27] Historically, appealability was guided by the so-called *Zweni*<sup>4</sup> trilogy of requirements, namely finality in effect; definitiveness of rights; and disposal of a substantial portion of the relief in the principal proceedings. In *International Trade Administration Commission v SCAW South Africa (Pty) Ltd*, the Constitutional Court summarised this approach as follows:

‘ . . . the decision must be final in effect and not open to alteration by the court of first instance; it must be definitive of the rights of the parties; and lastly, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.’<sup>5</sup>

[28] While these criteria remain important, they are not cast in stone, and the current established approach permits appealability where the interests of justice so require. This principle was confirmed by the Constitutional Court in *United Democratic Movement v Lebashe Investment Group (Pty) Ltd*<sup>6</sup> (*Lebashe*). In *Government of the Republic of*

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<sup>3</sup> *Cyril and Another v The Commissioner for the South African Revenue Service* [2024] ZASCA 32; 2024 JDR 1335 (SCA), (28 March 2024) para 5.

<sup>4</sup> *Zweni v Minister of Law and Order* [1992] ZASCA 197; 1993 (1) SA 523 (A) at 532I–533A (*Zweni*).

<sup>5</sup> *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* [2010] ZACC 6; 2012 (4) SA 618 (CC); 2010 (5) BCLR 457 para 49.

<sup>6</sup> *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* [2022] ZACC 34; 2023 (1) SA 353 (CC); 2022 (12) BCLR 1521 (CC) (*Lebashe*) para 45.

*South Africa and Others v Von Abo*,<sup>7</sup> (*Von Abo*) this Court summarised the present approach to appealability of orders in our law as follows:

‘It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the rights of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice.’

However, even on this broader footing, the appealability inquiry remains a threshold question to be answered before the court may consider other points *in limine* or the merits.

[29] In applying these principles, the court considers, inter alia, whether the order is final in effect, definitive of the parties’ rights, or disposes of a substantial portion of the relief. In addition, the court considers broader factors mentioned in *Von Abo*,<sup>8</sup> such as prejudice, avoidance of piecemeal appeals, and the interests of justice. This structured balancing act – undertaken prior to considering the merits – also guards against fragmented litigation and advisory opinions.

[30] In *Cyril and Another v Commissioner for SARS*,<sup>9</sup> this Court reiterated the fundamental importance of this approach. It struck an appeal from the roll after finding that, although leave to appeal had been granted, the order granting intervention in a pending review was not an appealable decision. This Court emphasised that interlocutory rulings, which neither determine rights in the review nor dispose of a substantial part of the relief, are ordinarily not appealable, and that courts must be vigilant to avoid piecemeal adjudication.

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<sup>7</sup> *Government of the Republic of South Africa v Von Abo* [2011] ZASCA 65; 2011 (5) SA 262 (SCA); 2011 All SA 261 (SCA) para 17.

<sup>8</sup> Ibid.

<sup>9</sup> Fn 3.

[31] Accordingly, the first step in any appeal is to decide appealability. Only if that jurisdictional threshold is met does the court proceed to the merits. If not, the proper course is to strike the appeal from the roll with costs, subject to the usual considerations.

[32] With these legal principles in mind, I now proceed to determine whether the order in this case is subject to appeal. In doing so, I recognise that the interlocutory nature of the order does not automatically render it unappealable. As the Constitutional Court cautioned in *Lebashe*:

‘In deciding whether an order is appealable, not only the form of the order must be considered, but also, and predominantly, its effect. Thus, an order which appears in form to be purely interlocutory will be appealable if its effect is such that it is final and definitive of any issue or portion thereof in the main action. By the same token, an order which might appear, according to its form, to be finally definitive in the above sense may, nevertheless, be purely interlocutory in effect.’<sup>10</sup>

[33] It is not disputed that the high court’s order – and for that matter its findings – are not definitive of the parties’ rights, nor do they dispose of a substantial portion of the relief claimed. Both the appellants and the fifth to eleventh respondents have consistently advanced this proposition. Although the Land Bank initially argued the contrary, during argument before this Court, its counsel ultimately conceded that the order did not dispose of a substantial portion of the relief claimed in the rescission proceedings. This concession was appropriately made.

[34] Although the high court’s reasoning regarding locus standi may imply that its findings are conclusive, the parties have correctly recognised that this is not so. In applications for interim relief, the court’s method of evaluating evidence differs fundamentally from that employed in applications for final relief. The focus during interim proceedings is on whether the applicant has presented facts that should justify final relief, without determining the substantive merits of the main dispute. Only the likelihood of success in the main proceedings is assessed and the applicant is only required to

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<sup>10</sup> *Lebashe* fn 6 para 41.

establish a *prima facie* right ‘though open to some doubt.’ As clarified in *Webster v Mitchell*,<sup>11</sup> the approach to considering evidence in support of interim relief is to assess the facts provided by the applicant, together with any facts put up by the respondent that the applicant cannot refute. The court must then determine whether, based on the inherent probabilities, the applicant should secure final relief in the main dispute. The facts set up in contradiction by the respondent should then be considered and if serious doubt is thrown upon the case of the applicant it cannot succeed.

[35] Conversely, in applications for final relief, the well-established *Plascon-Evans*<sup>12</sup> principle applies. In general terms, where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondent together with the admitted facts in the applicant’s affidavits justify such an order.

[36] Consequently, it is manifest that findings and orders issued in interlocutory proceedings are generally not final in nature. Such orders do not resolve the main dispute, let alone in a definitive manner, but serve as interim measures pending the final determination of the matter. In this matter, the central issue between the parties – specifically, the locus standi of the Land Bank in relation to the liquidation and sequestration proceedings – remains unresolved and continues to be contested in the rescission application. That application remains pending.

[37] The remaining question then is whether the interests of justice require the impugned order to be considered appealable. The appellants’ primary submission in this regard is that the appeal presents distinct legal issues with potential implications for the parties’ rights in future matters. They argue that it is, therefore, in the interests of justice that this Court adjudicate those issues.

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<sup>11</sup> *Webster v Mitchell*, 1948 (1) SA 1186 (W) at 1189, as refined in *Gool v Minister of Justice* 1955 (2) SA 682(C) at 688D-E.

<sup>12</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635D.

[38] The appellants specifically highlight the question of the Land Bank's *locus standi* and how the latter attempted to establish its standing before the high court. According to the appellants, there are conflicting judgments regarding whether the Land Bank's explanation of the contents and purpose of the suite of agreements it relied on was sufficient for its claim that it was owed R75 million by the insolvent estates.

[39] The appellants refer to other cases in which courts have held that it was not enough for the Land Bank to rely on its own opinion regarding the 'agreements' contents and significance. Instead, the Land Bank was required to file the actual agreements, enabling the court itself to determine whether those agreements genuinely amounted to a cession of debt from Unigro to the Land Bank. They argue that the interests of justice therefore warrant that this Court pronounce on that issue authoritatively.

[40] The argument advanced by the appellants regarding the existence of discrete legal issues warranting appellate consideration can be readily dismissed. As previously explained, it is not within the competence of a court hearing an application for interim relief to make determinations that are final in nature on matters that are reserved for adjudication in the main proceedings. Interim relief proceedings are, by their nature, limited to addressing immediate and temporary measures, and do not extend to resolving substantive issues that are central to the primary dispute. Furthermore, the purported discrete legal issues raised by the appellants continue to be actively contested within the rescission application. As such, there remains an appropriate forum for these issues to be determined in due course.

[41] Furthermore, the appellants could not advance any basis for the assertion that they will suffer harm if the appeal is not heard. As was explained in the context of the mootness point, the relief they sought in the interim application was designed to interdict the sale and transfer of assets by the liquidators while an application for rescission of the pertinent liquidation and sequestration orders was pending. It is common cause that the situation has materially changed. All movable and immovable assets that were under the control of the liquidators and the trustees of the insolvent estates have already been sold and

delivered to bona fide purchasers. Additionally, the first and second meetings of creditors have already taken place. The specific relief sought in respect of the farm is also no longer feasible. The property has already been sold and transferred to another entity, rendering the requested preservation order ineffective.

[42] In summary, except for the final processing of the liquidation and sequestration proceedings, all the outcomes the appellants sought to prevent through interim relief have already occurred. As a result, interim relief would in any event not have any practical effect. The appellants were therefore unable to demonstrate any remaining prejudice or fundamental right that would be addressed by the appeal.

[43] Upon careful consideration of the relevant circumstances, it is manifest that the order made in the interim application does not satisfy the established criteria for appealability as articulated in the longstanding principles originating from the *Zweni* judgment. Moreover, there is no justification for concluding that the interests of justice necessitate treating the impugned order as one that is appealable. The result is that the second jurisdictional fact necessary for this Court to assume jurisdiction is not present. Consequently, this Court lacks the jurisdiction to hear the appeal. In light of the foregoing, the appeal cannot proceed and must accordingly be struck from the roll.

### **Costs**

[44] Regarding the issue of costs, there is no reason to deviate from the conventional principle that costs should follow the result of the proceedings. All the parties made the decision to brief two counsel, a choice deemed suitable considering the intricacy and importance of the matter. Accordingly, it is appropriate that the costs occasioned by the employment of two counsel be allowed.

[45] Counsel for the Land Bank contended that the appellants' continued pursuit of proceedings with no reasonable prospect of success, coupled with their later affidavit containing statements alleged to be false and vexatious, warrant judicial rebuke and the

imposition of a punitive costs order. I am, however, not persuaded that such an order is justified. Consequently, I find that costs should be awarded on the ordinary scale.

[46] The order granting leave to appeal expressly provided that the costs incurred in the application for leave would be treated as costs in the appeal itself. In light of the conclusion that the appeal will not be entertained and must be struck from the roll, it follows that those costs should be included as part of the process of striking the appeal from the roll.

[47] In the result, the following order is made:

The appeal is struck from the roll with costs, such costs to include the costs of the application for leave to appeal and the costs of two counsel, where so employed.

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J E SMITH  
JUDGE OF APPEAL

Appearances:

|                                                          |                                                                                                              |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| For the appellants:                                      | N G D Maritz SC and F G Jansen van Rensburg                                                                  |
| Instructed by                                            | Haarhoffs Inc., Kimberley<br>Lovius Block Attorneys, Bloemfontein                                            |
| For the 1 <sup>st</sup> respondent:                      | J G Cilliers SC and S Tsangarakis                                                                            |
| Instructed by:                                           | Strydom & Bredenkamp Inc., Brooklyn<br>E G Cooper Majiedt Inc., Bloemfontein                                 |
| For the 5 <sup>th</sup> to 11 <sup>th</sup> respondents: | N J Esterhuyse<br>Du Plessis Van der Westhuizen Inc.,<br>Rustenburg<br>Phatshoane Henney Inc., Bloemfontein. |