IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

CASE: 2026-034622

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

[redacted]

17 March 2026

DATE SIGNATURE

In the matter between:

CHRISTO STRYDOM PHARMACEUTICAL AND NATURAL MEDICINE LABORATORIES (PTY) LTD (REG NO: 2015/451243/07)	**APPLICANT**

And

KAMOSO PROJECTS CC (REG NO.: 2010/148790/23)	**1ST RESPONDENT**
TEBOGO TAPSON MAKUSHU	**2ND RESPONDENT**
UNLAWFUL PERSONS ACTING THROUGH AND UNDER THE AUSPICES OF THE FIRST RESPONDENT	**3RD RESPONDENT**

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 17 March 2026 at 10h00.

JUDGMENT

MANGENA AJ:

[1] On 16 February 2026 applicant in the main application obtained an urgent *ex parte* order against the respondents. The order directed the respondents to immediately restore possession, access and control to the applicant of all hotel rooms situated at Portion 2 of Farm 561 Grootfonteinberg, in respect of which the locks were changed during an act of spoliation. The order was to operate as an interim one with a rule nisi issued for 06 March 2026 at 10h00 am.

[2] The respondents filed papers in opposition and applied for the re-consideration of the *ex parte* order on the basis that true facts were not placed before the court. Had the court been aware of the true and correct facts regarding the farm and the respondent's entitlement thereto, it would not have granted the order.

[3] In support of the contention, counsel placed reliance on a signed sale agreement concluded between the first respondent and the joint liquidators dated 11 December 2025. The essential terms of the agreement are that the liquidators sell to the first respondent an immovable property known as Portion 2 of the Farm Grootfonteinberg, Registration Division KT, Mpumalanga held by Deed of Transfer T111545/2003. The purchase price excluding VAT was agreed at R 3 500 000.00.

[4] The respondents paid the full purchase price and in terms of clause 12 of the agreement, possession and occupation will be given and taken subject to any existing lease agreement, on date of delivery of guarantees of the balance of the purchase price.

The respondents will assume sole risk, profit or loss arising out of the property from the date of delivery of guarantees.

[5] The respondents made full payment of the purchase price inclusive of VAT by 02 February 2026. The respondents were, according to the submissions made by counsel, entitled to take occupation of the property.

[6] This may well be so, but their possession and occupation were subject to the existing leases over the property. It is not denied and cannot be seriously contested that applicants were in possession of the property and conducting hotel operations there. The respondents had no right to interfere with applicant's possession without a valid court order and or consent of the applicant.

[7] To his credit, counsel for the respondents, Mr Roelofse conceded that the respondents were not supposed to attend at the property with guns and seize control of the administration and management of the hotel. He added his voice to the condemnation of his client's conduct and agreed that the applicant was indeed spoliated of his control and access to the property.

[8] Ordinarily, that should have been the end of the matter and as correctly pointed by Mr Presch, all what was required was to have the rule nisi confirmed and respondents be ordered to pay the costs including the costs of the extension of the rule nisi on Friday 06 March 2026. He urged me to order the respondents to pay costs on a punitive scale of attorney and own client scale as their conduct was reprehensible.

[9] However, there was a difficulty in that along with the reconsideration application, the respondents have brought a counter application for the eviction of the applicant from the

property. The counter application was under the same case number as the *ex parte* spoliation application. In the counter application, they argued that applicant has no legal basis to remain in occupation of the property as the agreement upon which he relies to be there has lapsed. I was directed to the correspondences exchanged between the liquidators and the applicant where the applicant was informed by the liquidators that they have elected to repudiate and terminate the contract concluded between the applicant and the company, Forever Resort Mount Sheba (Pty) Ltd before it went into liquidation.

[10] The respondents cannot be faulted for believing in the potency of their argument. The law supports them. The principle is that a liquidator of a company in liquidation is invested with a discretion whether to abide by or terminate an executory contract which had been concluded by the company in liquidation before its liquidation. Such an agreement does not terminate automatically on the company being placed in liquidation. The liquidator must make his election within a reasonable time. Should he elect to abide by the agreement the liquidator steps into the shoes of the company in liquidation and is obliged to the other party to the agreement to do whatever counter-prestation is required of the company in terms of the agreement. See *Nedcor Investment Bank v Pretoria Belgrave Hotel (Pty) Ltd, 2003 (5) SA 189 (SCA)* at para 6.

[11] On the basis of the SCA authority cited above and many others, the respondents appear to have good prospects to ultimately obtain ownership rights in respect of the contested property. However, good prospects alone are not sufficient to earn them declaratory orders as prayed for in their counter application. Applicant laid some hurdles over which they had to jump before they can succeed in their application for declaratory orders. Given the conclusion I reach, I shall only focus on the two which had some semblance of persuasive force and were pursued with vigour. The two points relate to

non-joinder and pending business rescue proceedings in the Gauteng Division of the High Court.

[12] Applicant says that they should have joined the liquidators to these proceedings because, so, it is argued, they have a substantial and direct interest in that they will be required to pass transfer. The counter argument by Mr Roelofse is that the respondents are not asking for an order to declare them owners nor are they asking for an order to pass transfer. All what they seek is a declaratory order that the agreement they concluded with the liquidators is valid and binding and consequent upon it, they should be given occupation of the property. There is therefore no need for the liquidators to be joined.

[13] Mr Roelofse is right. There is joinder of convenience and joinder of necessity. The guiding principle is that a party should only be joined when he/she has a direct and substantial legal interest in the outcome of the proceedings and is likely to be affected by the order. In *Bowring NO v Vrededorp Properties CC*, 2007 (5) SA 391 (SCA) para 21, the court put the test as follows:

> *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. If not, there is no need for joinder. The non-joinder point is dismissed.*

[14] Allied to the non-joinder point Mr Presch argued that the applicant has instituted business rescue proceedings in Gauteng High Court and the effect thereof is that all legal proceedings are suspended. Section 133(1) of the Companies Act 71 of 2008 provides in unequivocal terms that no legal proceedings, including, enforcement action, against the company or in relation to any property belonging to the company, or lawfully in its

possession may be commenced or proceeded within any forum except with the leave of the court.

[15] There is no dispute that there is a business rescue application pending and during the hearing I did indicate to Mr Roelofse that this aspect is occupying a greater part of my mind, and I cannot pre-empt the outcome of the court in Gauteng. But most importantly section 133 places a moratorium on legal proceedings and in the absence of an application to uplift the moratorium I cannot *mero motu* exercise a discretion to uplift it. In the view I take on this matter, the respondents are handicapped in pursuit of their relief to enforce the contract regarding the immovable property. The applicants will remain in occupation until the provisions of section 133 are complied with. Consequently, the point regarding the moratorium is well taken.

[16] The applicant has asked for the costs of opposing the counter application. I do not think they should be paid costs. Applicant succeeded on a technical point which is dilatory in nature. As alluded to above, it does not appear to me (and this is said in full deference to the court in Gauteng which is seized with the business rescue application) that they are on a strong footing in so far as the transfer of the property is concerned.

[17] The following order is made:

1. The re - consideration application is dismissed and the rule nisi is confirmed.
2. The respondents in the *ex parte* application and as applicants in the reconsideration application are ordered jointly and severally, one paying and others to be absolved, to pay applicant's costs in both an *ex parte* and reconsideration application on a party and party scale B of the High Court tariffs including costs of postponement on 06 March 2026.

3. The counter application by the respondents is dismissed with no order as to costs.

[redacted]

M I MANGENA

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

<u>APPEARANCES</u>:

Counsel on behalf of the Applicant:	Advocate W K C Pretsch The Club Advocate's Chambers Mobile: 083 790 6082 E-mail: wernerpretsch@clubadvocates.co.za
Attorney for the Applicant:	JV Rensburg Kinsella Inc 5th Floor, Bloukrans Building Lynwood Bridge Corner Lynwood & Daventry Street Lynwood Manor Pretoria Tel: 012 460 0008 Cell: 083 739 0825 Ref: 26/STR1/1

E-mail: sean@jvrkinc.co.za;

C/O Du Toit Smuts Attorneys

Law Chambers, Van Niekerk Street

Mbombela

E-Mail: vkruger@dtsa.co.za

Counsel for the Defendant:	Advocate JH Roelofse Cell: 065 353 5404 E-Mail: roelofsehenk@gmail.com
Attorney for the Defendant:	Gerrie Groenewald Attorneys Inc Merci Dieu Office, Block B 24 Mostert Street Mbombela 1200 Tel: 013 752 6955 Ref: Mr Jan Du Toit/HM2994 E-Mail: jan@ggattorneys.co.za; heidi@ggattorneys.co.za

Date of Hearing:	10 March 2026
Date of delivery:	17 March 2026

OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION MBOMBELA (MAIN SEAT)

CASE NUMBER: 2026-034622

BEFORE HONOURABLE JUDGE: MANGENA AJ

DATE: 17 March 2026

In the matter between:

CHRISTO STRYDOM PHARMACEUTICAL AND NATURAL MEDICINE LABORATORIES (PTY) LTD — **APPLICANT**

(REG NO: 2015/451243/07)

And

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)
Private Bag X20051, Mbombela 1211
2026 -03- 17
MP-MBO-000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)

KAMOSO PROJECTS CC — **1ST RESPONDENT**

(REG NO.: 2010/148790/23)

TEBOGO TAPSON MAKUSHU — **2ND RESPONDENT**

UNLAWFUL PERSONS ACTING THROUGH AND UNDER THE AUSPICES OF THE FIRST RESPONDENT — **3RD RESPONDENT**

COURT ORDER

The Judge heard the matter on 10 March 2026 and electronically circulated the judgment on 17 March 2026 and gave an order in paragraph "17" as follows:

"[17] The following order is made:

1. The re - consideration application is dismissed and the rule nisi is confirmed:

2. The respondents in the *ex parte* application and as applicants in the reconsideration application are ordered jointly and severally, one paying and others to be absolved, to pay applicant's costs in both an *ex parte* and reconsideration application on a party and party scale B of the High Court tariffs including costs of postponement on 06 March 2026".

BY ORDER OF THE COURT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)
Private Bag X20051, Mbombela 1211
2026 -03- 17
MD-MBO-008
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION,
MBOMBELA (MAIN SEAT)

REGISTRAR