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| Reportable: | NO |
| Circulate to Judges: | NO |
| Circulate to Magistrates: | NO |
| Circulate to Regional Magistrates: | NO |

**IN THE HIGH COURT OF SOUTH AFRICA**
**NORTH WEST DIVISION, MAHIKENG**

**CASE NUMBER:5870/25**

**In the matter between:**

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| **JAN HENDRIK DU PLESSIS N.O.** | **FIRST APPLICANT** |
| **CATHARINA CRONJE N.O.** | **SECOND APPLICANT** |

**and**

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| **FIRSTRAND BANK LIMITED** | **FIRST RESPONDENT** |
| **WARRENSVLAKTE (PTY) LTD (IN LIQUIDATION)** | **SECOND RESPONDENT** |
| **CAROLINE MMAKGOKOLO LEDWABA N.O.** | **THIRD RESPONDENT** |

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| **THEODORE WILHELM VAN DEN HEEVER N.O.** | **FOURTH RESPONDENT** |
| **COMPANIES AND INTELLECTUAL PROPERTY PROPERTY COMMISSION** | **FIFTH RESPONDENT** |

**Coram: WESSELS AJ**

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| **Date of hearing** | **:5 FEBRUARY 2026** |
| **Date of judgment** | **:5 FEBRUARY 2026** |

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## ORDER

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i. The counter-application brought by the first applicant is struck from the roll due to a lack of urgency.

ii. Costs are reserved for determination by the court seized with the hearing of the business rescue application.

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## JUDGMENT

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**Introduction**

[1] The main application before this Court is an application to place the second respondent ('the company') in business rescue. The company, which has been finally liquidated, is the owner, among other assets, of a farm in the Vryburg district ('the farm'). The third and fourth respondents, the company's appointed liquidators, caused the farm to be auctioned on 30 October 2025. On 29 October 2025, the applicants filed the business rescue application.

[2] Already on 30 October 2025, the first respondent filed its notice of intention to oppose the business rescue application. On 8 December 2025, the first respondent brought a counter-application ('the counter-application') wherein it inter alia seeks relief to have the business rescue application dismissed on account of what it alleges to be the lack of locus standi of the applicants as affected persons in terms of the Companies Act[1] ('the Companies Act'). In the alternative to the aforementioned relief, the first respondent seeks an order declaring the upliftment of the suspension of the liquidation proceedings under s 131(6) of the Companies Act and a declaration on the validity of the sale of the farm at auction. The counter-application came before me on the urgent roll on 30 January 2025.

[3] The First respondent brought the counter-application on an urgent basis. Due to the limited time the parties had to argue the matter and the filing of an affidavit addressing the finality of the second respondent's liquidation order, it was prudent to allow the parties the opportunity to file supplementary heads of argument.

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[1] Companies Act 71 of 2008.

[4] The principal consideration, given the nature of the counter application, is its urgency. The application of the principles to be considered for urgency is trite and requires no in-depth discussion. In keeping with the established principles of urgency, I can do no better than to refer to the succinct summary on the issue of urgency as found in the following passage in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[2]:

> '[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[5] Not only is the onus on the first respondent to make out a case for the urgency of the relief that it seeks, but an essential element of this onus is the first respondent's explanation for the delay in bringing the counter-application. This principle had been highlighted in the matter of *Amcu v Northam Platinum Ltd*[3] as follows:

> '[26] A final consideration where it comes to urgency is expedition when taking action. In other words, the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more

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[2] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011).
[3] Amcu v Northam Platinum Ltd [2016] 11 BLLR 1151 (LC).

urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency.'

[6] I am compelled to apply the principles of urgency to the counter-application, and nothing advanced by the first respondent has persuaded me to assign less weight to it. The first respondent failed to adequately justify the excessive delay between the filing of the business rescue application and the subsequent filing of its urgent application.

[7] In considering the possible prejudice that the first respondent may be suffering if the counter application is not heard on an urgent basis, I would be remiss in my duty not to mention that s 131(6) of the Companies Act has a suspensive effect on the liquidation process. To this extent, the dictum that emanates from the following paragraphs in *Richter v Absa Bank Limited*[4], to which I am bound, is apposite:

[16] Counsel for ABSA expressed concern that a liberal interpretation of s 131(1) may have negative results for the liquidation process. These include repetitive disruptions and uncertainty that may result from various affected parties making applications for business rescue at different times during the winding up process, reversion of business control to the same directors who may have been the cause of the financial distress experienced by the company, and the capacity of a company under final liquidation to conduct effective business, including concluding contracts, during the implementation of the rescue plan. All these concerns are valid and appear to have been uppermost in the mind of Bam J when he considered the issues. **Indeed implementation of the Act may produce some seemingly awkward results in the initial stages. However, that does not justify an unduly restrictive approach in the interpretation of the provisions of the Act.** The simple answer is that a court can dismiss any application

[4] Richter v Absa Bank Limited (20181/2014) [2015] ZASCA 100; 2015 (5) SA 57 (SCA) (1 June 2015).

for business rescue that is not genuine and bona fide or which does not establish that the benefits of a successful business rescue will be achieved.

[17] There is no sensible justification for drawing the proverbial 'line in the sand' between pre and post final liquidation in circumstances where the prospects of success of business rescue exist. The legislature did not do so and to restrict business rescue to those cases in which a final winding up order has not been granted is inimical to the Act.

[18] For these reasons, a proper interpretation of 'liquidation proceedings' in relation to s 131(6) of the Act must include proceedings that occur after a winding up order to liquidate the assets and account to creditors, up to deregistration of a company.

[8] Although a business rescue application is, by nature, urgent, the applicants' motives for setting it down on the normal motion court roll might seem (at least prima facie) questionable; the merits of the business rescue application stand to be determined in the normal course. If the hearing of the business rescue application, in the ordinary course, is to the detriment of the applicants, it is at their peril. The counter-application is destined to be heard with the business rescue application, as its determination at this stage would militate against the suspensive effect of s 131(6) of the Companies Act.

[9] Still, it doesn't detract from the fact that the timeframe between the filing of the business rescue application and the urgent counter-application remains unexplained and amounts to self-created urgency.

[10] The applicants make much of the alleged abuse of the court process by the first respondent in bringing its counter-application on an urgent

basis. I cannot conclude that lodging the counter application on an urgent basis constitutes an abuse of the court process, at least not intentionally. For this reason, I will leave the determination of the wasted costs incurred in bringing the counter application to the court that will be seized with the business rescue application.

[11] Having considered the arguments advanced by counsel for the respective parties as supplemented by the main and supplementary heads of argument, the first respondent has not made out a case for urgency.

**Order**

[12] I make the following order:

i. The counter application brought by the first applicant is struck from the roll due to a lack of urgency.

ii. Costs are reserved for determination by the court seized with the hearing of the business rescue application.

[redacted]

**M WESSELS**

**ACTING JUDGE OF THE HIGH COURT**

**NORTH WEST DIVISION, MAHIKENG**

**APPEARANCES**

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| **Counsel for Applicant** | **:Adv Jagga** |
| **Instructed by** | **:Callis Attorneys** |
| | **:c/o Labuschagne Attorneys** |
| | **:Mahikeng** |
| **Counsel for First Respondent** | **:Adv Smit SC** |
| **Instructed by** | **:RWL Inc** |
| | **:c/o Maree & Maree Attorneys** |
| | **:Mahikeng** |
| **Counsel for Second to Fourth Respondents** | **:Adv Maritz** |
| **Instructed by** | **:De Vries Inc** |
| | **:c/o Maree & Maree Attorneys** |
| | **:Mahikeng** |