



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NUMBER: 2025-120753

In the matter between:

**A1 CAPITAL (PTY) LTD
(Reg. No. 2007/019683/07)**

APPLICANT

and

**URBAN LIFESTYLE INVESTMENT
HOLDINGS (PTY) LTD
(Reg. No 2017/512579/07)**

FIRST RESPONDENT

**THE COMPANIES AND INTELLECTUAL
PROPERTIES COMMISSION
AFFECTED PARTIES**

SECOND RESPONDENT

THIRD RESPONDENT

Coram: MOSSOP J
Heard: 16 April 2026
Delivered: 16 April 2026

ORDER

The following order is granted:

1. The application for the adjournment of the application for leave to appeal is dismissed with costs.

2. The application for leave to appeal the refusal of the application for an adjournment is dismissed with costs.
3. The application for leave to appeal is dismissed with costs.
4. The costs of the applications identified in paragraphs 1, 2 and 3 of this order shall be paid by the applicant on the attorney and client scale and shall include the costs of two counsel where so employed.
5. Identical orders shall simultaneously issue, *mutatis mutandis*, in the following matters:
 - (a) 2025-120714: Homii Lifestyle (Pty) Ltd v K2017659127 (SA) (Pty) Ltd.
 - (b) 2025-120725: Homii Lifestyle (Pty) Ltd v K2017659651 (SA) (Pty) Ltd;
 - (c) 2025-120731: Homii Lifestyle (Pty) Ltd v K2018043790 (SA) (Pty) Ltd;
 - (d) 2025-120738: Homii Lifestyle (Pty) Ltd v Umbulumko Knowledge Services (Pty) Ltd;
 - (e) 2025-120747: A1 Capital (Pty) Ltd v Uli Props (Pty) Ltd.

JUDGMENT

MOSSOP J:

Introduction

[1] Having just heard argument, I deem it necessary to deliver this judgment immediately given the protracted history of this matter and the other matters associated with this matter and a consequence of the later developments that occurred, which will be addressed in greater detail shortly. This judgment may, as a consequence, lack the detail that I would ordinarily include in a judgment that I deliver.

[2] On 12 March 2026 judgment was handed down in this matter in which I dismissed an application brought by the applicant to place the first respondent under supervision and in business rescue and I granted a counter application brought by two affected parties in the business rescue application that the first respondent be

placed in provisional winding up. The two affected parties were Nedbank Limited (Nedbank) and the Unemployment Insurance Fund (the UIF).

[3] On the same day that the judgment was handed down, the applicant delivered notice of its application for leave to appeal. The application runs to some 27 pages and is comprised over one hundred separate paragraphs identifying where I am alleged to have erred.

[4] This judgment, brief as it is when compared with the notice of application for leave to appeal, deals with two issues, namely the applicant's application to adjourn its own application and the application for leave to appeal. Both applications are opposed both by Nedbank and the UIF. Before considering them, I deal with some preliminary issues

Preliminary issues

[5] Upon receipt of the application for leave to appeal, I notified the parties that I would hear it on 28 April 2026, after the commencement of the second term of the judicial calendar. The application for leave to appeal had been delivered approximately two weeks before the end of the first term and while I was performing criminal circuit court duties in Mtunzini in Zululand. Had I been able to hear the application earlier I would have done so, but being in Mtunzini I was prohibited from doing so.

[6] I was subsequently notified by letter that the date that I had selected, 28 April 2026, did not suit counsel for the applicant, Mr *Harpur SC*, who would be out of town on that date.

[7] I thereafter received a further letter on 7 April 2026, during recess, from the attorneys acting for Nedbank. They brought to my attention certain developments in the matter of which I was unaware. I address those developments now.

The events of 27 March 2026

[8] I was advised in the abovementioned letter of 7 April 2026 that on 27 March 2026, the applicant had brought an urgent application before the recess motion court in which it sought an interdict against the Master of the High Court preventing the

appointment of provisional liquidators to the first respondent (and the five other companies that were simultaneously ordered into liquidation as a consequence of the judgment that I delivered) pending the hearing of this application for leave to appeal (the interdict). Despite opposition from Nedbank and the UIF, the interdict was granted pending the determination of this application for leave to appeal.

[9] I have not seen the interdict application papers and I prefer therefore not to make any comment upon their contents. I have, however seen the order granted. Paragraph 2 thereof reads as follows:

‘That pending the final determination of the Applicants’ application for leave to appeal to this court in each of the matters in the above-mentioned case numbers, the first Respondent is interdicted and restrained from:

- (a) appointing provisional liquidators in the abovementioned case numbers;
- (b) taking any steps to give effect to the orders granted on 20 March 2026 refusing business rescue and granting provisional winding-up orders;
- (c) implementing any administrative or consequential processes arising therefrom.’

The revised date of hearing

[10] Having already been informed that 28 April 2026 was not suitable to the applicant’s counsel, an alternative date was always going to have to be fixed. Given the facts just mentioned, I formed the view that the new date of hearing should be sooner rather than later. I accordingly revisited my diary and created time to hear the application for leave to appeal today, Thursday, 16 April 2026. On 8 April 2026 I notified the parties of the new date of hearing. I accommodated the application by directing that it commences at 09h00, before the begin of the ordinary court day.

[11] On the same day, 8 April 2026, I then received a further, lengthy letter from the applicant’s attorneys which culminated in them advising me that the applicant’s counsel was, again, not available on 16 April 2026.

[12] I responded to this letter by indicating that I would not receive any further correspondence on the intricacies of the matter and that if the applicant’s counsel was not available on the date fixed, which date remained fixed, then other counsel

should be engaged. Although not stated in my letter, it is so that the applicant has throughout this matter been represented by two counsel.

The application for an adjournment

[13] In the applicant's attorney's letter of 8 April 2026, it was further explained that the applicant had been forced to bring the urgent application interdicting the Master from appointing provisional liquidators because the Master had been unwilling to hold such appointments in abeyance. It was further stated that despite allegations by Nedbank and the UIF that provisional liquidators had already been appointed, the applicant had established that the:

'... alleged provisional liquidators were only nominated by the Master as such, had not yet provided security to the satisfaction of the Master and were not yet issued with any certificates of appointment in terms of section 375 of the 1973 Companies Act and could therefore not be regarded as having been appointed as such.'

[14] In addition, the applicant had now conceived of a constitutional law point that it wished to pursue. It was alleged that:

'Nedbank and the UIF have adopted what the Applicants consider to be an unconstitutional interpretation of section 150 which would bar the Applicants section 34 of the Constitution rights of access to Court for an appeal in circumstances where the business rescue applications were refused and provisional orders were granted instead.'

[15] Notices had accordingly been issued in terms of Uniform rule 16A, and the periods prescribed in that rule had not yet elapsed and therefore the application for leave to appeal should not proceed pending the resolution of that issue and the joinder issue.

The application for an adjournment

[16] Notwithstanding the request by the applicant that its own application for leave to appeal not proceed today, I directed that it would. An application for an adjournment was then delivered. I heard argument on that application first and dismissed it, indicating that I would give brief reasons for that decision later. These are those ex tempore reasons.

[17] The application was largely predicated upon the grounds mentioned in the applicant's attorney's letter of 8 April 2026. It sought to adjourn the application for leave to appeal sine die on the grounds already described, and also sought the joinder of:

'... the persons identified as conditionally nominated provisional liquidators in Nedbank's Supplementary Affidavit be joined as Respondents in the applications for leave to appeal ...'.

[18] I can conceive of no legal interest in these proceedings that any of the 15 persons named in the application may have in the applicant's appeal. On the applicant's own version they have not been appointed to any position by the Master. As regards the constitutional issue, this is clearly something conceived of post the handing down of the judgment sought to be appealed. It was not an issue in the matter that I heard.

[19] The applicant, having brought its application for leave to appeal at the first opportunity, now seeks not to have it heard. I am not satisfied that any of the issues that the applicant now allegedly wishes to pursue, all of which arose subsequent to the handing down of the judgment sought to be appealed, merits an adjournment of the application for leave to appeal.

[20] The application for an adjournment was accordingly refused. Mr *Harpur* immediately applied for leave to appeal against that order. I refused that application with costs on the basis that a refusal to grant an adjournment is not appealable.

[21] I turn now to the application for leave to appeal.

The application for leave to appeal

The two issues

[22] There were, in essence, two applications initially before me: the business rescue application and the counter application at the instance of Nedbank and the UIF for the winding up of the first respondent.

The business rescue application

[23] I am satisfied that the order refusing business rescue is appealable.

[24] The business rescue application was predicated upon the plan prepared by Dr Karl Gribnitz (Dr Gribnitz), which I shall continue to refer to as 'the Gribnitz Plan'. I considered the Gribnitz Plan in great detail in my judgment and found that what it contained was insufficient to permit me to grant an order placing the first respondent under supervision and in business rescue. There were various reasons why I came to this conclusion. Dr Gribnitz conceded that his plan was based upon unverified information. In addition, no financial statements of any sort, whether audited financial statements or management accounts, were put up to provide an objective and true understanding of its present financial condition. There were management accounts which were apparently considered by Dr Gribnitz and from which he drew certain conclusions, but those accounts were not disclosed to the court. Why this was the case was never explained.

[25] The Gribnitz Plan was based upon the proposition that immovable properties held by other companies in the A1 Group would be acquired by the applicant which acquisition would, somehow, remedy the first respondent's parlous financial position. The first respondent, however, only had R1 600 in its bank account when the Gribnitz Plan was prepared, clearly an insufficient amount to allow the scheme to proceed.

The liquidation application

[26] As regards the counter application for liquidation, I am not satisfied that the provisional order of liquidation is appealable, the general position being that a provisional order of liquidation is not appealable.¹ The applicant has argued that because the provisional order was granted in terms of s 131(4)(b) of the Companies Act 71 of 2008 (the Act), this somehow renders the order appealable whereas in other circumstances it would not be. I do not understand this to be the case.

¹ Section 150 of the Insolvency Act 24 of 1936.

[27] It is not the empowering legislation that renders an issue appealable (unless the legislation in question specifically deals with this issue and there is no such provision in the Act), but the effect of the order granted. In *Pitello v Everton Gardens Projects CC*,² the court observed that:

‘An order is not final for the purpose of an appeal merely because it takes effect, unless it is set aside. It is final when the proceedings of the court for first instance are complete and that court is not capable of revisiting the order...It is not appealable because such an order is capable of being rescinded by the court that granted it, and it is thus not final in its effect...’

[28] It is so that recently there has been a movement away from the defined criteria that determined for many years whether a matter was appealable, namely whether the order appealed against was final in effect and not susceptible of alteration by the court of first instance, whether it was definitive of the rights of the parties and whether the order had the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. I refer here to the criteria set out in the well-known case of *Zweni v Minister of Law and Order*.³ The new, overarching principle to be applied is the interests of justice.

[29] However, in *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others*,⁴ Unterhalter JA remarked that:

‘I do affirm, though, that the doctrine of finality must figure as the central principle of consideration when deciding whether a matter is appealable to this Court. Different types of matters arising from the high court may (I put it no higher normatively) warrant some measure of appreciation that goes beyond *Zweni* or may require an exception to its precepts. Any deviation should be clearly defined and justified to provide ascertainable standards consistent with the rule of law. Recent decisions of this Court that may have been tempted into the general orbit of the interests of justice should now be approached with the gravitational pull of *Zweni*.’

[30] The order that I granted was a provisional order, with a return date. It was not final in effect, nor did it finally determine the rights of any of the parties. Notionally, the rule that I granted could be discharged on the prescribed return date. The order of provisional liquidation was therefore not final and not appealable in my

² *Pitello v Everton Gardens Projects CC* 2010 (5) SA 171 (SCA) para 27.

³ *Zweni v Minister of Law and Order* [1993] 1 All SA 365 (A); 1993 (1) SA 523 (A).

⁴ *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd and Others* [2023] ZASCA 63; 2023 (5) SA 163 (SCA) para 30.

view. But, in the event that I am incorrect in this conclusion, I briefly consider the merits of the intended appeal.

[31] On the applicant's own version, presented again through the Gribnitz Plan, the first respondent is in a financially ruinous situation. Its liabilities exceed its assets by some R370 million, and, according to Dr Gribnitz, it cannot be rehabilitated through the restructuring of its own income streams. The Gribnitz Plan, furthermore, acknowledged that the first respondent was under capitalised and required an injection of capital to continue in business. There is, however, simply no prospect of a knight-errant⁵ coming to its aid with the capital injection that it requires simply to stay afloat.

Analysis

[32] The facts that determined the fate of both the business rescue application and the counter application for liquidation were largely those presented by the applicant through the Gribnitz Plan, supplemented by additional facts from Nedbank and the UIF. I have considered the detailed application for leave to appeal and counsel's submissions made to me this morning. As Mr *Rood* SC, who appears for Nedbank, put it in his heads of argument, the grounds of appeal are largely the same arguments presented by the applicant when arguing the application.

[33] My view remains that no reasonable prospect of rescue was made out in the business rescue application and, on the applicant's own version, the first respondent is hopelessly insolvent.

[34] I am therefore unable to conclude that another court, faced with the same facts, would come to a different conclusion than those to which I came.

Conclusion

[35] The application must therefore be refused. While there serves before but a single application for leave to appeal, the same situation exists as before, namely

⁵ A medieval knight who travelled around doing brave things and helping people who were in trouble: Cambridge On-line Dictionary https://dictionary.cambridge.org/dictionary/english/knight-errant#google_vignette

that the order to be granted in this matter shall also be deemed to have been granted in the other five matters that were included in the order that I granted on 12 March 2026.

[36] I can discern no reason why costs should not be ordered on the same scale as when I dealt with the main application.

Order

[37] I accordingly grant the following order:

1. The application for the adjournment of the application for leave to appeal is dismissed with costs.
2. The application for leave to appeal the refusal of the application for an adjournment is dismissed with costs.
3. The application for leave to appeal is dismissed with costs.
4. The costs of the applications identified in paragraphs 1, 2 and 3 of this order shall be paid by the applicant on the attorney and client scale and shall include the costs of two counsel where so employed.
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MOSSOP J

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