IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 054370/2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED.
(4) Date: 08 April 2026
Signature: [redacted]

In the matter between:

ELEGANT FUEL	Applicant
And	
TEPCO PETROLEUM (PTY) LTD	1ST Respondent
COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION	2nd Respondent
REGISTRAR OF DEEDS, PRETORIA	3rd Respondent
DEPARTMENT OF PUBLIC WORKS	4th Respondent
DEPARTMENT OF NATIONAL TREASURY	5th Respondent

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES	6th Respondent
SHELL SOUTH AFRICA MARKETING (PTY) LTD (Registration Number: 1961/000645/07)	7th Respondent
SHELL DOWNSTREAM SOUTH AFRICA (PTY) LTD	Intervening Applicant

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JUDGMENT

NYATHI J

A. INTRODUCTION

1. This matter concerns an application by Elegant Fuel (Pty) Ltd ("Elegant Fuel") for:
   (a) the restoration of Tepco Petroleum (Pty) Ltd ("Tepco") to the companies register in terms of section 83(4) of the Companies Act 71 of 2008, and
   (b) a final liquidation order against Tepco.

2. Shell Downstream South Africa (Pty) Ltd ("Shell Downstream") applies for leave to intervene in terms of Rule 12. Elegant Fuel opposes the intervention and maintains that Shell Downstream lacks locus standi. The intervening party, on the other hand, disputes Elegant Fuel's locus standi as a creditor and opposes both the restoration and liquidation.

3. The Court is therefore required to determine three principal questions:
   (i) Should Shell Downstream be granted leave to intervene?

(ii) Should Tepco be restored to the register?

(iii) Should Tepco be placed under final liquidation at this stage?

4. As appears below, this judgment adopts a middle-ground solution: intervention is granted, restoration is granted, but liquidation is not granted at this stage, pending proper ventilation of the enrichment claim.

B. THE INTERVENTION APPLICATION

5. Rule 12 permits intervention where an applicant demonstrates a direct and substantial interest in the subject matter. Shell Downstream avers that it is the sole shareholder of Tepco and thus has such an interest.

6. Elegant Fuel challenges this on the basis that no share register or share certificate has been produced, despite demands under Rule 35(12) and (14).

7. While the absence of these documents is concerning, Shell Downstream's averment that it succeeded to Shell Marketing's shareholding pursuant to a merger is not inherently improbable and is not contradicted by documentary evidence from the applicant.

8. On balance, and in line with Plascon-Evans principle, the Court accepts the intervening party's version at this stage. The intervention application is granted.

C. LOCUS STANDI OF THE APPLICANT

9. Elegant Fuel asserts locus standi as a creditor based on an enrichment claim of R5.56 million for improvements allegedly made to Tepco's immovable property.

10. The intervening party disputes that any permanent improvements were made, contending that:

- storage tanks are above ground and movable;
- the office is a wendy house;
- security systems are removable;
- many alleged improvements prescribed.

11. Elegant Fuel's replying affidavit includes **photographic evidence** showing permanent structures inconsistent with Shell Downstream's characterisation.

12. The Court is satisfied that Elegant Fuel has established a **prima facie** enrichment claim sufficient to confer **creditor standing**, though disputed in material respects. That dispute cannot be resolved on motion papers.

13. Elegant Fuel therefore **has locus standi** for purposes of restoration, but whether it has a claim sufficient to justify liquidation **cannot be determined finally** on these papers.

D. RESTORATION OF THE FIRST RESPONDENT

14. Section 83(4) provides a wide discretion to restore a company where "just and equitable". This includes instances where the company owns immovable property and is indebted to creditors.

15. It is common cause that Tepco owns immovable property and that municipal arrears exceed R400 000.

16. Restoration is essential before any lawful administration of the company or its property may occur.

17. On these facts, restoration is just and equitable. The order will accordingly be granted.

E. LIQUIDATION OF THE FIRST RESPONDENT

18. For a final liquidation order, the Court must find:
(i) that the applicant is a creditor;
(ii) that the debt is not genuinely disputed on bona fide reasonable grounds; and
(iii) that the company is commercially insolvent.

19. While commercial insolvency appears *prima facie* established given Tepco's inability to pay municipal debts for over 79 months, the crucial issue is whether the alleged enrichment claim is undisputed or clearly established.

20. Shell Downstream raises substantive disputes:

- nature and permanency of improvements;
- identity and dates of invoices;
- prescription;
- factual contestation of what was built.

21. The disputes concern core factual foundations of the enrichment claim and cannot be resolved on paper. Applying Plascon-Evans, these are not "fictitious disputes" but genuine disputes requiring oral evidence or trial.

22. Liquidation is a drastic remedy, and courts are slow to grant it where the underlying debt is seriously disputed on reasonable grounds.

23. It follows that liquidation cannot be granted at this stage. A referral to trial is the appropriate mechanism.

F. COSTS

24. Costs should follow the result. Each party has achieved partial success. Restoration is granted at the instance of Elegant Fuel; intervention is granted at the instance of Shell Downstream; liquidation is postponed.

25. The fairest order is that costs be reserved for determination at the eventual trial or final determination of the enrichment claim.

G. ORDER

The following order is made:

1. Shell Downstream South Africa (Pty) Ltd is granted leave to intervene in the proceedings.
2. Tepco Petroleum (Pty) Ltd is hereby restored to the register of companies in terms of section 83(4) of the Companies Act 71 of 2008.
3. The relief sought for the final liquidation of Tepco is postponed, and the disputes relating to the applicant's alleged enrichment claim are referred to trial.
4. The affidavits filed to date shall stand as pleadings in the trial action.
5. Either party may deliver further pleadings as may be required under the Uniform Rules.
6. Costs are reserved for determination by the trial court.

[redacted]

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of Judgment: 08 April 2026

On behalf of the Applicant: Adv. J. Hershensohn SC
With him: Adv. R. De Leeuw

Applicant’s attorneys: Schabort Potgieter Inc. Attorneys, Pretoria

On behalf of the 1st & 7th Respondents and the Intervening party: Mr M. Smit
Respondent’s attorneys: Cliffe Dekker Hofmeyr Attorneys. C/O Asger Gani Attorneys, Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 08 April 2026.