IN THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)

CASE NUMBER: 2135/2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: **NO**	
(2) OF INTEREST TO OTHER JUDGES: **NO**	
(3) REVISED **YES/NO**	
	[redacted]
22 APRIL 2026	H.F. FOURIE
DATE	SIGNATURE

In the application between:

THUSANYO PROJECT SERVICES (PTY) LTD **APPLICANT**

(Registration Number: 2022/881446/07)

and

BOTENKO BUSINESS ENTERPRISES (PTY) LTD **RESPONDENT**

(Registration Number: 2014/148985/07)

JUDGMENT

FOURIE AJ

INTRODUCTION:

[1] In the current application, the Applicant seeks the provisional winding up of the Respondent, a private company.

[2] The application is brought under the auspices of Section 345 of the Companies Act, 61 of 1973, "the Act", alternatively on the basis that the Respondent is unable to pay its debts and that it is just and equitable as contemplated in Section 344(f) and (h) read with Sections 345(1)(a) and 345(1)(c) of the Act, for the Respondent so to be provisionally wound up.

[3] This Court is satisfied that the relevant statutory compliance specifically pertaining to service, as set out in Section 346(4)(h)(b) of the Act, and the setting of security as per Section 346(4)(a) of the Act, has been met.

RELEVANT BACKGROUND FACTS:

[4] Pursuant to the Applicant purchasing the entity known as Thusanyo Investments, the Respondent, who was, at the time and specifically on 1 March 2024, a debtor of Thusanyo Investments became a debtor of the Applicant, on the Applicant's contentions.

[5] The indebtedness of the Respondent is claimed in the amount of R 5 625 624.95.

[6] On 4 March 2022, the Respondent entered into a process of business rescue, and on 27 March 2023, an order was granted against the Respondent, terminating the business rescue proceedings and finally winding up the Respondent in the hands of the Master.

[7] Pursuant to being persuaded by the Respondent, the Applicant agreed to the setting aside of the final winding-up order obtained under the promise that the indebtedness of the Respondent would be settled in totality within a period of 12 months.

[8] The winding up of the Respondent was consequently set aside.

[9] What transpired thereafter, and since that date, has been several exchanges of correspondence between the respective parties, in which the indebtedness has been discussed and the parties have attempted to facilitate its repayment. It is a common cause between the parties that, during this period, the Respondent has not made any payments to the Applicant, and that the Respondent has endeavoured to repay its other debts owed to other individuals and companies.

[10] From the correspondence exchanged between the parties, the Respondent's indebtedness has not been seriously challenged throughout; rather, the Respondent attempted repayment on certain terms that were not acceptable to the Applicant.

[11] What followed was the service of a Section 345(1)(a) Notice in terms of the Act, which led to the current application.

[12] The Applicant relies on, specifically, correspondence received from the Respondent dated 9 April 2025, in which the debt owed is admitted as R 5 625 624.95, and a proposed repayment schedule is advanced, as well as

an acknowledgement of debt in the amount of R 5 914 374.96, which was entered into and signed as far back as 16 November 2021.

[13] The Respondent's opposition seems to consist of a request for the indebtedness as claimed to be separated into an amount of R 3 946 375.62, which, according to the Respondent, forms part and parcel of an internal dispute pertaining to the repayment of unpaid salaries, an amount of R 1 679 249.33 that was utilised for operational requirements.

[14] The Court finds it peculiar that the Respondent raised issues in the current application with any portion of the debt owed under circumstances where the outstanding debt has, on several occasions, been admitted. Had it not been for the current application, it seems as if the only real dispute that was raised between the parties would have been the manner in which the debt was to be repaid.

[15] The Respondent, however, avers that the amount of R 3 946 375.62 must be deducted from the debt as it does not form part of the SLA that forms the subject matter of the debt.

[16] The aforesaid, even if the Court accepts the challenge to the amount of R 3 946 375.62 leaves an indebtedness of R 1 679 249.33. On the papers before the Court, it has not been denied that at least this amount is challenged, and if there is a notion of a challenge to this amount, the Court cannot accept that such a challenge is disputed on *bona fide* grounds. The submissions at the hearing of the matter by the Respondent's legal representatives were that the admitted amount was not being repaid as the Respondent would only make payment once the amount owed had been formally agreed to by the parties and a suitable repayment plan was set up. The Respondent fails to address why no payment, at the very least, towards the indebted amount of R 1 679 249.33 has been made.

[17] The Respondent, for instance, in its answering papers stated as per paragraph 8.6 thereof that the Respondent is willing to make payment of the owed amount of R 1 679 249.33.

[18] At the hearing of the matter, the Court allowed the Respondent the opportunity to make submissions on, if the Court allowed such an opportunity to the Respondent, whether, at the very least, the admitted amount would be paid by the Respondent to the Applicant if the Court so orders. The Court was informed that the Respondent would not be in a position to make payment of this amount, and should it be so ordered, the Respondent would need to enter into some sort of payment arrangement with the Applicant.

[19] This concession, together with the admission of significant indebtedness, moves the Court to the ruling it ultimately issues.

APPLICABLE LEGAL PRINCIPLES:

[20] Where a creditor has a debt which a debtor cannot pay, the creditor is entitled, *ex debito justitiae,* to a winding-up order. **[1]**

[21] In terms of the Act referenced *supra*, the Applicant would have the required *locus standi* to institute these proceedings upon proving that it holds a claim of not less than R 100.00 against the Respondent. The indebtedness in at least this amount is not seriously contested.

[22] The issue whether the total amount as claimed by the Applicant, in this case the amount of R 5 625 624.95 needing to be proven for the Applicant to succeed in its application has been dealt with by our Courts on several occasions, and it is trite Law that the Applicant, in order to proceed, needs to prove, on the evidence available to Court, a liquid debt exceeding R 100.00 even thought that amount might not be the total claim amount of the Applicant.**[2]**

[23] During argument the Court was referred to the matters of Kalil v Decotex (Pty) Ltd and Another**[3]**, as well as the matter of Badenhorst v Northen Construction Enterprises (Pty) Ltd**[4]**, both of which generally get referred to when matters for the liquidation of a company is argued. This Court is satisfied that, in order to overcome an application for the winding-up of the Respondent, the Respondent had an evidential burden to prove either that the debt has been settled in total, alternatively that the total of the debt is disputed on *bona fide* grounds. If a Respondent is unable to dispute its indebtedness and is unable to prove that an Applicant's claim is meritless to the degree that a Court will not find an indebtedness of at least R100.00, all that remains is to answer the question, whether the Respondent is able to repay such amount, and if the question is answered in the negative, surely an Applicant is entitled to the relief it seeks in respect of the winding-up of the Respondent.

[24] In the current matter, all that remains to be answered is whether or not there is some other compelling reason why the Court ought not to order, at the very least, a provisional winding-up. The high-water mark for the Respondent in this regard was that the Respondent employed several employees, and that the provisional winding-up Order would negatively impact their employment. Although the impact on the employees will be a harsh reality, it is one caused by the Respondent.

[25] A diligent employer has a duty not only to their creditors but also their employees to ensure the financial existence of their company. If an employer does not do so, they cannot hide behind the obvious effects of liquidation unless exceptional circumstances dictate it to be just. In the current matter it does not.

DISCUSSION:

[26] The Respondent seems to have, rather belatedly, taken issue with a portion of the debt which it previously acknowledged to be owed to the Applicant.

[27] Irrespective of the aforesaid, a considerable amount of money is admitted to be owed by the Respondent to the Applicant, at least in the amount of R 1 679 249.33. Despite the Respondent's acknowledgement of its indebtedness towards the Applicant, the Respondent has blatantly refused to make any sort of payment towards the Applicant in this regard.

[28] At the very least, the Respondent would have shown some sort of *bona fides* if the amount they admitted to owe to the Applicant was settled or partially settled by way of monthly repayments.

[29] The Court further needs to consider the fact that the Respondent was previously wound up, and it seems, at the very least on the papers, that had it not been for the grace of the Applicant in agreeing to set aside the winding-up previously obtained, that position would in all likelihood have remained the position. With the aforesaid as backdrop, there is simply no justification for why the Respondent has not honoured its commitments towards the Applicant.

[30] Whether the Applicant ultimately proves its total claim with the liquidator is an aspect that this Court does not need to evaluate, but at the very least, this Court is satisfied that an admitted debt has been proven and conceded, which debt the Respondent is unable to repay as it became due. For such reason, there can be no alternative to the provisional winding-up of the Respondent.

<u>ORDER:</u>

[31] For all the aforesaid reasons, the following Order is made:

[31.1] The Respondent Company is placed under provisional winding-up.

[31.2] All persons who have a legitimate interest are called upon to put forward their reasons why this Court should not order the final winding-up of the Respondent on 26 June 2026 at 10:00 or as soon thereafter as the matter may be heard.

[31.3] A copy of this Order shall be served upon the Respondent Company at its registered office and upon the employees and their registered trade unions, if any.

[31.4] A copy of this Order shall be served on the South African Revenue Services.

[31.5] A copy of this Order shall be served on the Master of the High Court.

[31.6] A copy of this Order shall be forwarded to each known creditor by preregistered post.

[31.7] A copy of this Order shall be published in the Government Gazette and at least one local newspaper within the area of the Respondent's registered address.

[31.8] The costs of the application shall be costs in the liquidation of the Respondent.

[redacted]

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Counsel for the Applicant: Adv R de Leeuw

Counsel for the Respondent: Mr Nsibande

Judgment reserved on: 16 April 2026
Date of delivery: 22 April 2026

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[1] ABSA Bank v Rheboksklоof (Pty) Ltd and Others 1993 (4) SA 436 (C) at 440

[2] Moodley v Cassim 1953 (4) SA 516 (M)

See Also Body Corporate of Fish Eagle v Group 12 Investments (Pty) Ltd 2003 (5) SA 414 (W) at 528 B

[3] 1988 (1) SA 943 (AD)

[4] 1956 (2) SA 346 (2)