

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2026-051275

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____ DATE	_____ SIGNATURE

In the matter between:

MARI HAYWOOD N.O.

First Applicant

MUTETERAZINA NDEKWE N.O.

Second Applicant

And

PPBK TRADING (PTY) LTD

First Respondent

WESBANK, A DIVISION OF FIRSTRAND BANK

Second Respondent

JUDGMENT

STRYDOM, J

[1] This is an urgent application in which the applicants, in their capacities as joint provisional liquidators of KVP Logistics (Pty) Ltd (in liquidation) (the company), seek relief regarding a motor vehicle alleged to be part of the insolvent estate.

[2] The primary relief sought is the delivery of a Toyota Hilux 2.8 DD-6 Raider 4x4 P/U D/C motor vehicle with VIN Number: A[...], Engine number: 1[...], and

Registration Number: L[...] (“the vehicle”) into the custody of the applicants. In the alternative, the applicants seek interim interdictory relief to preserve the vehicle pending the institution of proceedings to rescind or set aside a court order obtained by the first respondent on 30 July 2025, under which the first respondent's alleged pledge over the vehicle was perfected.

- [3] The vehicle was bought by the company under an instalment sale agreement between the company and Wesbank, a division of FirstRand Bank (Wesbank). Wesbank remained the owner until the vehicle was paid off.
- [4] The company allegedly owed PPBK Trading (Pty) Ltd (the first respondent) R291 034.76 (the debt) and, as security for repayment, on 28 November 2024, the company pledged the partly paid-off vehicle to the first respondent. Possession of the vehicle was passed on to the first respondent.
- [5] On 31 March 2025, liquidation proceedings against the company commenced, and on 10 September 2025, a final liquidation order was granted.
- [6] On 30 July 2025, after the commencement of liquidation proceedings, the first respondent obtained a court order in which its security was perfected, and the vehicle was declared specifically executable. Further ancillary relief was granted.
- [7] The applicant indicated its intention to rescind and set aside this judgment, detailing the legal grounds on which it relies.

URGENCY

- [8] The application was brought in terms of Rule 6(12). The applicants contend that, absent urgent intervention, the vehicle may be dissipated, alienated, or otherwise placed beyond the reach of the insolvent estate.
- [9] Although the first respondent contends that urgency is self-created, I am satisfied that the applicants had shown that the matter should be regarded as urgent. The first respondent was granted an order to continue to execute against the vehicle. The first respondent previously tried to sell the vehicle.

- [10] I am satisfied that the applicants have shown that they and the company in liquidation will not be afforded substantial redress if this application is only heard months from now in the ordinary course. The vehicle could be sold, and a vehicle continues to lose value, especially if it is used and not properly maintained.
- [11] In the circumstances, the applicants' non-compliance with the ordinary rules is condoned, and the matter is heard as one of urgency.

THE RELIEF SOUGHT

- [12] The applicants seek, in essence:

- (a) delivery of the motor vehicle into their possession; alternatively
- (b) interim interdictory relief restraining the first respondent from dealing with the vehicle and directing measures to secure its preservation pending contemplated rescission proceedings.

EVALUATION

- [13] Being an urgent application, I am of the view that if I find that the applicant has made out a case for interim relief, the court should order the maintenance of the *status quo* rather than the delivery of the vehicle. Consequently, I will consider whether a case has been made out for the alternative relief.
- [14] The requirements for interim interdictory relief are trite:
- (a) a prima facie right, though open to some doubt;
 - (b) a reasonable apprehension of irreparable harm;
 - (c) the balance of convenience favouring the grant of relief; and
 - (d) the absence of an adequate alternative remedy.
- [15] In matters concerning insolvency, liquidators bear a statutory duty to secure and preserve the estate's assets for the benefit of creditors. On the filing of a liquidation application, a *concurso creditorum* is established.

[16] The vehicle is currently retained by the first respondent, who has refused to deliver it or provide an undertaking that it will not alienate, sell, encumber, modify, or otherwise deal with it. The first respondent refused to disclose the vehicle's current location. It relies on its court-perfected pledge despite the company's liquidation.

[17] The applicant's case is underpinned by the following broad grounds:

- a. No valid pledge could have existed as the second respondent retained ownership of the vehicle in terms of an instalment sale agreement prior to the company's liquidation, the agreement which remained extant at the time of the company's liquidation.
- b. Upon the company's liquidation, ownership of the vehicle passed to the insolvent estate, and the second respondent was, by law, given a preference claim to the vehicle or the proceeds thereof.
- c. As the company was not the owner of the vehicle at the time the alleged pledge was constituted, it could not have validly pledged the vehicle to the first respondent. Accordingly, the first respondent sought and obtained the court order in instances where no valid pledge existed.
- d. The first responder, by virtue of the fact that the company was already provisionally liquidated, was precluded in terms of section 359(1)(a) of the 1973 Companies Act¹ to proceed with its application to perfect its alleged pledge.
- e. Furthermore, the first respondent in obtaining the court order, impermissibly, sought to improve its position as a supposed creditor of the

¹ Section 359(1)(a) of Act 61 of 1973 provides as follows: "(1) When the court has made an order for the winding-up of a company or a special resolution for the voluntary winding-up of the company has been registered in terms of section 200-- (a) all civil proceedings by or against the company concerned shall be suspended until the appointment of a liquidator; and (b) any attachment or execution put in force against the estate or assets of the company after the commencement of the winding-up shall be void.

(2)(a) Every person who, having instituted legal proceedings against a company which were suspended by a winding-up, intends to continue the same, and every person who intends to institute legal proceedings for the purpose of enforcing any claim against the company which arose before the commencement of the winding-up, shall within four weeks after the appointment of the liquidator give the liquidator not less than three weeks' notice in writing before continuing or commencing the proceedings. (b) if notice is not so given the proceedings shall be considered to be abandoned unless the Court otherwise directs."

estate after the *concursum creditorum* was established, and thereby disregarded the effect of the *concursum creditorum* and the rights of creditors.

- [18] The first respondent alleges that the pledge of the vehicle, which was owned by Wesbank, was valid because Wesbank, after being informed of the pledge, through its actions, accepted and acquiesced in it. These actions included a request for an invoice to settle the debt of the first respondent, to take possession of the vehicle, and to dispose thereof to recoup the outstanding balance, and attending the first respondent's premises to inspect the vehicle. When the first respondent applied to have the pledge perfected, Wesbank, aware of the application, did not oppose the relief sought.
- [19] Whether Wesbank subsequently ratified the pledge is a factual question that cannot be decided on the papers before this court.
- [20] What was shown before this court, however, is that Wesbank has not paid off the first respondent's debt and later refused to provide the first respondent with the vehicle's registration papers to facilitate the transfer of the vehicle to a buyer.
- [21] This, in my view, is indicative, at least on a *prima facie* basis, that the second respondent did not accept or acquiesce to the pledge. This would mean that the pledge may later be found to have been unlawful. Moreover, the court order to perfect the pledge was obtained after the *concursum creditorum* was established. All legal proceedings from the date of filing the liquidation application were suspended.
- [22] The applicants have demonstrated, on a *prima facie* basis, that the vehicle constitutes an asset which falls to be preserved pending the determination of competing rights. The applicants intend to institute rescission proceedings in respect of the order granted on 30 July 2025. The validity and effect of that order are central to the ultimate determination of rights.

- [23] Irreparable harm has been shown. A real risk exists that, if interim relief is not granted, the vehicle may be disposed of or be dealt with in a manner prejudicial to the insolvent estate.
- [24] The balance of convenience favours preserving the status *quo* pending determination of the parties' rights. These rights could be determined as part of the rescission application. The relief sought in the alternative is for the preservation of the vehicle and does not finally determine the dispute.
- [25] There is no alternative remedy available to the applicant. The first respondent elected not to provide the applicant with an undertaking. While rescission proceedings are contemplated, such proceedings do not provide immediate protection against the risk of dissipation of the asset.
- [26] The first respondent submitted that this is not an application for a stay of the execution pursuant to the 30 July 2025 court order. A stay of execution should have been brought in terms of Rule 45A. The relief sought in this application will have the effect of setting aside the existing court order. The binding order must be obeyed till set aside. Therefore, the application was incompetent and should not be granted.
- [27] The applicants countered this argument by arguing that:
- a. First, the execution of the court order was and remains suspended in terms of either Section 359(1)(a) of the 1973 Companies Act or Section 20(1)(c) of the Insolvency Act 24 of 1936².
 - b. Second, there is no legal foundation for the suggestion that this court cannot grant an interim interdict until the outcome of a rescission application. The court was referred to as the case of *Van Rooyen v Warby and Another*,³ where this court entertained and granted interim interdicts in similar circumstances.

² 24 of 1936. Section 20(1)(c) provides as follows: "(1) The effect of the sequestration of the estate of an insolvent shall be—(c) as soon as any sheriff or messenger, whose duty it is to execute any judgment given against an insolvent, becomes aware of the sequestration of the insolvent's estate, to stay that execution, unless the court otherwise directs;"

³ 2025 JDR 3758 (GJ)

- c. Third, it is well established that this court, had a stay of execution in terms of rule 45(a) being sought, would have considered the same requirements for the granting of an interim interdict.
- d. Moreover, the applicants were not a party to the proceedings when the order was obtained, at a time when the company was already in liquidation. The order is simply unenforceable and void as against the applicants in their capacity as the company's liquidators. The court that granted the order was not even made aware of the liquidation. To protect the rights of the liquidated estate, the court should stay the implementation of the order pending a rescission application to set aside the order.

[28] In my view, the application could have been brought outside the ambit of Rule 45A. The court has, apart from the provisions of this rule, a common-law inherent discretion to order a stay of execution or to suspend the operation of a court order. The interim relief sought in this application has the same effect. Ancillary relief to secure the applicants' rights should be granted whilst the vehicle remains in the first respondent's possession. This would entail an opportunity to inspect the vehicle and to ascertain the odometer reading.

[29] I am not persuaded that the appropriate course is to grant an order for the vehicle's delivery. A case has been made out for the alternative relief to secure the safekeeping and preservation of the vehicle pending the institution and finalization of rescission proceedings. (see *Van Rooyen, supra, at para [6]*⁴)

⁴ "[6] The interdict does not turn on whether the applicant has established a bona fide defence to the claim and is, thus, entitled to rescission that is for the rescission court to decide. A rescission application was launched and awaits determination. The function of interim relief in this setting is to preserve the status quo pending that determination. Without such relief, the applicant faces the risk of execution under a judgment which may yet to be set aside; With it, the respondent suffers no material prejudice, as his judgment remains enforceable if rescission is refused. His claim remains secured pending the determination of rescission. The balance of convenience favours granting the stay. In the circumstances, the applicant has demonstrated a sufficient basis for the interim relief sought, notwithstanding the respondent's contention that the application was unnecessary because of the practice of the sheriff not to execute pending rescission."

[30] I am satisfied that the applicants have established the requirements for interim relief. The status quo should be maintained pending the adjudication of the rescission application.

[31] The following order is made:

- (1) The applicants' non-compliance with the Uniform Rules of Court is condoned, and the matter is heard as one of urgency.
- (2) Pending the finalization of legal proceedings to be instituted by the applicants within 20 court days, from the date of this order, to rescind and/or set aside the order granted on 30 July 2025 under case number: 2025-059863, the first respondent is interdicted and restrained from:
 - (a) disposing of, alienating, or selling the motor vehicle;
 - (b) encumbering, pledging, or otherwise dealing with the vehicle;
 - (c) using, repairing, modifying, or in any other manner dealing with the vehicle;
 - (d) removing the vehicle from the jurisdiction of this Court.
- (3) The first respondent is ordered to afford the applicants, or their agents, at any time, the opportunity to establish where the vehicle is kept, to assess its condition, and to read its odometer.
- (4) If the rescission application is not instituted within the 20 court days from the date of this order, the order would lapse.
- (5) Costs of this application are reserved for determination in the rescission proceedings if so instituted; if not, the applicant is ordered to pay the costs of this application on Scale C.

R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 17 & 19 March 2026

Delivered on: 1 April 2026

Appearances:

For the Applicants: Adv. S.N. Davis

Instructed by: Tintingers Incorporated

For the 1st Respondent: Mr. D.M. Molepo

Instructed by: ENS Incorporated