REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 2026 - 069781

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

20 April 2026 [redacted]

DATE MOKOSE SNI

In the matter between:

MAHOMED MAHIER TAYOB N.O.	First Applicant
[In his capacity as duly appointed business rescue practitioner	
Of Overall & Industrial Manufacturing (Pty) Ltd (in business rescue)]	
OVERALL & INDUSTRIAL MANUFACTURING (PTY) LTD	Second Applicant

and

ASHOKUMAR RAMPERSAD	First Respondent
NARDEV MISTRY	Second Respondent

JUDGMENT

MOKOSE J

Introduction

[1] The applicants approach this court on an urgent basis allegedly necessitated by the first respondent's persistent and unlawful refusal to comply with its obligations in terms of Chapter 6 of the Companies Act 71 of 2008 ("the Act"). The applicants seek an order directing the respondents to produce "all books, records and statements" relating to the affairs of the company including a full reconciliation of all cash sales; a full report on all diverted stock and the current whereabouts thereof; a complete disclosure of any and all business assets apparently concealed or unaccounted for; a full report of all alleged parallel trading, including all items sold; income earned and a reconciliation of all funds held and disbursed; a full report on all debtors and creditors including overseas creditors and any payments or agreements made without the business rescue practitioner's ("BRP") consent and a comprehensive list of all assets including serial numbers of all equipment.

[2] The first respondent opposes this application and further launches a counter application however, it is not sought to be determined in the urgent court. The second respondent filed a notice to abide by the decision of the court.

Factual Background

[3] The factual background is as follows: business rescue proceedings commenced during May 2024 at which time the first applicant was appointed as the business rescue practitioner. Upon his appointment, he assumed full management control of the company in terms of Section 140(1)(a) of the Act, subject to the statutory oversight and cooperation obligations imposed on the first respondent.

[4] The business plan was adopted in November 2024. It contemplated that creditors would receive a dividend over a 24-month moratorium period commencing in January 2025. It is common cause that the business rescue proceedings initially progressed in a structured manner in accordance with the business plan. Furthermore, the company continued to trade, and distributions were made to creditors but failed to endure as envisaged.

[5] The applicant contends that from October 2025 it came to his attention that there were irregularities in the affairs of the company whereupon he appointed Mr Mark Laros to assist with the oversight and investigation of the irregular trading activities. By February, his concerns had crystalised into evidence of potentially serious financial misconduct, including irregular transactions and the possible dissipation of assets. He then demanded from the first respondent the requisite books, records and financial information. He also consulted his legal representatives about his concerns.

[6] The applicants contend further that the first respondent failed to provide the requested information which rendered it impossible for him to discharge his statutory duties in terms of Sections 140 and 141 of the Act. Accordingly, he is of the view that the matter is sufficiently urgent as to warrant it to be heard in terms of Rule 6(12) of the Uniform Rules of Court. He contends that business rescue proceedings are of their own, sensitive and urgent in nature and cannot be heard on the ordinary motion roll. He further contends that he took all reasonable and proactive steps to avoid the institution of this urgent application and that his conduct was measured, diligent and directed at resolving the issues without recourse to litigation. The urgency does not emanate from the initial discovery of irregularities in October 2025 but from the continued and ongoing irregularities and the first respondent's failure to furnish him with the documents and records requested in March 2026.

[7] The first respondent, on the other hand, contends that this application does not satisfy Rule 6(12) and that on the first applicant's own version, the material complaints arose over many months commencing in October 2025 whilst this application was only launched in late March 2026. Any urgency is therefore self-created.

Urgency

[8] A court is obliged in its determination of urgency, to interrogate the allegations of the parties in the papers and decide whether the matter should be heard on an urgent basis. In terms of Rule 6(12) of the Uniform Rules of Court a party seeking relief must set out explicitly in its affidavit, the circumstances which render the matter urgent with proper particularity and must also set out the reason why he would not be afforded redress at a later date.

[9] The *locus classicus* for the law pertaining to urgent proceedings is the case of *Luna Meubels Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers*[1]. The court established guidelines for urgent applications in terms of Rule 6(12) of the Uniform Rules of Court. The court expressly recognised that in appropriate circumstances, the ordinary forms and time periods may be abridged to permit the court to deal with the matter as one of urgency. The test for urgency in applications was further enunciated in the case of *East Rock Trading 7 (Pty) Limited and Another v Eagle Valley Granite (Pty) Limited and Others* [2]. Two key elements which an applicant must satisfy for an urgent application to qualify as such are that the matter is genuinely urgent and that he or she will not obtain substantial redress in due course should the matter proceed in the normal course.

[10] I have considered the submissions of both the applicants and the first respondent pertaining to the urgency of the matter and am of the view that the matter is sufficiently urgent as to obtain a hearing in terms of Rule 6(12) of the Uniform Rules of Court. The urgency is not measured merely by the passage of time but by whether the delay inherent in the ordinary course would render the relief hollow, ineffective or meaningless. Furthermore, matters pertaining to business rescue proceedings are of themselves urgent. Any delay in compliance with the statutory framework of business rescue proceedings exposes creditors to ongoing risk which includes the dissipation of assets. The Court in the matter of *Koen and Another v Wedgewood Village Golf & Country Estate (Pty) Ltd*[3] held as follows:

"…..It is axiomatic that business proceedings, by their very nature, must be conducted with the maximum possible expedition. In most cases, a failure to expeditiously implement rescue measures when a company is in financial distress will lessen or entirely negate the prospect of effective rescue. Legislative recognition of this axiom is reflected in the tight timelines provided for in terms of the Act for the implementation of business rescue proceedings."

I respectfully align myself with these sentiments. Accordingly, the urgency of the matter has been established by the applicant.

Allegations of Incompetent Relief

[11] Chapter 6 of the Act establishes a comprehensive statutory regime for the supervision and rehabilitation of distressed companies with the prime objective being that of preserving value and

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[1] 1977 (4) SA 135 (W)
[2] [2011] ZAGPJHC 163 (23 September 2011)
[3] 2012 (2) SA 378 (WCC) at para 10

maximising returns for creditors. In terms of Section 140(1) of the Act, the business practitioner assumes full management control of the company in substitution of the board and pre-existing management. The practitioner is entrusted with wide-ranging statutory duties including the investigation of the company's affairs, business, property and financial position. He is also concerned in the management of the company's ongoing operations.

[12] Section 142 of the Act requires the directors of the company to cooperate with and assist the business rescue practitioner. The directors are obliged to deliver to the practitioner as soon as practicably possible after business rescue proceedings commence, all the books and records of the company that are in their possession or control and to provide a statement of affairs.

[13] The applicant contends that the first respondent has failed to comply with these obligations despite requests and a formal demand. He further contends that this section should not be read in isolation as the obligation is reinforced by Section 137(3) which reads as follows:

"During a company's business rescue proceedings, each director of the company must attend to the requests of the practitioner at all times, and provide the practitioner with any information about the company's affairs as may reasonably be required."

[14] The first respondent is of the view that the Act does not support the application before this court. He contends that Section 141 required the first applicant, as soon as practicable after appointment, to investigate the company's affairs, property and financial situation. He also contends that Section 142 requires the early delivery of the documentation. Accordingly, the practitioner must obtain such documents promptly at the commencement of the proceedings. He cannot be requesting such documents nearly two years later. The urgent application to obtain a comprehensive asset list, serial numbers, sweeping reconciliations and broad explanations of matters that fell within his own domain of investigation, control and supervisions should have been done at the outset of the rescue. The applicant cannot now seek to cure his non-compliance with an urgent application.

[15] I agree with the first applicant that the Act contemplates an ongoing process of oversight, investigation and intervention. Such process requires continuous access to the company documents and financial information. Consideration of Sections 140 and 141 indicate ongoing and investigative

processes. The approach in the interpretation of the sections accords with a purposive approach to interpretation as approved in the case of *Natal Joint Municipal Pension Fund v Endumeni Municipality*[4]. I am of the view that Section 142 does not impose a once-off obligation to obtain documentation at the outset of the rescue especially when read with Section 137(3) of the Act. The approach of the first respondent that the obligation is once-off is untenable. It would enable a director to discharge his obligations immediately he has handed over what documents he believes should be furnished to the practitioner, which could possibly only be a partial delivery of records. It would render a practitioner's statutory powers hollow and undermine the very process of business rescue.

[16] Furthermore, the first respondent contends that the relief sought by the applicant is incompetent and in parts unenforceable as it is not confined to specifically defined documents. It is framed to include "all books, records and statements". Furthermore, the prayers are vague in that it does not specify what is intended by "a full report on all dealings with debtors and creditors" and "all diverted stock".

[17] The applicant contends that the first respondent had been entrusted with day-to-day management responsibilities of running the company and was under a heightened duty to act transparently and provide the practitioner with all such information as would be required to discharge his duties as a business rescue practitioner. Such conduct is in breach of his duties in terms of Section 137(3) as stated above.

[18] I agree with the applicant in this matter. The first respondent has a responsibility to furnish to the practitioner all such documents as are required to enable him to discharge his statutory duties. The first respondent has been retained in the position of managing the company. Accordingly, he is best placed to furnish the documents as are required for the practitioner to discharge his duties in terms of the Act. I am satisfied that judicial intervention is necessary and justified in these circumstances. The relief sought is not incompetent.

[4] 2012 (4) SA 593 (SCA) at para 18

Dispute of Facts

[19] In opposition to the application, the first respondent further contends that the application from inception was bound to generate serious disputes of fact such as accusations of diverted stock, concealment of assets, irregular cash handling, parallel trading, collusive dealings, unauthorised dispatches and hidden funds. The first respondent is of the view that these disputes go to the heart of the application. In these circumstances, final relief cannot be granted on the papers. At the very least, the Plascon-Evans rule applies.

[20] The first applicant is of the view that the first respondent makes this assertion to avoid the relief sought in the application and render this application unsuitable for motion proceedings.

[21] It is trite that where there are no real and genuine or *bona fide* disputes of fact, there is no basis to subject the parties to the delay and expense of a trial. The issue to be determined in such circumstances is whether a real of fact arises on the papers. The SCA in the matter of *Wightman t/a JW Construction v Headfour (Pty) Limited and Another*[5] held that a party who seeks to raise a dispute of fact must seriously and unambiguously engage with the facts said to be disputed. Furthermore, a respondent cannot defeat motion proceedings by resorting to bare or general denials.[6]

[22] At paragraphs 45 to 49 of the founding affidavit, the first applicant contends that about 17 February 2026, at a time that the factory was scheduled to remain closed, Mr Laros observed a white VW Kombi parked at the office premises of the company. On enquiry, he ascertained that it was present for the purposes of collecting good he had not been notified about. No collections nor deliveries had been scheduled. Upon further enquiry with one of the employees, an attempt was made to conceal the documentation pertaining to this collection of goods however, he was able to retrieve the paperwork which had been discarded by this employee. From the documentation, the pro forma invoice which also served as a delivery note to Golden Fashion reflected an amount of R56 920,00 for a collection which comprised of 17 bags of garments. When Mr Laros approached the dispatch manager about the transaction, he approached the employee he had asked about the

[5] 2008 (3) SA 371 (SCA) at para 13
[6] Soffiantini v Mould 1956 (4) SA 150 (E)

transaction and was given inconsistent explanations about same. When he subsequently instructed the driver of the vehicle to return the driver failed to comply.

[23] In response, the first respondent contends that the application was from inception bound to generate disputes of fact on issues such as the alleged diverted stock, being the incident described above. In particular, he denied the contents of the applicant's affidavit pertaining to the Golden Fashion incident described above. He merely denied that the incident establishes theft, diversion of stock or unauthorised despatch of company goods and that no monies were received in respect thereof. He further contends that Mr Laros' intervention disrupted the proposed transaction.

[24] In response, the first respondent fails to provide a cogent explanation. The response is rendered vague and evasive. This response fails to give rise to a *bona fide* dispute of fact. This is not a clear response to the first applicant's allegations and furthermore, does not unambiguously engage with the facts allegedly disputed. This is but one example of the first respondent's failure to engage with facts which he says would create a dispute of facts.

[25] Furthermore, the applicant contends that a pro forma invoice had been generated in the ordinary course in anticipation of a proposed transaction. The first respondent responds that it did not materialise. This does not account for the fact that the goods had been physically handed over and loaded into the VW Kombi and removed from the company's premises. This is also a failure on the part of the first respondent to engage with the material facts therefore rendering it incapable of raising a *bona fide* dispute of facts.

[26] I agree with the applicant that the cumulative effect of the first respondent's responses demonstrates that that no real, genuine or *bona fide* dispute of facts arises. His responses are characterised by bare denials, misdirected explanations and a failure to address many material facts as contained in the founding affidavit of the applicant. These are not genuine disputes and fall short of the standard required to raise a *bona fide* dispute of fact. This defence is rejected outright.

Hearsay Evidence

[27] The first respondent further contends that portions of the applicant's evidence constitute inadmissible hearsay. The first respondent filed a notice in terms of Rule 6(15) of the Uniform Rules of Court for an order that certain offending portions of the applicant's founding affidavit be struck out, alternatively, disregarded on grounds that they are scandalous, vexatious, irrelevant and/or inadmissible. The first respondent further contends that the impugned matter is prejudicial because it attributes theft, concealment, diversion of stock, parallel trading, tax impropriety and other serious misconduct through unconfirmed statements, second-hand reports and inferential conclusions.

[28] The first applicant contends that to the extent that he relies on the evidence of Mr Laros, such evidence is not hearsay as a confirmatory affidavit of Mr Laros has been signed and forms part of the pleadings in support of the founding affidavit. Furthermore, this court retains the discretion to admit hearsay evidence where it is in the interests of justice to do so.

[29] The regulatory framework pertaining to hearsay evidence and its admissibility is set out in the Laws of Evidence Amendment Act 45 of 1988. However, in urgent proceedings, the court may relax its evidentiary standards. I am satisfied that to the extent that the first applicant relies on the evidence of Mr Laros, the evidence is not hearsay as a confirmatory affidavit has been attached to the pleadings. As such, the evidence is properly before the court. Furthermore, the court may exercise its discretion in terms of Section 3 of the Law of Evidence Amendment Act 45 of 1988 and admit same where the interests of justice so require.[7] I direct that the evidence as may be hearsay be admitted as it is in the interests of justice to do so. Accordingly, the application to strike the evidence or dismiss the application is dismissed.

[30] Accordingly, I am satisfied that the first applicant has established on the evidence before the court that the relief sought should be so granted. Withholding the information required goes to the heart of the company's financial affairs and the integrity of the company's operations. The failure to furnish the information by the first respondent prevents the first applicant from performing and discharging his obligations in terms of the Act.

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[7] Mabale and Others v Verey and Others (UM214.20) [2023] ZANWHC 147 (22 August 2024) at para 44

Order

[31] Accordingly, the following order is granted:

1. The forms and service provided for in the Rules of this Court are dispensed with and the matter is heard as one of urgency in accordance with Rule 6(12) of the uniform Rules of Court.

2. The respondents are directed to deliver to the first applicant within 5 days of this order, all books, records and statements that relate to the affairs of the second applicant, in his control which contain, at a minimum:

   2.1 a full reconciliation of all cash sales;

   2.2 a full report on all stock and the current whereabouts of same;

   2.3 a complete disclosure on any and all business assets unaccounted for;

   2.4 a full report of any and all dealings with debtors and creditors including any overseas creditors and any payments or agreements made with any creditors/debtors without the first applicant's knowledge and consent;

   2.5 a full report on all parallel trading which may have been concluded including all items sold, all income earned from such sales as well as a full reconciliation of all funds held and disbursed in this regard to date; and

   2.6 a comprehensive list of all assets belonging to the second applicant, whether immovable, movable, fixed or otherwise, including the serial numbers of all such equipment.

3. The first respondent shall pay the costs of this application on Scale "B".

[redacted]

SNI MOKOSE J

Judge of the High Court of
South Africa Gauteng
Division, PRETORIA

For the Applicants: Adv L Makhoba

On instructions of: A Mothilal Attorneys Inc

For the First Respondent:	Adv R Raubenheimer
On instructions of:	Goodes & Co Attorneys
Date of hearing:	7 April 2026
Date of judgment:	20 April 2026