IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 2818/2025

In the matter between

STANDARD BANK OF SOUTH AFRICA LIMITED	**FIRST APPLICANT**
SB QUARANTEE COMPANY (RF) (PTY) LTD	**SECOND APPLICANT**
and	
THEWO DEVELOPMENT AND CONSULTING ENGINEERS CC	**RESPONDENT**

Neutral citation: *Standard Bank South Africa and Another v Thewo Development and Consulting Engineering CC* (2818/2025) [2026] ZAFSHC 245 (16 April 2026)

Coram: MHLAMBI ADJP

Heard: 26 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 16 April 2026.

Summary: Companies Act 71 of 2008 – final liquidation order – when will an application placing the company under supervision and commencing business rescue proceedings, suspend liquidation proceedings – service by sheriff – final order granted.

ORDER

Final liquidation order granted

JUDGMENT

Mhlambi ADJP

[1] The applicants applied for the respondent's provisional liquidation on 3 June 2025. The application was opposed, and a provisional order was granted on 16 January 2025, returnable on 19 February 2025. On 19 February 2025, the respondent sought a postponement because its counsel was unavailable due to urgent family business. Second, a business rescue application was issued and served that morning, and it was argued that this suspended the liquidation proceedings.

[2] I ordered that the rule *nisi* be postponed and extended to Thursday, 26 February 2026, for argument, and that the respondent provide proof of proper service of the application for business rescue before 12:00 on Monday, 23 February 2026. A service affidavit by Mr. Yonela Mvana, a practising attorney and director at Mvana and Associates incorporated in Cape Town, was filed, and paras 3 and 4 read as follows:

'3. On 19 February 2026 at 10h43 am I duly attended to the issuing and service of a Notice of Motion, Founding Affidavit and Annexures thereto in respect of an application for Business Rescue of Thewo Development and Consulting Engineers CC on all the Respondents cited undercover of case number 2026- 037927 before this Honorable Court via electronic mail at the below e-mail addresses at litigation7@egc.co.za; admin.@ecg.co.za; HighCourtLitigation@sars.gov.za; and corporatelegalservices@cipc.co.za. I attach hereto, the proof of service via electronic means marked as annexure "A".

4. In this regard, and since personal service or service upon a person older than 16(Sixteen) years of age was not possible, I duly affected service of the Notice of Set Down by delivering same and into a message box at the premises and by way of electronic service as well.'

[3] It appears that the business rescue application was filed, citing the following six

respondents: Thewo Development and Consulting Engineers CC, Standard Bank of South Africa Limited, SBA Guarantee Company (RF) (PTY) Ltd, and the Commissioner for the South African. Revenue Service (SARS), the Companies and Intellectual Property Commission (CIPC), and the First Respondent's Known Affected Persons.

[4] On 26 February 2026, Mr. Mvana appeared on behalf of the respondent and informed the court that the counsel briefed on the matter had left Bloemfontein the previous day because his father had passed away. He sought a postponement, which the applicant opposed and which was denied. As the applicants' counsel presented his argument on the merits, he again applied for a further postponement, stating that he was unprepared and unable to continue with the matter. This secondary application was opposed. After the argument, I denied the application.

[5] After the applicants' counsel had argued their case, Mr. Mvana indicated that he wanted to address the court, given the applicants' address and the granting of the final order. After addressing the court, the applicants' counsel replicated. I then reserved judgment.

[6] The first postponement application was dismissed under the Companies Act 71 of 2008 (the Act) and the Uniform Rules of Court. Section 131 of the Act provides that an applicant who applies to a court at any time for an order placing the company under supervision and commencing business rescue proceedings must serve a copy of the application on the company and the Commission and notify each affected person of the application in the prescribed manner.

[7] If liquidation proceedings have already been commenced by or against the company when an application is made for an order placing the company under supervision and commencing business rescue proceedings, the application will suspend those liquidation proceedings until the court adjudicates the application or the business rescue proceedings end, if the court makes the order applied for.

[8] Uniform Rule 4(1)*(a)* provides that service of any process of the court directed to the sheriff, and, subject to the provisions of paragraph (*a*A), any document initiating application proceedings, shall be effected by the sheriff in a specified manner. In

Lutchman No and Others v African Global Holdings and Others,[1] it was held that, on proper interpretation, such an application would be made only when it was issued and served on the company and the Companies and Intellectual Property Commission, and all reasonable steps had been taken to identify affected persons, obtain their addresses, and notify them of it.[2] The business rescue application had not been made, as only one of four liquidators had been served with it and only part of its employees had been notified, with no indication that reasonable steps had been taken to identify and notify the remainder.

[9] The court stated the following:

'[40] On a proper conspectus of the papers, it cannot be said that there has even now been compliance, or even substantial compliance, with the service and notification prescripts of s 131(2) of the Companies Act and the Regulations. First, the business rescue application ought to have been served by the sheriff on each joint liquidator of each of the six Bosasa companies in the manner provided for in rule 4(1)(a) of the Uniform Rules of Court. It is a substantive form 2(a) application, and not an ancillary or interlocutory application, which, in terms of rule 4(1)(*a*A), may be served upon an attorney representing a party in proceedings already instituted. In general, rule 4(1)(*a*A) applies to proceedings already instituted so that it in effect applies to ancillary and interlocutory applications . . .'

[10] The respondent only served the applicants' attorneys, SARS, CIPC, and the respondent's director by email. He failed to serve the applicants, the first respondent, and the first respondent's known affected persons, and the second, third, and sixth respondents in the business rescue application in the prescribed manner. The business rescue application was therefore not made within the meaning of s 131(6) of the Companies Act, and the suspension of the liquidation proceedings was not triggered in terms of that section.[3] The application for the postponement was dismissed on this basis.

[11] Mr. Mvana again sought a postponement and informed the court that his counsel was in Bloemfontein but had left the day before because his father had died. He was therefore unprepared to proceed with the liquidation application and requested a postponement. The applicant opposed the request, stating that since the rule *nisi* was

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[1] *Lutchman No and Others v African Global Holdings and Others* [2022] ZASCA 66; 2022 (4) SA 529 (SCA).
[2] Ibid paras 24, 28 and 31.
[3] Ibid para 42.

granted, the respondent had failed to file an affidavit explaining why a final order should not be granted. No heads of argument were submitted. The court denied the request for a postponement.

[12] The applicant argued that the liquidation application was not fairly opposed because the respondent did not dispute its indebtedness to the applicant. The respondent conceded that the debt was not disputed but argued that business rescue, even though the application was not before the court, would benefit not only the applicants but also the creditors, as a whole.

[13] A company deemed to be unable to pay its debts may be wound up solely on this ground.[4] The best proof of solvency is that a man should pay his debts.[5] In the present matter, it is undisputed that the respondent is unable to pay his debts, and there is no reason why a final order should not be granted.

Order

[14] Consequently, I grant the following order:

A final order of liquidation is granted,

[redacted]

J J MHLAMBI

JUDGE OF THE HIGH COURT

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[4] *Scania Finance Southern Africa (Pty) Ltd v Thomi-Gee Road Carriers CC and Another* [2012] ZAFSHC 148; 2013 (2) SA 439 (FB) para 14.

[5] *De Waard v Andrew & Thienhaus Ltd* 1907 TS 727 at 733.

Appearances

For the Appellant:	Adv J Els
Instructed by:	EG Cooper Majiedt Inc
For the Respondent:	Mr Y Mvana
Instructed by:	Mvana & Associates Inc