THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case 2026/083440

(1) REPORTABLE: Yes☐/ No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

[redacted]

Date: 02 May 2026

In the matter between:

THANDAZILE DLAMINI	Applicant
and	
EWERHARD BRITS	Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this urgent application, the applicant seeks interdictory relief against the respondent, her co-director in MD Dsign Worx (Pty) Ltd ("MD Dsign"). In the alternative, she seeks relief under section 163 of the Companies Act[1] ("the Act") on the basis that the respondent's conduct is oppressive, unfairly prejudicial to, or unfairly disregards her interests.

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[1] 71 of 2008.

[2] The papers tell a story of a deteriorating business relationship, a dispute over the company's management and financial affairs, and communications from the respondent concerning closure, “short time,” and liquidation. The difficulty is that the applicant has shown sufficient grounds for concern about the tenor and effect of some of the respondent’s conduct, but the relief in the notice of motion is too broad, and the wider section 163 relief in the alternative is not, on these urgent papers, ripe for final determination.

Background

[3] The applicant and the respondent are co-directors of MD Dsign, a manufacturing company. The applicant is the majority shareholder and is responsible for production, while the respondent is involved in sales and administration. The respondent’s wife is the minority shareholder in MD Dsign.

[4] This arrangement arose in 2019, when the applicant brought production expertise and product development knowledge, and the respondent brought his greater experience in the commercial and administrative running of the business. But from around 2021, the applicant alleges that the respondent increasingly took unilateral decisions without her consent and in a manner inconsistent with the company’s memorandum of incorporation. These included the replacement of accountants, the transfer of shares to his wife, and the use of the respondent’s own company, MedDev, to procure work for the company at predetermined prices. All this resulted in a financially dependent relationship in which MedDev advanced loans and the respondent exercised increasing leverage over the company’s affairs. This was described as a “vicious cycle” in which, by then, there was little or no profit in the company. The respondent provided funding through MedDev and then used his financial strength to dictate outcomes and place pressure on her when she resisted his decisions.

[5] This relationship broke down some time ago. There is a pending application in the ordinary course seeking relief on the legality of some of the earlier decisions taken by the respondent (in terms of section 162 of the Act). However, a recent escalation triggered this application.

[6] After the earlier proceedings were instituted, MedDev issued a demand under section 345 of the Act to MD Dsign for payment. The applicant says she demanded proof and a reconciliation of the alleged indebtedness, and that the debt remains disputed. She contends that the respondent thereafter threatened liquidation and applied commercial pressure to force her to accept a buyout.

[7] Particular reliance is placed on communications in April 2026. The founding affidavit records that on 7 April 2026, the respondent demanded that staff be notified of "pending closure" on 24 hours' notice, that staff stop work from 8 April 2026, and that other entities be informed that the company would proceed with voluntary liquidation and would be unable to pay retrenchment packages. The applicant says there had been no special resolution by shareholders to place the company in voluntary liquidation, nor had any lawful liquidation process been commenced. She describes these communications as oppressive and prejudicial, intended to pressure her into selling her shares.

[8] The applicant's replying affidavit attaches a memorandum to staff dated 13 April 2026, headed "Implementation of Short Time", which records that, due to a lack of orders, the company would implement short time with effect from the following day and that full payment could not be sustained in the circumstances. The staff list appended to that memorandum suggests that the communication was, in fact, disseminated within the company. The respondent objects to this evidence in reply and disputes the applicant's broader characterisation of his conduct, but the existence of short-time messaging to staff does not appear to be merely speculative.

[9] The respondent's answer is that the company is in genuine financial distress, that he must be able to communicate that reality, and that the applicant seeks to transform ordinary commercial and governance disagreements into oppressive conduct. He also points out that, on 15 April 2026, through his attorneys, he tendered compliance with prayers 2 to 4 of the notice of motion by undertaking not to communicate false or misleading information, not to coerce the applicant into informing employees that the company is closing, and not to coerce the applicant into selling her shares. During the argument, it was submitted that the prayers sought are too broad,

and it remains unclear how he can, at the same time, object that they are too broad yet give a broad undertaking.

[10] Be that as it may. The principles governing urgent applications are well established. *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*[2] lays emphasis on the "substantial redress in due course" requirement in Rule 6(12).

[11] The respondent is correct that not every complaint raised by the applicant is urgent. Some of the conduct on which the applicant relies dates back to 2021, and litigation is already pending in the ordinary course concerning the company's governance and the respondent's earlier conduct. However, the applicant also relies on April 2026 communications concerning closure, short time and voluntary liquidation, together with the broader context of the section 345 demand and the respondent's proposal that she sell her shares. The undertaking furnished on 15 April 2026 is relevant, but it does not retrospectively extinguish urgency. At most, it bears on what relief remained necessary when the matter was heard. I therefore proceed on the basis that urgency was established in relation to the immediate communications and the threatened prejudice said to arise from them.

[12] The requirements for final interdictory relief are trite: a clear right, an injury actually committed or reasonably apprehended, and the absence of a satisfactory alternative remedy.[3] In motion proceedings seeking final relief, those requirements must be applied consistently with the *Plascon-Evans* rule.

[13] The applicant does not, on the papers before me, establish a basis for a wide-ranging interdict in the terms sought in the notice of motion. The interdict would prohibit the respondent from communicating "any false or misleading information" to employees, clients, suppliers or third parties about the company's operations or future, or about claims that it is undergoing liquidation. As the respondent submitted, relief cast in such broad terms risks operating as a general gag on communications about the company's future. In a company that appears to be in commercial difficulty, a

[2] [2011] ZAGPJHC 196.
[3] *Setlogelo v Setlogelo* 1914 AD 221.

director must remain able to communicate truthfully and in good faith with staff, creditors and other stakeholders about financial distress and available options.

[14] On the other hand, the applicant’s complaint is not merely that the respondent spoke about financial distress. He also communicated closure and voluntary liquidation, presenting them as decisions to be implemented despite the absence of a special resolution to that effect, and despite the debt underlying the section 345 demand remaining in dispute.

[15] In my view, some tailored protection is justified. The applicant has shown a sufficient right, as co-director and majority shareholder, not to have the respondent communicate as an accomplished fact that the company is in liquidation or has resolved to enter voluntary liquidation, when no such formal step has been taken. She has also shown a basis to restrain pressure to compel her to disseminate inaccurate closure messaging or to dispose of her shares under threat.

[16] Any order must therefore be carefully confined so as not to prohibit the respondent from communicating truthfully about the company’s financial position, that a section 345 demand was served, and that short time is being considered. Lawful options such as business rescue, restructuring or liquidation should be permitted to be communicated, provided they are accurate and made in good faith. What it should prohibit is communication that, as an existing decision or legal fact, represents that the company is under liquidation or has resolved upon voluntary liquidation where that is not so, and coercive conduct directed at forcing the applicant to communicate such a false position or to sell her shares.

[17] I do not wish to venture into the section 163 relief, which was in the alternative, as I do not consider the urgent court the correct forum to decide those matters on the papers before me, especially not when there appears to be a factual dispute. It was also framed in the alternative.

Remedy

[18] The respondent relied heavily on the undertaking. This undertaking is significant because it closely aligns with the immediate prohibitory relief sought by the applicant. The applicant argued that a mere undertaking did not necessarily address her concern, particularly as the dispute had already escalated to formal litigation and the undertaking was issued after urgent proceedings had begun. In the circumstances, the appropriate course is to make the undertaking an order of court, formulated in terms that are sufficiently precise to be enforceable.

Costs

[19] As to costs, the applicant was justified in seeking urgent relief, but the notice of motion was framed too widely, and the respondent's undertaking materially narrowed the live issues for determination. As a result, and given the mixed outcome, fairness is best served by directing that each party bear its own costs.

Order

[20] The following order is made:

1. The forms and service provided for in the Rules are dispensed with, and the matter is heard as one of urgency.
2. The respondent is interdicted from representing to employees, clients, suppliers or other third parties that MD Dsign Worx (Pty) Ltd is under liquidation, in liquidation, or has resolved to proceed with voluntary liquidation, in circumstances where no shareholders' special resolution to that effect has been adopted and no liquidation proceedings have been instituted.
3. The respondent is interdicted from requiring or coercing the applicant to communicate to employees of MD Dsign Worx (Pty) Ltd that the company has closed, will close, or will proceed with liquidation, in circumstances where no lawful decision to that effect has been taken.
4. The respondent is interdicted from threatening closure, liquidation, withdrawal of financial support, or comparable economic pressure for the purpose of compelling the applicant to

dispose of her shares in MD Dsign Worx (Pty) Ltd to the respondent or his nominee.

5. Nothing in this order prevents the respondent, acting in good faith and in his capacity as director, from communicating truthfully about the company's financial position or about lawful options available to the company, including restructuring, business rescue or liquidation, provided he does not misrepresent that liquidation has already been commenced or finally decided upon when that is not so.

6. There is no order as to costs.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division, Johannesburg

Date of hearing:	29 April 2026
Date of judgment:	2 May 2026
For the applicant:	V Sihawu instructed by Mgidlana Attorneys Inc
For the respondent:	N Brodie from SBL Incorporated.