



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2025-223276

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

29 April 2026

Date

K. La M Manamela

In the matter between:

JARED JOUBERT

Applicant

and

J CROUSE N.O.

First Respondent

BIG FOUNTAIN BENEFICIATION (PTY) LTD

Second Respondent

INFINITE RESOURCES GROUP (PTY) LTD

Third Respondent

AFRICAN DAWN PROPERTY TRANSFER

Fourth Respondent

FINANCE 1 (PTY) LTD

XANDER DU PREEZ N.O.

Fifth Respondent

NTSHENGEDZENI ANTHONY

MICHAEL TSHIVHASE N.O.

Sixth Respondent

DATE OF REASONS FOR ORDER GRANTED: These reasons for order granted are issued by the Judge whose name is reflected herein and are submitted electronically to the parties/their legal representatives by email. The reasons are further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the reasons for the order granted is deemed to be **29 April 2026**.

REASONS FOR ORDER GRANTED

Manamela, J

Introduction

[1] The applicant, Mr Jared Joubert ('Mr Joubert'), is the sole director of the second respondent, Big Fountain Beneficiation ('the Company'), a private company in liquidation. The fifth and sixth respondents are the joint provisional liquidators of the Company ('the liquidators'). The liquidators, after their powers were extended by the Master of the High Court, summoned the applicant to an examination or enquiry during October 2025 convened in terms of sections 417 and 418¹ of the Companies Act 61 of 1973 ('the Enquiry'). The first respondent, Mr Johan Anthony Michael Crouse is the appointed commissioner for the Enquiry, as envisaged by the Companies Act 61 of 1973 ('CA 1973'). Mr Crouse ('the Commissioner') presided over the Enquiry when it sat on 7 October 2025. The Enquiry was adjourned to 9 December 2025. The Commissioner's ruling(s) during and after the Enquiry are considered by the applicant to have necessitated these proceedings.

[2] These proceedings were launched by the applicant by way of an urgent application ('Part A') in November 2025, primarily, to halt the Enquiry pending the disposal of the relief sought in terms of Part B of the application. Under Part B, the applicant seeks that a ruling by the Commissioner and his subsequent refusal to recuse himself from the Enquiry be reviewed and set aside, and ultimately that the Commissioner be removed from office. It is the applicant's case that the Commissioner has displayed bias against him in terms of the ruling(s) he made. The secondary relief sought under Part A was for the deferment of the proceedings at the Enquiry, pending the disposal of the action proceedings under case number: 2025-203781 in this Court. In the action declaratory orders are sought to do with the loan given to the Company by the third respondent, Infinite Resources Group (Pty) Ltd ('IRG'), and the associated cession of rights of the Company to IRG, as well as IRG's shareholding in the Company. At the hearing

¹ Par [36] below for a reading of section 417 of the Companies Act 61 of 1973.

counsel for the applicant indicated that his client was no longer pursuing the latter relief, but I will still deal with the relief sought by the applicant in its entirety.

[3] The Commissioner filed a notice to abide the outcome, but furnished a report to the Court, and made submissions through own counsel at the hearing. The Company, the liquidators and IRG opposed the urgent application. The fourth respondent, African Dawn Property Transfer 1 (Pty) Ltd ('African Dawn') did not take part in the proceedings. African Dawn holds 49% of the shares in the Company. The ownership of the remaining 51% worth of shares is the subject of the litigation involving IRG. The latter claimed to have acquired the shares from Empire Trust as security (by way of cession) for a loan granted to the Company, referred to above. IRG's disputed shareholding has some relevance to the ruling(s) by the Commissioner at the Enquiry. I will return to this below.

[4] The opposed motion came before me in the urgent court on 5 December 2025. At that hearing Mr Dirk Vetten appeared for the applicant; Mr DM Leathern SC for the Commissioner; Mr D van den Bogert SC with Mr J Steyn for the Company and the liquidators, and Mr AJ Daniels SC with Ms C de Villiers-Golding for IRG. I extemporaneously granted an order dismissing the application with punitive costs ('the Order').² I undertook to later furnish the reasons for the Order ('these Reasons'). I am grateful to counsel for both oral and written submissions.

Background facts

[5] This matter has a rich history. But – in the narration of the relevant facts in the background – I will be brief. The narration is done on the basis of the common cause facts or, otherwise, I will indicate what is disputed.

² Par [67] below for the full terms of the Order granted.

[6] The applicant was appointed as the director of the Company on 26 February 2024. He replaced a certain Mr Brendon Fraser who had occupied that position from 30 November 2021. The applicant is elsewhere referred to as the chief executive officer or CEO of the Company.

[7] The Company was placed in provisional liquidation on 5 November 2024 and, on 20 November 2024, the liquidators were provisionally appointed. The Company was placed in final liquidation on 14 April 2025.

[8] The Enquiry into the affairs of the Company presided over by the Commissioner commenced in July 2025. Mr Brendon Fraser, the former director of the Company, was examined during that sitting of the Enquiry. The applicant could not be examined as his then legal representative had picked up a conflict of interest after representing another witness at the Enquiry. The Enquiry was adjourned, among others, for the applicant's testimony.

[9] The applicant appeared again at the Enquiry on 7 October 2025. He sought postponement of the Enquiry on the basis that there was an application for business rescue of the Company being considered or pending. But the latter application had not been issued or served at that stage. The request for postponement was opposed by IRG and the liquidators. The Commissioner extemporaneously ruled against the postponement, but ultimately adjourned the proceedings to 9 December 2025. This was to allow the applicant an opportunity to launch urgent proceedings to review the ruling by the Commissioner. In terms of the agreed timeframes the review was to have been heard in the urgent court on 18 November 2025.

[10] The business rescue application was issued in the Johannesburg seat of this Division on 8 October 2025. The first and second applicants therein are the two trustees of the Empire Trust and the third applicant is Mr Jared Joubert, evidently, the applicant in this application before this Court.

[11] On 10 October 2025, the Commissioner gave a written comprehensive ruling regarding his refusal of postponement of the Enquiry. This, it is explained, was to supplement his earlier extemporaneous ruling made at the Enquiry. I, conveniently, refer to both as ‘the Postponement Ruling’.

[12] On 11 November 2025, the applicant - through his attorneys - directed a letter to the Commissioner asking him to recuse himself. The applicant sought the Commissioner’s recusal from the Enquiry on the basis that the Commissioner was biased against him. The Commissioner refused to recuse himself from the Enquiry (‘the Recusal Ruling’). This application ensued on 19 November 2025.

[13] The application was enrolled for hearing on 2 December 2025, but was stood down to 5 December 2025 to allow the exchange of further papers. The Order³ was extemporaneously made on the latter date and the Court undertook to furnish these Reasons.

Applicant’s case (including submissions)

[14] The applicant’s case is summarised from what is stated in the affidavits before the Court and the submissions by Mr Dirk Vetten, who appeared as the applicant’s counsel at the hearing.

[15] This application, as indicated above, was launched following the Postponement Ruling. The Commissioner had, despite his ruling against postponement, briefly postponed the Enquiry to 9 December 2025. This was specifically to allow the applicant to review the Postponement Ruling. A further ruling by the Commissioner ensued - during the intermission - when he refused to recuse himself (i.e. the Recusal Ruling). The latter ruling also forms part of the applicant’s case. Actually, it is a critical part of the applicant’s case.

³ *Ibid.*

[16] The applicant, instead of a basic review of the Postponement Ruling, decided to bring this application to interdict the Enquiry pending a review of the Commissioner's rulings and finalisation of the action proceedings to set aside IRG's cession and loan agreements, as well as disputes involving IRG's shareholding in the Company.

[17] In respect of the Recusal Ruling, the following statements by the Commissioner were said to be indicative of bias against the applicant:

The security was perfected on or about 12 December 2024. Nothing has been done since then by any party to set aside the order of the perfection of the security. The order perfecting the security was not set aside, appealed, reviewed or in any other manner dealt with. No explanation was provided why since December 2024 until October 2025 nothing has been done in this regard.⁴

[18] By the time this matter was heard it was already common cause that no order of perfection of security existed and that the Commissioner had misconstrued the submissions or statements at the Enquiry. Mr Richter, acting for IRG, had told the Enquiry that his client has taken cession of the shares which Empire Trust held in the Company and that on or about 12 December 2024 the cession was perfected. The Commissioner incorrectly assumed in the Postponement Ruling the existence of the so-called perfection of the cession held by IRG in respect of the loan to the Company to involve a court order. IRG's material rights as shareholder were not determined by way of a court order. The applicant considers the reference to the non-existent perfection order by the Commissioner to be indicative of bias against him. This is the paramount reason for requesting the Commissioner to resign, a request the Commissioner rebuffed in terms of the Recusal Ruling.

[19] The applicant, directly and indirectly, is interested in the voiding of the loan and cession instruments relevant to IRG's shareholding in the Company or part thereof from the alleged

⁴ Founding affidavit ('FA') annexure 'FA10' ('Commissioner's Ruling') par 42, CL 002-134.

51% of the shares in the Company. He is part of the business rescue application (as the third applicant) issued in the Johannesburg seat of this Division. The other litigation is in the form of an action (aimed at setting aside the cession and loan agreements) issued in this seat of the Division. But the applicant is not a cited party in the action, although he had sought to subject the relief in Part A of this matter to finalisation of the action.

[20] Of particular importance - for current purposes - is that according to the applicant the Postponement Ruling and the Commissioner's incorrect reference to a perfection court order displayed clear bias on the part of the Commissioner against him. The applicant criticised the Commissioner for having accepted the word of Mr Richter that there was perfection court order without interrogation or inquiring further into the issue. This amounted to unjustifiably affording IRG a preferred position or privileged status. It was also submitted that the Commissioner displayed his bias against the applicant in other respects, including through his interpretation and application of legal authority for purposes of the Postponement Ruling. The Commissioner was said to have also - in decision-making - displayed hostility towards the applicant. These were good grounds for his recusal from the Enquiry on the basis of actual bias or a reasonable apprehension of bias, but he refused to do so, it is contended on behalf of the applicant. The applicant said that he urgently required the protection of an interim interdict (i.e. Part A) prior to subjecting the Commissioner's rulings to review in due course. He had prospects of success in Part B of the application and, for purposes of Part A, had met the requirements for an interdict, the submission went.

[21] Regarding urgency it was, among others, submitted on behalf of the applicant that the applicant approached the Court immediately after 14 November 2025 when the Recusal Ruling was made. And once it is accepted that the Commissioner is biased against the applicant, then the applicant could not be expected to appear before the Commissioner at the Enquiry on 9

December 2025. The applicant could not obtain substantial redress in due course. Therefore, there was no merit in the complaints about delay and all parties had filed substantial affidavits.

Second, fifth and sixth respondents' case (including submissions)

[22] The case put forward for the Company and the liquidators, as second, fifth and sixth respondents, respectively, included substantially what appears next. This included submissions made by Mr D van den Bogert SC, as counsel for these respondents. I will – henceforth, conveniently – refer to the Company and the liquidators, as ‘the liquidators’, unless the context dictates otherwise.

[23] The liquidators viewed the case on the merits to have hinged on two distinct allegations. First, that the Commissioner was said to have made a reviewable error by refusing postponement as sought by the applicant on the ground of the still to be issued application to place the Company in business rescue. The liquidators considered the applicant to have jettisoned – in his heads of argument – this principal ground of attack of the Commissioner’s rulings. The liquidators considered the ground to have lacked merit, in any way, based on the authorities.⁵ In their view a notion that a business rescue application suspends an insolvency enquiry is bad point in law. The second allegation was that the Commissioner is biased due to his incorrect reference in the Postponement Ruling to IRG’s cession being perfected in terms of a court order and, further, for having stated that nothing had been done by any of the parties to set aside the court order perfecting the security. I have already, conveniently, tagged the two rulings: the Postponement Ruling and the Recusal Ruling. I will henceforth, once more for convenience, refer to both as the ‘Commissioner’s Rulings’.

⁵ *GCC Engineering (Pty) Ltd and Others v Maroos and Others* 2019 (2) SA 379 (SCA); *Van Staden NO and Others v Pro-Wiz Group (Pty) Ltd* 2019 (4) SA 532 (SCA); *Liebenberg and Another v Tariomix (Pty) Ltd t/a Forever Diamonds and Gold (In Liquidation) and Others* (2167/2024) [2024] ZANWHC 166 (5 June 2024).

[24] The liquidators, as a point of departure, doubted the applicant's capacity or *locus standi* to seek relief. They criticised the applicant for seeking to halt the Enquiry in its entirety and not just seeking to interdict the rendition of his testimony or examination. This would have brought the whole edifice down and prevented the testimony or examination of every other witness, it was pointed out. Also, it was pointed out that the applicant is only a director of the Company and not a shareholder.

[25] Regarding the applicant's claim that the Commissioner's Rulings and his conduct constituted bias, submissions by counsel for the liquidators included the following. The claim of bias is an afterthought; progressively blown out of proportion and progressively crafted, with allegations being desperately added along the way. The applicant's case is restricted to the terms of the relief sought in terms of Part B of the notice of motion, which is the review and setting aside of the Recusal Ruling. Also, as the recusal was sought by way of a letter there was no formal application. The step taken was procedurally flawed and fell short of a recusal application. This approach precluded the other bearers-of-interest in the Enquiry, such as the liquidators and creditors, from taking part. But counsel for the applicant pointed out that the letter was directed not only to the Commissioner, although he was the only one who reverted. In the end, the so-called recusal application was one-sided, the contention for the liquidators concluded. No primary facts to support the existence of the alleged bias were placed before the Court. And the liquidators associated fully with the Commissioner's Recusal Ruling. They find credence and merit in his explanation that he had accepted the verbal confirmation of perfected security at the Enquiry and that should this be proven false or mistaken it does not detract from the fact that the postponement of the Enquiry was never sought on the basis of existence of perfected security, but the business rescue application. I am still to deal briefly with the Commissioner's input below.

[26] Overall, the liquidators disputed that the application for recusal met the legal test or requirements as set out in legal authorities. And that there was a basis for the interdict sought by the applicant. Consequently, the liquidators sought the dismissal of the application with punitive costs as, in their view, it amounted to an abuse of process.

Third respondent's (i.e. IRG's) case (including submissions)

[27] IRG, as already stated, is the lender of funds to the Company and have sought to secure repayment through a cession over part of the Company's shares. According to the applicant IRG does not hold 51% shares in the Company, but only 19%. This is said to be the dispute in the action, referred to above.

[28] IRG's opposition of the application, including submissions on its behalf by Mr AJ Daniels SC, was as follows. I will avoid part of IRG's submissions in duplication of what has already been stated in respect of the other respondents above. Regarding the fear of self-incrimination or the applicant's alleged concern that his testimony at the Enquiry could be detrimentally used against him in future proceedings, it was pointed out that section 417(2)(c)⁶ expressly excludes the use of incriminating evidence adduced at an enquiry from subsequent criminal proceedings, save in very limited circumstances. IRG, also, contended that the applicant failed to join as parties to the application all bearers of a direct and substantial interest in the relief sought, including the creditors of the Company. The application ought to be struck from the roll for want of urgency or be dismissed with punitive costs for want of merit.

First respondent's case (i.e. Commissioner's) (including submissions)

[29] The Commissioner, as already indicated, served and filed a notice to abide the outcome, accompanied by a report. But, subsequently, the Commissioner employed Mr DM Leathern SC, as counsel to attend Court. This was said to have been for making submissions, if required,

⁶ Par [36] below, for a reading of section 417(2)(c) of the CA 1973.

and to address anything (which may impute the Commissioner's reputation and professional standing, generally, as an attorney and officer of the Court and, specifically, as a presiding officer or a commissioner at the Enquiry) that may arise during the hearing from submissions by counsel for the other parties. Some of the assertions by the Commissioner or submissions on his behalf are reflected below.

[30] The Commissioner denied that he was biased against the applicant. His conduct had always remained within the confines of the law, he asserted. Reference by him to security held by a creditor as being 'perfected', as done at the Enquiry in respect of IRG's cession of the shares securing the loan account, ordinarily implies obtainment of a court order. Such perfection would not avail a creditor outside of a judicial tribunal as it would constitute an impermissible self-help. The perfection of the cession of shares and loan account, it was submitted, was understood by those attending the Enquiry to refer to the *locus standi* of IRG's attorney, Mr Richter, when he appeared at the Enquiry. But, nothing turned on the issue as he also held a mandate from African Dawn, a 49% shareholder in the Company. And the Commissioner was not required to make a determination in this regard. What the Commissioner was called upon to determine was the applicant's postponement application brought on the basis of the impending launch of the business rescue application. This, according to the applicant, suspended the liquidation proceedings in terms of section 131(6) of the CA 1973. The Postponement Ruling was not on the basis of perfection of the security and the Commissioner's remarks on the issue are incapable of manifesting bias on his part.

[31] Overall, counsel for the Commissioner reiterated his client's position that he abided the decision of this Court and that the submissions made were directed towards correction of the allegations made against the Commissioner and assisting the Court.

Issues determined

[32] The preliminary issue that was to be decided was urgency, tied to the fact that the applicant would not obtain substantial redress in due course. I decided that the matter was urgent. I will briefly state the premise for this ruling below. The other issues which arose for determination were the following: (a) interim interdict; (b) the Commissioner's alleged bias against the applicant; (c) the deferment of the proceedings at the Enquiry, pending the disposal of the action proceedings; (d) the Postponement Ruling; (e) the Recusal Ruling; (f) the applicant's capacity or *locus standi* regarding the nature and extent of the relief sought, and (g) punitive costs.

[33] Obviously, the main issue to be determined was whether the Commissioner is biased against the applicant or whether the Enquiry ought to have been postponed due to, primarily, existence of this bias. A determination of this issue is a composite enquiry. It involved a number of ancillary or secondary issues, some of them already identified above as issues requiring determination. Further issues may arise during the determination. And some of these issues would require that they be discussed jointly, due to their substantial interlinkages. I will turn to the issues, after stating some of the legal principles applicable to the issues.

Applicable legal principles

General

[34] The primary legal principles applicable to the issues in this matter are those relating to bias alleged on the part of presiding officers or, if capable of such nuances, bias on the part of a presiding officer in an insolvency enquiry in terms of the CA 1973, as in this matter.

[35] The legal principles applicable to the granting or refusal of interdicts are also of equal prominence. But they are trite and would not be dealt with under this part. And, there are other legal principles, such as those relating to enquiries and business rescue, perched at the

secondary tier of applicability. I discuss – in no particular order of significance – the most pertinent of these legal principles for current purposes, next.

Enquiries in terms of sections 417 and 418 of the CA 1973

[36] Section 417 of the CA 1973 concerns the summoning and examining of persons regarding the affairs of companies being wound up. It reads as follows in the material part:

(1) In any winding-up of a company unable to pay its debts, the Master or the Court may, at any time after a winding-up order has been made, summon before him or it any director or officer of the company ..., or any person whom the Master or the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(1A) Any person summoned under subsection (1) may be represented at his attendance before the Master or the Court by an attorney with or without counsel.

(2)(a) The Master or the Court may examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection ...

(b) Any such person may be required to answer any question put to him or her at the examination, notwithstanding that the answer might tend to incriminate him or her and shall, if he or she does so refuse on that ground, be obliged to so answer at the instance of the Master or the Court ...

(c) Any incriminating answer or information directly obtained, or incriminating evidence directly derived from, an examination in terms of this section shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he or she is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to-

(i) the administering or taking of an oath or the administering or making of an affirmation;

(ii) the giving of false evidence;

(iii) the making of a false statement; or

(iv) a failure to answer lawful questions fully and satisfactorily...

[37] Section 418(1) of the CA 1973 provides for examination by commissioners, as follows in the material part:

(1)(a) Every magistrate and every other person appointed for the purpose by the Master or the Court shall be a commissioner for the purpose of taking evidence or holding any enquiry under this Act in connection with the winding-up of any company.

(b) ...

(c) The Master, if he has not himself been appointed under paragraph (a), the liquidator or any creditor, member or contributory of the company may be represented at such an examination or enquiry by an attorney, with or without counsel, who shall be entitled to interrogate any witness ...

(d) The provisions of section 417 (1A), (2) (b) and (5) shall apply *mutatis mutandis* in respect of such an examination or enquiry.

[38] The role of a commissioner appointed in terms of section 418 of the CA 1973 is said to be *quasi-judicial* in nature. Such commissioner's functions, though, are inquisitorial, investigative and adjudicative and may constitute an administrative action. The nature of a commissioner's functions dictates that she/he conducts her/himself within the rules of natural justice enjoining her/him to observe impartiality and procedural fairness to all persons her/his conduct is likely to adversely affect or prejudice.⁷

[39] In *Bernstein and Others v Bester and Others NNO*⁸ the Constitutional Court made the following observations, among others, about an enquiry in terms of sections 417 and 418 of the CA 1973:

The enquiry in question is an integral part of the liquidation process pursuant to a Court order and in particular that part of the process aimed at ascertaining and realising assets of the company. Creditors have an interest in their claims being paid and the enquiry can thus, at least in part, be seen as part of this execution process.⁹

Bias: meaning and test thereof

[40] Moving on to the concept or element of bias. The word 'bias' is defined in the dictionary as 'the action of supporting or opposing a particular person or thing in an unfair way, because of allowing personal opinions to influence your judgment...'¹⁰ Other dictionary meanings previously used by the court include that bias is '(a)n inclination, leaning, tendency, bent; a preponderating disposition or propensity; predisposition *towards*; predilection; prejudice'.¹¹ But earlier in *Greenfield Manufacturers (Temba) (Pty) Ltd V Royton Electrical Engineering*

⁷ *Schulte v Van der Berg and Others NNO* 1991 (3) SA 717 (C) at 720I-721A, cited in *ABSA Bank Ltd v Hoberman and Others NNO* 1998 (2) SA 781 (C) at 796F-G.

⁸ *Bernstein and Others v Bester and Others NNO* 1996 (2) SA 751 (CC).

⁹ *Bernstein and Others v Bester and Others NNO* 1996 (2) SA 751 (CC) [97].

¹⁰ <https://dictionary.cambridge.org/dictionary/english/bias> accessed on 23 January 2026.

¹¹ *ABSA Bank Ltd v Hoberman and Others NNO* 1998 (2) SA 781 (C) at 799H.

(Pty) Ltd¹² the Appellate Division, as the then apex court of South Africa described bias as including a civil trial judge's quest to studiously avoid any form of intervention in the proceedings which may create the impression that she/he is descending into the arena in a way that such intervention evidences bias or that prejudgement on the matters to be considered only at the end of the trial.¹³ It was submitted these considerations find application to an enquiry in terms of section 417 of the CA 1973 and, thus, to an insolvency enquiry commissioner.

[41] The test for bias is whether there is a reasonable suspicion of bias and not an apprehension of a real likelihood of bias on the part of the decision maker.¹⁴ An apprehension of bias ought to be held by a reasonable person and be based on facts which are true or correct, otherwise no reasonable apprehension of bias exists or a justifiable basis for a recusal application.¹⁵ The test is objective and the applicant seeking recusal bears the onus in this regard.¹⁶ Therefore, in its full extent, the test may be phrased as: 'whether a reasonable, objective and informed person' in the position of the applicant – relying on true or correct facts - would reasonably apprehend that the presiding officer or judge has (already) or will (in the future) 'not bring an impartial mind to bear on the adjudication of the case' or an open mind capable of persuasion by the evidence before the court and submissions made.¹⁷

[42] The authorities, as cited in *Claassen's Dictionary of Legal Words*, are to the effect that '[e]very person who undertakes to administer justice, whether he is a legal official or is only

¹² *Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd* 1976 (2) SA 565 (A).

¹³ *Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd* 1976 (2) SA 565 (A) at 570E-F.

¹⁴ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 9; 1999 (4) SA 147 (CC); 1999 (7) BCLR 725 (CC) ('SARFU') [36]-[38]. See also *S v Basson* [2005] ZACC 10; 2005 (12) BCLR 1192 (CC); 2007 (3) SA 582 (CC) ('Basson') [29]; *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* [2022] ZACC 5; 2022 (4) SA 1 (CC); 2022 (7) BCLR 850 (CC) ('Masuku') [63], [74].

¹⁵ *SARFU* [45]. See also *South African Commercial Catering and Allied Workers Union and Others v Irvin and Johnson Ltd (Seafoods Division Fish Processing)* [2000] ZACC 10; 2000 (3) SA 705 (CC); 2000 (8) BCLR 886 (CC) ('SACCAWU') [14]-[15]; *Basson* [31]; *Masuku* [63].

¹⁶ *SARFU* [45], [48] and the other authorities cited there. See also *Basson* [30]; *Masuku* [64].

¹⁷ *SARFU* [42]-[43], [45]. See further *SACCAWU* [11], [13]; *Masuku* [63].

for the occasion engaged in the work of deciding the rights of other, is disqualified if he has a **bias** which interferes with his impartiality'.¹⁸ This could apply to the Commissioner in this matter, as it does to judges or judicial officers. And the mischief being guarded against here is the lack of impartiality.

[43] A presumption of judicial impartiality exists in respect of judges. This is somewhat applicable to quasi-judicial and administrative proceedings concerning the recusal of non-judges. This is borne by the following holdings from the Constitutional Court in *Masuku*, relying on its earlier decision in *SARFU*:

A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals. This applies, of course, to both criminal and civil cases as well as to quasi-judicial and administrative proceedings. Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes.¹⁹

[44] It is submitted on behalf of the respondents that the same test for recusal is applicable to both judges and non-judges in the form of quasi-judicial and administrative proceedings. And that the point of departure is that a commissioner is presumed unbiased and, thus, that an applicant as the disputer of this prima facie fact is saddled with a duty to dislodge the presumption. Mr Vetten for the applicant submitted that there is no such presumption for quasi-judicial officers, such as commissioners at an insolvency enquiry. They do not take oath of office like judges, he pointed out.

[45] The origin of the right to seek the recusal of a presiding officer or judge is twofold. First, it is derived from the rules of natural justice intended to ensure the omnipresence of fairness in trials of accused persons before courts of law. The Court is at large to order the

¹⁸ *Claassen's Dictionary of Legal Words* (and the authorities relied upon) on 'bias'.

¹⁹ *Masuku* [56], quoting from *SARFU* at [35].

removal of a commissioner where it is established that the commissioner's conduct does not accord with the principles of natural justice enjoining him or her to act in a fair and impartial manner at all times.²⁰ Secondly, section 35(3) of the Constitution provides for all accused persons with 'a right to a fair trial', primarily, in criminal proceedings.²¹

[46] Impartiality or the impartial adjudication of disputes by the courts or other tribunals (be they civil or criminal or even quasi-judicial or administrative in nature) is considered a 'cornerstone of any fair and just legal system'.²² Confidence in such proceedings by the partaking litigants or the general public is likely to be impaired by the presence of actual bias or appearance of bias on the part of those tasked with the adjudication of disputes.²³

[47] The test for recusal, I recap, is premised on a binary of considerations, that: (a) in a recusal the court's point of departure is a presumption that judicial officers are impartial in their adjudication of disputes, and (b) to expect 'absolute neutrality' in the context of the judiciary is an illusion, as judges are human and products of their own life experiences.²⁴ The first leg of the test is constituted by two further values, that: (i) the applicant for recusal bears the onus to rebut the presumption of impartiality on the part of the judges and (ii) to rebut or dislodge the presumption, an applicant ought to place before the court evidence of a 'cogent' or 'convincing' value.²⁵

²⁰ *ABSA Bank Ltd v Hoberman and Others* NNO 1998 (2) SA 781 (C) at 805.

²¹ *SARFU* [28], partly relying on *Council of Review, South African Defence Force, and Others v Mönnig and Others* 1992 (3) SA 482 (A) at 491E F.

²² *SARFU* [35]; *Masuku* [56].

²³ *SARFU* [35].

²⁴ *SARFU* [40]-[42]; *SACCAWU* [13]. See also *Basson* [30]; *Masuku* [67].

²⁵ *SACCAWU* [12]; *Basson* [31]; *Masuku* [56], [60], [63].

[48] Although it was handed down after the Order and, thus, was not relied upon during argument and for these Reasons (in their conception form), the recent decision of the Constitutional Court in *Systems Applications Consultants (Pty) Ltd t/a Securinfo v SAP SE and Another*²⁶ confirms – as good and valid law - the above principles.²⁷

Urgency

[49] As stated above, the applicant's case on urgency for the relief sought under Part A of the application was that the Recusal Ruling made on 14 November 2025 signified the earliest date the applicant could have embarked on his approach to the Court for relief. There was no delay and all parties filed substantial affidavits in the matter and, thus, the matter was capable of disposal on its merits under Part A. Overall, the applicant's view is that he could not have been expected to make a re-appearance at the Enquiry on 9 December 2025 before a biased Commissioner. No substantial redress in due course was available to the applicant under these circumstances.

[50] The respondents denied that the matter was urgent and that the applicant would not obtain substantial redress in due course. Submissions on urgency included the following. Clearly no prejudice of any kind would befall the applicant from his testimony at the Enquiry. His evidence cannot be utilised in any criminal proceedings, as this is proscribed by section 417 of the CA 1973, quoted above.²⁸ The undeniable fact was that the applicant failed – without a valid reason - to use the opportunity granted to him at the Enquiry, as far back as 7 October 2025, to review the impugned rulings by 19 November 2025, as agreed. The applicant was still not ready (as recently at 1 December 2025) to bring this application and even sought the

²⁶ *Systems Applications Consultants (Pty) Ltd t/a Securinfo v SAP SE and Another* (CCT101/24) [2026] ZACC 13 (8 April 2026).

²⁷ *Systems Applications Consultants (Pty) Ltd v SAP SE* (CCT101/24) [2026] ZACC 13, among others, [44], [45], [58]-[60], [68].

²⁸ Section 417 of the CA 1973, quoted in par [36] above.

indulgence from the Court, albeit by way of a letter, to file further papers and for the matter to stand down for a hearing later in the week. This was so, despite the fact that the applicant has waited for six weeks before launching this application and had only provided a few days to his opponents to file their papers in non-compliance with the durable authority for the justified abridgement of time periods prescribed by the rules and departure therefrom.²⁹ Also, the founding papers failed to explicitly set out the circumstances which rendered the matter urgent and the absence of substantial or adequate redress at a hearing in the ordinary course.³⁰ Should there have been urgency, it would have been self-created by the applicant. Therefore, the matter ought to be struck from the roll with punitive costs as it constituted an abuse of the process of this Court.

[51] I found the matter urgent. It also concerned allegations of bias against a presiding officer of the Enquiry, which required disposal before the applicant could re-appear. If the bias indeed existed, its undoing after the applicant's testimony was not without substantial challenges. The matter also appeared reasonably ripe and capable of disposal on the merits, although it had to be stood down to later in the week.

The applicant's locus standi

[52] There was also a challenge – muted as it seemed - of the applicant's capacity or *locus standi* to seek relief amounting to halting the Enquiry in its entirety. This was considered by the respondents to have been an overreach. The applicant ought to have only interdicted the rendition of his testimony at the Enquiry by targeting his subpoena and seeking its suspension,

²⁹ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture Manufacturers* 1977 (4) SA 135 (W) at 137.

³⁰ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2012] ZAGPJHC 196 (23 September 2011) [6]; *Salt and Another v Smith* 1991 (2) SA 186 (NM) 187.

it was argued. And that halting the entire Enquiry would have prevented the examination of all other witness to the detriment of creditors upon whose interests the Enquiry is focussed.

[53] I did not think that the real issue in this regard was the legal standing or *locus standi* of the applicant to approach the Court for the relief. In my view the correct characterisation of the issue was rather the nature and extent of the relief sought. I did not see anything wrong with the applicant's standing to seek the impugned relief, even though I obviously did not grant the relief sought for want of merit, as would appear below.

Are the Commissioner's Rulings and conduct indicative of bias against the applicant?

[54] This part is focussed on the conduct of the Commissioner and his rulings which were alleged to be suggestive of bias against the applicant. Although the application is styled in a form where these would be the subject of the review under Part B, the rulings and conduct were relevant for the disposal of the urgent part (i.e. Part A) of the application.

The Postponement Ruling

[55] The Commissioner declined to postpone the Enquiry to allow an application for business rescue application to be launched. The application, at that stage, was still not yet issued and served. In the applicant's view continuation of the Enquiry was impossible once the business rescue proceedings were under way. The rest of the parties held a contrary view.

[56] As indicated above, the Enquiry was postponed to early December 2025 for the applicant to review – in the meantime - the Postponement Ruling within an agreed period. But the applicant appears to have decided to alter his point of attack in this regard to only that the rulings made by the Commissioner – ostensibly including the Postponement Ruling - were indicative of the latter's bias against him. But those form part of the review under Part B of the application.

[57] For purposes of Part A of the application, I did not view the Postponement Ruling as capable on the part of a reasonable person - based on true or correct facts – of giving rise to an actual bias or reasonable apprehension of bias justifying the recusal of the Commissioner.³¹ I also did not view the issue as justifying, singularly or cumulatively with other issues, the halting of the Enquiry.

The Recusal Ruling

[58] The Recusal Ruling relates to the refusal by the Commissioner to recuse himself upon the request of the applicant, through his attorneys' letter sent on 11 November 2025 after the adjournment of the Enquiry. The applicant held a view that the Commissioner was biased against him. The bias, according to the applicant, was manifested by the Commissioner expressing a view that the cession held by IRG in respect of its indebtedness by the Company had been perfected through a court order. It was common cause by the time this matter was heard that this is incorrect. The Commissioner was said to have also displayed hostility towards the applicant in his decision-making. Despite these good grounds for the recusal the Commissioner refused to do so. The Commissioner could not be trusted to bring an impartial mind to bear on the issues before him at the Enquiry, the applicant opined.

[59] The applicant's contentions were disputed. It was pointed out that the perfection of security issue did not arise for discussion at the Enquiry or for determination by the Commissioner. The issue which arose was whether the business rescue application suspended the Enquiry or not, which led to the Postponement Ruling, dealt with above. The respondents' general view was that there was no valid reason for the Commissioner to recuse himself.

[60] Regarding the applicant's apprehension of bias in future proceedings at the Enquiry, the respondents pointed out that the applicant would be able to react contemporaneously at the

³¹ Par [41] above for the applicable legal principles.

Enquiry to any instances of impartiality by the Commissioner. The applicant enjoyed the benefit of legal representation. And that he would be insulated by section 417 of the CA 1973 from self-incrimination, unless he perjures himself.³² I agreed with the respondents that the applicant's concerns did not support his quest to avoid being examined or providing a testimony at the Enquiry on the affairs of the Company. It is not an insignificant consideration that the applicant was the sole director of the Company and best placed to provide answers regarding its affairs prior to the liquidation.

[61] Therefore, I did not consider the Recusal Ruling when considered from its true or correct facts to justify a reasonable person to have a reasonable apprehension of bias justifying the recusal or removal of the Commissioner. The same view applied to the conduct of the Commissioner which was said to have been hostile and biased against the applicant.

Interdictory relief (a recap)

[62] To recap: the applicant essentially sought that the Commissioner be interdicted from conducting the Enquiry (pending a review of the Postponement Ruling and Recusal Ruling and, possibly, culminating with the removal of the Commissioner from his office or role) and that the proceedings at the Enquiry be deferred (pending the finalisation of the action proceedings for declaratory relief regarding IRG's cession, loan and shareholding in the Company). This was under Part A of the application which came before me on an urgent basis.

[63] Essentially, the interdict was sought on the basis of an alleged bias on the part of the Commissioner. The applicant did not want to appear before the Commissioner as he considered him to be biased against him due the Commissioner's Rulings and hostile conduct. The Commissioner and the Enquiry had to be interdicted whilst a decision on the Commissioner's

³² Par [36] above, on s 417 of the CA 1973. See also *Bernstein and Others v. Bester and Others NNO* 1996 (2) SA 751 (CC), referred to in par [39] above.

removal is sought under Part B of the application. The respondents disputed that there was a basis for the interdict sought. They also viewed the interdict sought - despite its labelling as interim by the applicant - to be final in effect, open-ended and indefinite.

[64] I agreed that there was no basis for the interdictory relief sought, be it interim or final. I refer to the views I expressed above regarding the Commissioner's Rulings and the alleged Commissioner's bias. There was no valid basis upon which the progression of the Enquiry and continued participation of the Commissioner could be interdicted. The Enquiry had been properly convened and for a lawful purpose in furtherance of the interests of, among others, the creditors of the Company.

Conclusion and costs

[65] Based on these Reasons the application was dismissed in terms of the Order. I reflect, for ease of reference, the full terms of the Order below. I granted costs against the applicant in favour of all the participating respondents, save for the Commissioner. The Commissioner had participated in the proceedings against his expressed intention to assist the Court whilst abiding the outcome. This declared approach had not changed, despite counsel being briefed to appear on behalf of the Commissioner.

[66] I granted costs at a punitive scale against the applicant as in my view the application was clear abuse on the part of the applicant. This is confirmed by how the Postponement Ruling, based on a business rescue application still to be issued, morphed into the Recusal Ruling based on assertion of perfected security or cession in favour of IRG on the indebtedness of the Company. There was clearly no basis for the urgent application, and the affected respondents should not be out of pocket through funding their opposition of the meritless application. I agreed with the respondents that the application amounted to an abuse of process of this Court.

Order

[67] For these Reasons, I made the Order in the following terms:

- (1) the application is dismissed, and
- (2) the applicant is liable to pay the costs of the second, third, fifth and sixth respondents on an attorney and client scale.



Khashane La M. Manamela
Judge of the High Court

Date of Hearing : 05 December 2025
Date of Order : 05 December 2025
Date of Reasons : 29 April 2026

Appearances :

For Applicant : Mr Dirk Vetten
Instructed by : Jagga and Associates, Dunkeld West, Johannesburg

For First Respondent : Mr DM Leathern SC
Instructed by : Tintingers Incorporated, Nieuw Muckleneuk, Pretoria

For Second, Fifth and Sixth Respondents : Mr D van den Bogert SC
Instructed by : with Mr J Steyn
Willemse Potgieter & Babinsky Incorporated,
Brooklyn, Pretoria

For Third Respondent : Mr AJ Daniels SC
Instructed by : with Ms C de Villiers-Golding
Richter Attorneys, Rosebank, Johannesburg
c/o Van der Merwe Attorneys, Erasmusrand, Pretoria

Fourth Respondent : No appearance