

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2024-056154

(1)	REPORTABLE: no
(2)	OF INTEREST TO OTHER JUDGES: no
(3)	REVISED: NO
5 May 2026	...
DATE	SIGNATURE

In the matter between:

K2015353134 (SOUTH AFRICA) (PTY) LIMITED

Applicant

And

LOUISA SIBIYA N.O.

First Respondent

ELIZABETH MARGARATE EDWARDS N.O.

Second Respondent

MPONYANA LAZARUS LEDWABA N.O.

Third Respondent

[in their capacities as the duly appointed joint liquidators of
Artio investments (Pty) Ltd (in liquidation)

ARTIO INVESTMENTS (PTY) LTD (IN LIQUIDATION)

Fourth Respondent

JUDGMENT

SMIT AJ

- [1] This matter came before me on the Opposed Motion Roll for the week of 27 October 2025. The application was launched as an urgent application and was heard by Minnaar AJ on 25 June 2025 where it was struck from the roll due to lack of urgency. The matter came before me on the normal Opposed Motion Roll.

Background

- [2] During 2017 the parties concluded a written agreement that contained an arbitration clause. During the ensuing arbitration proceedings the parties agreed to a right of appeal against the award of the arbitrator, and it was agreed that the arbitration would be self-administered, following the AFSA rules. On 19 August 2023 the arbitrator dismissed the applicant's claim with costs. On 29 August 2023 the applicant delivered a notice of appeal.
- [3] The respondents refused to give effect to the appeal and it was the contention of the respondents that the appeal had lapsed and was not procedurally sound. This caused the applicant to approach the Court for relief and on 28 March 2025 the application in this regard was heard by Motha J (*"Motha J judgment"*) that made the following Order:

- "1. *It is declared that the applicant's notice of appeal dated 27 August 2023 against the arbitration award dated 19 August 2023 has not lapsed*
2. *the applicant and the respondents are directed to convene and attend a pre-appeal arbitration meeting to be held within 15 days of the date of this order with a view to reaching an agreement on the number of arbitrators to hear the appeal.*

3. *the costs are to be costs in the appeal."*

[4] The applicant in its notice of motion claimed the following relief:

- "2. the First to the Third Respondent are interdicted and restrained from finalising the Fourth Respondent's liquidation and distribution accounts and submitting same to the Fifth Respondent for approval.*
3. *alternatively to paragraph 2 above, and to the extent that the First to the Third Respondent have finalised the Fourth Respondent's liquidation and distribution accounts and submitted same to the Fifth Respondent for approval, then and in that event the Fifth Respondent is interdicted from approving the Fourth Respondent's liquidation and distribution accounts;*
 4. *the First to Third Respondents be and are interdicted and restrained from taxing the bill of costs and executing upon the costs order that was granted by the Arbitrator, Adv DH Hinrichsen in the arbitration as between the Applicant and the First to Fourth Respondents;*
 5. *paragraphs 1 and 2 of the Court Order that was granted on 28 March 2025 by the Honourable Mr Justice Motha be varied, amplified and supplemented by the following further Orders;*
 - 5.1 *that in the event that the Applicant and the First to the Third Respondents are unable to reach an agreement on the panel and number of Arbitrators to hear the appeal as directed in terms of paragraph 2 of the order granted by the Honourable Mr Justice Motha, then and in that event the Chairman of the Society of Advocates, Pretoria be and is hereby authorised to appoint a 3 retired Judges, alternatively 1 retired Judge to hear the arbitration appeal pursuant to the Applicants notice of appeals dated 27 August 2023;*
 - 5.2 *that in pursuance of paragraph 2 of the order granted by the Honourable Mr Justice Motha, the Arbitration appeal Panel comprising either of 3 retired Judges alternatively 1 retired Judge are authorised to issue directives in regard inter alia the parties' respective obligations, the appeal record, the date for hearing of the appeals, and the conduct and procedure applicable to the arbitration appeal.*
 6. *The Orders contained in paragraph 2 to 4 above shall operate as interim orders with immediate effect, pending the final determination and hearing of the Applicant's appeal ("the appeal") in the pending arbitration appeal pursuant to the Applicant's notice to appeal dated 27 August 2023 as between the Applicant and the First to the Third Respondent.*

7. *The First to Third Respondent are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved on the scale as between attorney and client; including the cost consequent upon the employment of two Counsel;....”*

[5] This was the same notice of motion that was utilised in the urgent application before Minaar AJ. The urgent application was struck from the roll by way of a written judgment. (*“Minnaar AJ judgment”*)

[6] The Motha J judgement has been complied with by the parties as a pre-arbitration hearing had been convened, but the parties could not agree on the Arbitrator/s for the appeal. There is thus no need for variation of the judgment.

[7] I now turn to the interim interdict relief claimed by the applicant. The requirements that must be satisfied by the applicant to have the interim interdict relief granted would be:

- a. Prima facie right;
- b. Well grounded apprehension of irreparable harm;
- c. Balance of convenience favouring the applicant; and
- d. No other satisfactory remedy.

[8] The issue of no other satisfactory remedy has been considered and addressed in the Minnaar AJ judgment:

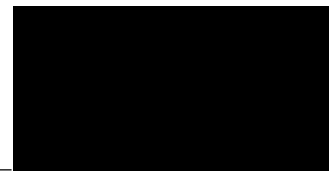
“[13] In terms of section 407 of the Companies Act 61 of 1973 (Old Act), any person having an interest has the right to object to any L&D after it has been submitted for approval. It is for the fifth respondent to consider whether the applicant would have an interest in objecting to the L&D. For the applicant to seek now an order to interdict the L&D process would be premature. Such a right in terms of section 407 would also afford the applicant substantial redress in due course.”

[9] It is clear that the applicant does not have a satisfactory other remedy, therefor I am of the view that the applicant has not proved all the requirements

to obtain the relief of an interim interdict and also this issue had been adjudicated on already in the Minnaar AJ judgment.

[10] The only question that remains before this Court to answer is the question of the panel for the arbitration appeal and I therefor make the following judgment:

1. The parties are ordered to approach the Chairperson of the Pretoria Bar Association to nominate 1 retired Judge to be appointed as the Arbitrator in the appeal dated 23 August 2023;
2. The retired Judge so appointed is hereby authorised to issue directives in regard inter alia the parties respective obligations, the appeal record, the date for hearing of the appeal, and the conduct and procedure applicable to the arbitration appeal.
3. The costs of this application shall be costs in the appeal.



M SMIT

ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION
PRETORIA

Date of hearing: 28 October 2025

Date of judgment: 5 May 2026

For the Applicant	: Adv D Ramdhani SC
	: Adv A Voster
Instructed by	: Asif Latib Attorneys Incorporated
For the Defendant	: Adv M Louw
Instructed by	: Jaco Roos Inc