




**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)**

CASE NUMBER: 053518/2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
<u>2/6/2026</u> DATE	 <u>H.F. FOURIE</u> SIGNATURE

In the application between:

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

APPLICANT

In re:

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

APPLICANT

and

JC POWER TRADING CC
(Registration Number: 2011/069346/23)

FIRST RESPONDENT

ABM COLLEGE SA (PTY) LTD
(Registration Number: 2013/016656/017)

SECOND RESPONDENT

NGWATO ENGINEERING AND MAINTENANCE (PTY) LTD (Registration Number: 2016/144615/07)	THIRD RESPONDENT
ANDERSONBROWN CC (Registration Number: 2011/056965/23)	FOURTH RESPONDENT
ASGARD TRADING CC (Registration Number: 2011/051706/23)	FIFTH RESPONDENT
BRAVOPLEX 115 CC (IN LIQUIDATION) (Registration Number: 2010/109796/23)	SIXTH RESPONDENT
FIREBREAK SAFETY APPLIANCES (PTY) LTD (Registration Number: 2015/119944/07)	SEVENTH RESPONDENT
LIFHO CONSTRUCTION CC (Registration Number: 2008/209086/23)	EIGHTH RESPONDENT
MANGLO INDUSTRIAL AND MINING SUPPLIER (PTY) LTD (Registration Number: 2014/054906/07)	NINTH RESPONDENT
CENTRAL SOURCING GROUP (PTY) LTD (Registration Number: 2015/098396/07)	TENTH RESPONDENT
TRIEAGLE ENERGY (PTY) LTD (Registration Number: 2016/314068/07)	ELEVENTH RESPONDENT
ESOX MANUFACTURING FACTORY (PTY) LTD (Registration Number: 2018/111648/07)	TWELFTH RESPONDENT
ADVANCED PLANT INDUSTRIALISTS (PTY) LTD (Registration Number: 2018/566965/07)	THIRTEENTH RESPONDENT

TAHUTI TRADING 59 (PTY) LTD
(Registration Number: 2013/094084/07)

FOURTEENTH RESPONDENT

**ZZYZX TRADING AND PROJECTS
(PTY) LTD**
(Registration Number: 2013/036013/07)

FIFTEENTH RESPONDENT

ALJ TECH (PTY) LTD
(Registration Number: 2019/003046/07)

SIXTEENTH RESPONDENT

DOUBLE IMPACT PROJECTS (PTY) LTD **SEVENTEENTH RESPONDENT**
(Registration Number: 2016/178187/07)

**IZIMVELO MINING LABOUR AND PLANT
HIRE CC**
(Registration Number: 008/256614/23)

EIGHTEENTH RESPONDENT

KEEWAVE TRADING 334 (PTY) LTD
(Registration Number: 2018/515531/07)

NINETEENTH RESPONDENT

AMIBASE (PTY) LTD
(Registration Number: 2016/047545/07)

TWENTIETH RESPONDENT

**DIBUSEENG BUSINESS ENTERPRISE
(PTY) LTD**
(Registration Number: 2014/067732/07)

TWENTY-FIRST RESPONDENT

**MPHEGOLLE TRADING ENTERPRISE
(PTY) LTD**
(Registration Number: 2015/343501/07)

TWENTY-SECOND RESPONDENT

JUDGMENT

FOURIE AJ

INTRODUCTION:

[1] The Commissioner of the South Revenue Service (SARS) sought and obtained, on 27 March 2026, a provisional Preservation Order, under the auspices of Section 163 of the Tax Administration Act 28 of 2011, against 34 respective Respondents. Amongst those Respondents were the Fourteenth Respondent, Tahuti Trading 59 (Pty) Ltd, who, in the current application, seek to have the provisional Preservation Order discharged. The Fourteenth Respondent, as they are entitled to do under Rule 6(8) of the Uniform Rules of Court, has anticipated the return day of the Preservation Order. The Applicant moves to have the Preservation Order made final against the Fourteenth Respondent.

BACKGROUND:

[2] As the matter deals with certain provisions of the Tax Administration Act, it is relevant for such to be quoted:

“163 (1) A senior SARS Official may, in order to prevent any realisable assets from being disposed of or removed, which must frustrate the collection of the full amount of Tax that is due or payable or the official unreasonable grounds is satisfied may be due and payable, authorise an ex parte application to the High Court for an Order for the preservation of any assets of the Tax payer or other person prohibiting any person, subject to the conditions and

exceptions as may be specified in the Preservation Order, from dealing in any manner with the assets to which the Order relates.”

[3] At the hearing of the matter, the respective parties were in agreement that the jurisdictional requirements needed to be proven in order for the Applicant to succeed in the application were:

[3.1] A tax amount being due or payable, or the official on reasonable grounds, is satisfied, may be due and payable.

[3.2] There are realisable assets, directly or indirectly linked to the Respondents (in this case, the Fourteenth Respondent, from which the Applicant may collect the tax amounts owed or reasonably suspected to be owed.

[3.3] The realisable assets may be disposed of or removed, which may frustrate the collection of the full amount of tax owing by the Respondent in question, in this case, the Fourteenth Respondent; and

[3.4] A Preservation Order is required in order to prevent the realisable assets from being disposed of or removed, which may frustrate the collection of the full amount of tax, whether proven or reasonably expected to exist.

[4] The founding papers filed by the Applicant allege a scheme of interconnected individuals and corporate entities that unlawfully and irregularly extract money from ESKOM via corrupt procurement activities which lead, as the Applicant's papers go, to an estimated total unpaid tax across the Respondents in the amount of R 1 166 055 806.32.

- [5] The Applicant's founding papers at length deal with the respective Respondents and the manner in which they are, according to the Applicant, interlinked and conducting themselves in an unlawful manner.
- [6] The Fourteenth Respondent in their answering papers point out that the Applicant has not averred nor proven any relationship between the Fourteenth Respondent and the other Respondents so mentioned in the application.
- [7] The Fourteenth Respondent argues that the Applicant sketched an incorrect picture pertaining to the Fourteenth Respondent and that the Court, when dealing with the *ex parte* application, was misled into granting the application under the guise that the Fourteenth Respondent was part and parcel of the complained of illegal and irregular activities.
- [8] It is not contested in the papers that the Fourteenth Respondent indeed had some business dealings with ESKOM. The Court is similarly satisfied, and it had not seriously persisted with by the Applicant that the Fourteenth Respondent was not mentioned as an interlinked party to the complained-of scheme.
- [9] As addressed with the respective legal representatives, when the matter was called, the Court believes that nothing turns on this point. The Application is brought by the Commissioner for the South African Revenue Service, not the South African Police Service. The matter at hand concerns the Tax liability of the Fourteenth Respondent and not whether the Fourteenth Respondent contravened any other legislation or conducted themselves in any other illegal or unlawful manner.
- [10] Whilst the Fourteenth Respondent was pulled together in an application by the Applicant, a standalone application against the Fourteenth Respondent would have been equally competent. The fact of the matter is simply that the Court *a quo*, initially, and this Court on the anticipated return date, needs to establish whether the Applicant proved the necessary facts to sustain the relief it seeks

against the Fourteenth Respondent. The jurisdictional requirements only need to be proven against the Fourteenth Respondent, as it is only with the Fourteenth Respondent that this Court is dealing.

[11] The bulk of the Applicant's application does not speak to, nor does it concern the Fourteenth Respondent, and it is only the paragraphs dealing expressly with the Fourteenth Respondent to which the Court will look to establish whether the Applicant has made out a case for the relief they seek.

[12] Whether the strategy of the Applicant has led to unnecessary costs being incurred by the Fourteenth Respondent in the manner in which they had to prepare or present their opposition to the application, is one that does not and should not lead to the dismissal of the application, but might impact on a cost order a Court ultimately makes if the Court is with the Applicant ultimately.

[13] The Applicant says that an audit process was followed in respect of the 2018 – 2024 years. It is premised on the aforesaid that the Applicant alleges discrepancies in respect of Income Tax in the amount of R 57 540 170.17 and in respect of VAT in the amount of R 54 520 117.17 on the part of the Fourteenth Respondent. The potential prejudice suffered by the Applicant is accordingly estimated at an amount of R 24 289 265.22. It is this amount to which any Preservation Order sought by the Applicant ought to be capped as the maximum exposure alleged by the Applicant.

[14] In respect of the under-declaration and the possible shortfall, the Fourteenth Respondent alleges that they are Tax-compliant, and that as such the relief sought by the Applicant is non-suited. The Fourteenth Respondent indicates that a current payment arrangement with the Applicant in respect of Value Added Tax is in place, which was concluded on 15 December 2025, and that the Fourteenth Respondent has not been the subject of any audit, investigation or enquiry, other than a routine notification of audit issued on 5 January 2026, which audit is currently pending.

- [15] Tax compliance is not a status to be claimed by a party at their mere say-so. The Tax liability of a party is calculated based on the evidence presented to SARS by that party. If it later turns out that a party has not declared all relevant and appropriate information to SARS, then it is evident that a party is indeed not Tax-compliant and that a shortfall in the Tax obligations of a party may exist.
- [16] This Court need not decide whether such an under declaration was made with any amount of intent, or by mistake. This Court is not even tasked to finally pronounce on whether such an under declaration exists. The only concern of this Court is whether a reasonable expectation exists that justifies the expectation that a possible under declaration and an underdeclared Tax obligation exists. If the Court is satisfied with this jurisdictional requirement, the remaining requirements may be evaluated.
- [17] In the current matter, the SARS investigation and the preliminary findings satisfy a reasonable apprehension of a Tax amount that might be due and payable.
- [18] The existence of realisable assets directly or indirectly linked to the Fourteenth Respondent is dispensed with by the curator's affidavit filed in respect of the Fourteenth Respondent. Although the curator indicated that his investigation is not yet complete, if the report is read together with the Answering Affidavit and the submissions made during the hearing of the matter, several movable assets of significant value are common cause to exist.
- [19] SARS has further preserved funds in the Fourteenth Respondent's bank accounts at First National Bank and Standard Bank, in the amount of approximately R 800 000.00.

[20] The Court is accordingly satisfied that the jurisdictional requirement in respect of the existence of assets has been satisfied.

[21] In respect of the safeguarding of the assets pending the finalisation of the recovery of any potential Tax liability, the parties are in agreement that **SARS v TRADEX [1]** may be regarded as the leading authority to the point.

“SARS is required to show, I think, that there is a material risk that assets that would otherwise be available as satisfaction of Tax will, in the absence of a preservation order, no longer be available. The fact that the taxpayer bona fide considers that he does not owe the tax would not stand in the way of a preservation order if there is a material risk that realisable assets will not be available when it comes to ordinary execution. In an obvious case is that a company which, believing it owes no tax, proposes to make a distribution to its shareholders.”

[22] The question is simply, as stated by the Court in **COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE v HAMILTON HOLDINGS [2]**:

“The critical question is whether reasonable grounds exist to believe that there is a real risk of assets being dissipated and thereby frustrate the fiscus’s attempt to collect what is due. Given the picture that emerges, would a reasonable observer suspect that the behaviour of the Respondents presented a threat to revenue collection.”

[23] The question of whether reliance on a scheme failing should lead to the ultimate and immediate dismissal of the application was addressed and resolved in the matter of **BUTHELEZI [3]**. Irrespective of the Fourteenth Respondent’s involvement in a scheme, if the case is made by the Applicant and proven to the Court’s satisfaction at this stage that a reasonable apprehension of breaches in respect of Tax obligations by the Fourteenth

Respondent exists and the Court is satisfied that a reasonable apprehension that the Preservation Order is necessary, the Order ought to be confirmed.

[24] There are three further defences attempted by the Fourteenth Respondent that are deserving of evaluation, being:

[24.1] The absence of facts that would justify the preservation of the Fourteenth Respondent's assets;

[24.2] A defective reliance on the alleged personal liability of a non-joined director; and

[24.3] An unlawful disclosure of confidential information relating to the Fourteenth Respondent and its directors.

NON-DISCLOSURE OF MATERIAL FACTS:

[25] An *ex parte* application by its nature requires the utmost good faith on the part of an Applicant. The Court, on the return date or on the anticipated date, has discretion to set aside the Order with costs on any grounds of non-disclosure. It should, however, be noted that the Court has discretion, and is not compelled, even if the non-disclosure was material, to dismiss the application or to set aside the proceedings. **[4]**

[26] Only material facts, and facts which are within the Applicant's knowledge, should be disclosed. **[5]**

[27] The Court is satisfied that the Applicant presented to the Court all the relevant facts necessary for the Court to come to a just conclusion. The Fourteenth Respondent has not proven any material facts to exist which were in the knowledge of the Applicant and which ought to have been advanced to the Court which would have materially impacted the decision the Court initially took. Insofar as the Tax compliance is an element the Fourteenth Respondent

wishes the Court to consider, the existence of a further audit revealing facts after any alleged Tax compliance is sufficient to overcome the averments as made by the Fourteenth Respondent.

SARS RELIANCE ON ALLEGED PERSONAL LIABILITIES OF NON-JOINED DIRECTOR:

[28] In reliance on the point, the Director for the Fourteenth Respondent, Mr Williams seems to rely on the fact that the items seized by the curators are items of a personal nature that belong to him, and which have no bearing on the alleged Tax liability of the Fourteenth Respondent.

[29] The current application is not one suited for the aforesaid argument. Nothing precludes Mr Williams from filing an affidavit with the curator, proving his ownership of the goods in question, after which such goods ought to be immediately released to him. The papers filed by SARS speak solely to a Tax consideration owed by the Fourteenth Respondent, and not its Directors. As such, the Order made, which the Applicant seeks to confirm, is only against the Fourteenth Respondent and not its Directors, and as such, the reliance on this purported defence by the Fourteenth Respondent must fail.

ALLEGED UNLAWFUL DISCLOSURE OF CONFIDENTIAL INFORMATION:

[30] The Fourteenth Respondent states that the Applicant has, by grouping the Fourteenth Respondent together with the other Respondents, publicly associated the Fourteenth Respondent with the other Respondents and the allegations of corruption and irregular procurement when SARS has not made or proven any of the aforesaid averments against the Fourteenth Respondent

[31] The Respondents state that the disclosure caused unwarranted reputational harm and is a ground for the discharge of the Provisional Order.

- [32] The Court is satisfied that any inference that the Fourteenth Respondent forms part of the alleged scheme would be unwarranted as no allegations against the Fourteenth Respondent are made in this regard. In respect of the pooling together of the Fourteenth Respondent with the other Respondents insofar as it relates to Tax non-compliance, the Fourteenth Respondent cannot escape the *prima facie* position in that the association with the other Respondents on this ground cannot be regarded as unwarranted.
- [33] No disclosures were made in respect of the Fourteenth Respondent's Director; the disclosures made, other than Mr Williams being a Director of the Fourteenth Respondent, all relate to the alleged Tax non-compliance of the Fourteenth Respondent.
- [34] The application being brought *ex parte*, the Applicant was necessitated to provide sufficient information under which relief could be granted. If the Applicant was scarce in the information provided, it can be assumed that the Fourteenth Respondent would have taken issue with the fact that not all and sufficient information was provided to the Court in respect of the Fourteenth Respondent. Section 69(2) of the Tax Administration Act, *supra*, allows the Applicant to disclose confidential information in the course of performance of duties. The complained-of actions are not necessarily a direct disclosure of confidential information or sensitive information, but rather an inference the Fourteenth Respondent wishes to avoid being formed in respect of the involvement of the Fourteenth Respondent with the other Respondents.
- [35] The Fourteenth Respondent in their answering papers states that a damages claim in this regard may be forthcoming. The Court is satisfied that no irregularity occurred that ought to lead to the setting aside of the Preservation Order on this ground.

UNDUE HARDSHIP:

- [36] The final string to the Fourteenth Respondent's bow is that the Fourteenth Respondent alleges that less intrusive mechanisms were available to the Applicant than the preservation of the Fourteenth Respondent's assets by way of Section 163.
- [37] The very nature of a Preservation Order is accepted to be inconvenient and intrusive. A Preservation Order is intended to secure an asset or assets and to take away a Respondent's right to deal with that asset as it ordinarily might have wanted to do. The existence of this inconvenience towards a Respondent is not draconian, nor can a Respondent be stated to be deprived of his property arbitrarily. He is simply restrained from dissipating the property until the conclusion of the investigation and the establishment of the final Tax liability.^[6] Any inconvenience or harsh realities in respect of the existence of a Preservation Order is accordingly to be justified by the ultimate goal such preservation seems to achieve.
- [38] It would only be under circumstances where the preservation was being utilised for an improper motive, or where an Applicant is overreaching, that the hardship encountered by a Respondent would be regarded as undue or draconian.
- [39] The Respondents contend that the application overextended what was necessary to achieve the ultimate purpose. The Fourteenth Respondent avers that the preservation of assets was not necessary as there is no reasonable apprehension that any of the assets of the Fourteenth Respondent were to be dissipated.
- [40] All the facts before the Court indicate that the Fourteenth Respondent is of the intention of proceeding with their normal business operations pending the finalisation of the investigation, and in the normal business-as-usual approach, it can reasonably be expected that the Fourteenth Respondent would deal

with its assets as it ordinarily would have. A structured approach to dealing with the Fourteenth Respondent's assets pending the finalisation of the issues at hand is neither disproportionate nor unfair. The relationship between the Fourteenth Respondent and the curator is one that is flexible enough to ensure that the Fourteenth Respondent can proceed with their business operations, and that the Fourteenth Respondent will need to allow the utilisation of certain assets in order to perform the necessary functions to ensure the business operations of the Fourteenth Respondent can proceed.

[41] The Applicant alleges that a presumption can be drawn that a party who has underdeclared their income and has either knowingly or negligently circumvented their Tax obligations could, at least *prima facie*, be expected to dissipate assets pending investigations to secure some sort of benefit for themselves. The court accepts this proposition at the very least as a *prima facie* position in respect of preservation orders

[42] Preservation Orders, such as the current one, are not intended to dispose of the ultimate issues between the parties finally.

[43] This Court is satisfied that, given the large tax implications as reasonably alleged by the Applicant and the facts presented to this Court, the Preservation of the Fourteenth Respondent's assets is justified.

[44] The defences as raised by the Fourteenth Respondent do not rebut the evidence presented by the Applicant in support of the current application.

COSTS:

- [45] The interim Preservation Order was brought *ex parte*, and the Fourteenth Respondent was entitled to anticipate the return date. The Fourteenth Respondent ultimately failed to discharge the interim Preservation Order, and the Applicant succeeded in having the provisional Preservation Order made final.
- [46] The papers filed, as directed at the Fourteenth Respondent, specifically were, however, unnecessarily prolix and necessitated the Fourteenth Respondent to deal with matters and prepare on matters that were unnecessary.
- [47] The Applicant prays for costs of the application on Scale C including the costs of two Counsel. The Court believes that, under the circumstances, neither of the prayers is justified, and normal costs on a party and party scale will have justice be done between the respective parties.

ORDER:

- [48] For all the aforesaid reasons, the following Order is made:
- [48.1] The provisional Preservation Order, dated 17 March 2026, is confirmed and made final against the Fourteenth Respondent.
- [48.2] The Fourteenth Respondent is ordered to pay the costs of the application.



H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Judgment reserved on:
Date of delivery:

19 May 2026
2 June 2026

- [1] SARS v TRADEX (Pty) Ltd and Others 2015 (3) SA 596 (WCC)
- [2] Commissioner for the South African Revenue Services v Hamiltonn Holdings (Pty) Ltd 20211 JDR 0460 (GP)
- [3] Commissioner for the South African Revenue Services v Buthelezi and Others 87 SAT C571 (10 May 2024)
- [4] Schlesinger v Schlesinger 1979 (4) SA 342 (W)
- [5] Commissioner for the South African Revenue Services v Bachir and Others (87306/2014) [2016] ZAGPPHC 251 (22 April 2016)
- [6] Commissioner for the South African Revenue Service v Van der Merwe and Others (13048/13) [2014] SAWCHC 59