REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2024-089311**

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: Yes

05/05/26 [redacted]

DATE SIGNATURE

In the matter between:

MUZIWENI HOLDINGS (PTY) LIMITED Applicant

and

REVA TRADING (PTY) LIMITED Respondent

Heard: 20 March 2026

Delivered: 05 May 2026

JUDGEMENT

NOTSHE AJ

A. INTRODUCTION

[1] In this matter, the applicant applies for the confirmation of the provisional liquidation order granted by Rome J against the respondent.

[2] The respondent opposes the application.

[3] The question on the return date is whether the respondent has shown sufficient cause why the provisional order should not be granted. The question is whether the respondent presents genuine new material that displaces Rome AJ's finding.

B. BACKGROUND

[4] The applicant seeks the winding-up of the respondent in terms of sections 344(f) and 345 of the Companies Act 61 of 1973, as preserved by item 9 of Schedule 5 to the Companies Act 71 of 2008.

[5] The undisputed facts as they appear on the papers are the following:

5.1 On 1 October 2020, the parties concluded the written "Kongoni Manganese Mandate" ("mandate agreement").

5.2 In terms of that agreement, the applicant undertook to render services to assist the respondent to recover agency fees from Amari Resources (Pty) Ltd and Mr Mike Nunn. The services included negotiations, assistance and legal proceedings, consultations concerning enforcement of a proposed settlement, and weekly progress reports.

5.3 The agreement was to endure for four years;

5.4 It provided that the applicant would be entitled to 50% of any settlement amount paid to the respondent by Amari Resources or Mr Nunn, payable within two business days of receipt.

5.5 A settlement agreement was signed on 28 December 2023 between the respondent, Mr Paul Ekon, Mr Nunn and ERG Manganese (Pty) Ltd.

5.6 In terms of that settlement, Mr Nunn undertook to pay US$1,000,000 in instalments and ERG Manganese US$250,000.

5.7 By 4 March 2024 the respondent had received US$650,000, comprising US$400,000 from Mr Nunn and US$250,000 from ERG.

5.8 On the applicant's 50% entitlement, US$325,000 became due within two business days of receipt. The respondent paid only US$260,000, leaving a balance of US$65,000.

5.9 On 20 June 2024 the applicant served a statutory demand in terms of section 345(1)(a), demanding payment within 21 days.

5.10 The respondent did not pay, secure or compound for the debt within the statutory period.

5.11 The respondent's contemporaneous communications, including those of 7 June 2024, 12 June 2024 and 14 July 2024, did not dispute the debt. They sought indulgence and promised payment.

[6] The provisional winding-up order was granted on these facts. Rome A J held that the applicant had established a *prima facie* case that the debt owed by the respondent was not bona fide disputed on reasonable grounds and that the section 345 presumption of commercial insolvency had arisen and had not been rebutted.

[7] On the return date, the respondent bears a duty to lead evidence rebutting the *prima facie* case established by the applicant; otherwise, the *prima facie* case becomes a conclusive case.

[8] The applicant alleges that the respondent breached the agreement and failed to pay the agreed amount.

[9] Despite the duty to lead evidence that is borne by the respondent, the applicant still bears the overall onus of proving, on a balance of probabilities, that the final winding-up order should be granted.

[10]. The respondent is now opposing the granting of the final liquidation order. It alleges that the applicant has not satisfied the requirements for the granting of a final liquidation order. It alleges the applicant has no *locus standi* because it is not its creditor. It alleges that there is a bona fide and reasonable dispute of indebtedness.

C. DISCUSSION

[11] An applicant for winding up has to satisfy the following requirements:

11.1 that it is a creditor of the respondent and therefore has *locus standi* to institute the proceedings;

11.2 that the respondent is the debtor because it owes the amount claimed;

11.3 that the respondent falls within one or more of the grounds laid down in section 344[1] read with 345[2] of the Companies Act 1973 ("*the Old Act*").

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[1] Section 344 provides as follows:
"A company may be wound up by the Court if-
(a) the company has by special resolution resolved that it be wound up by the Court;
(b) the company commenced business before the Registrar certified that it was entitled to commence business;
(c) the company has not commenced its business within a year from its incorporation, or has suspended its business for a whole year;
(d) in the case of a public company, the number of members has been reduced below seven;
(e) seventy-five per cent of the issued share capital of the company has been lost or has become useless for the business of the company;
(f) the company is unable to pay its debts as described in section 345;
(g) in the case of an external company, that company is dissolved in the country in which it has been incorporated, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;
(h) it appears to the Court that it is just and equitable that the company should be wound up."

[2] Section 345(reads as follows:
"(1) (a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred rand then due-
(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or
(ii) in the case of any body corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the Court may direct,
and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
(b) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or the messenger with an endorsement that he has not found sufficient disposable property to satisfy the judgment, decree or order or that any disposable property found did not upon sale satisfy such process; or

[12] In this case, the applicant relies on the provisions of both sections 344(f) and 344(h) read with section 345 of the Old Act. It alleges that the respondent company "... *is unable to pay its debts as described in section 345.*" It also alleges that " ... *it is just and equitable that the company should be wound up.*"

[13] It avers that on 20 June 2024, it issued a statutory demand for payment of the outstanding US $65 000 within 21 calendar days. Despite the demand, no payment was made within the stipulated period.

[14] As stated above, the respondent opposes the application on the grounds that the applicant is not a creditor because there is no debt owed to it by the respondent.

[15] It is now trite law that winding-up proceedings should not be resorted to as a means of enforcing payment of a debt, the existence of which is *bona fide* disputed on reasonable grounds. This is part of the broader principle that the court's processes should not be abused. Liquidation proceedings are not intended as a means of deciding claims which are genuinely and reasonably disputed. The decisions are legion.

[16] Where, as in this case, the applicant, at the provisional stage, shows that the debt *prima facie* exists and is granted the provisional liquidation order, the onus is on the respondent to show that the claim is *bona fide* disputed on reasonable grounds. A creditor cannot obtain a liquidation order

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[Para. (b) substituted by s. 26 of Act 59 of 1978 (wef 17 May 1978).]

(c) It is proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) In determining for the purpose of subsection (1) whether a company is unable to pay its debts, the Court shall also take into account the contingent and prospective liabilities of the company.

if there is a *bona fide* dispute of the claim. The *onus* on the respondent is not to show that it is not indebted to the applicant. It merely has to show that the indebtedness is disputed on *bona fide* and reasonable grounds[3].

[17]. In *GAP Merchant Recycling CC v Goal Reach Trading 55 CC*[4] the Court held that:

"*Bona fides relates to the respondent's subjective state of mind, while reasonableness has to do with whether, objectively speaking, the facts alleged by the respondent constitute in law a defence. The two elements are nevertheless interrelated because inadequacies in the statement of the facts underlying the alleged defence may indicate that the respondent is not bona fide in asserting those facts. ... the objective requirement of reasonable grounds for a defence is not met by bald allegations lacking in particularity; ...bald allegations lacking in particularity are unlikely to be sufficient to persuade a court that the respondent is bona fide.*"[5]

[18] In this case, the respondent raises new defences that were not raised in opposition to the provisional winding-up application. It now alleges that the applicant did not perform its obligations in terms of the Mandate Agreement.

[19] The issue of raising new defences to oppose the granting of a final winding-up order is crucial to the respondent's version. The respondent is required to lead evidence rebutting the *prima facie* case established by the

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[3] Kahil v Decotex (Pty) Ltd and Another1988 (1) SA 943 (A) of 980;
Exploitatie- en Beleggingsmaatschappij Argonauten 11 BV and Another v Honig 2012 (1) SA 247 (SCA) [11] – [12].

[4] 2016 (1) SA 261 (WCC).

[5] At [26].

applicant. It has to lead evidence to show that the claim is *bona fide* disputed on reasonable grounds.

[20] The applicant's claim cannot be said to be *bona fide* disputed on reasonable grounds where the respondent changes its versions on a number of occasions.

[21] In the latest answering affidavit, the deponent, on behalf of the respondent, merely says that it became clear when new legal representatives were appointed that certain material evidence supporting the respondent's version was not placed before the Court. There is no explanation why that was the case. The deponent does not say whether he gave the information to the previous legal representatives, but the latter excluded it. He does not explain the reason for deposing to the previous affidavits without the relevant material evidence. I am left to guess.

[22] I now have to balance the probabilities of the two versions of the applicant and the respondent. Probabilities do not concern the credibility of witnesses but the credit to be given to the version by reason of its inherent probabilities or improbabilities. Where a version is regarded as improbable, belief is slow and difficult.

[23] In a nutshell, the applicant says that there is a debt owing by the respondent, the respondent admitted it, and the latter is unable to pay it despite an undertaking to pay. The respondent's version is that it *bona fide* disputes the applicant's claim on reasonable grounds.

[24] In this case, the denial by the respondent of the facts alleged by the applicant is not such as to raise a real, genuine or bona fide dispute of fact. I

am satisfied as to the inherent credibility of the applicant's factual averments. The denials of the respondent and its version are rendered improbable by the admissions made by the respondents and the change of versions as the case progressed.

C. CONCLUSION

[25] I find that the applicant has proved its case on a balance of probabilities. The respondent has failed to rebut the prima facie case established by the applicant.

[26] In the circumstances, I make the following order:

(a) The provisional order granted on 19 November 2025 is hereby confirmed, and the estate of the respondent is placed under final liquidation.

(b) The costs of this application are costs in the administration of the respondent's insolvent estate.

[redacted]

V S Notshe

Acting Judge of the High Court

APPEARANCES:

For the Applicant: Counsel: **R Raubenstein**

J Steyn

Attorneys: **Messrs Wright Rose Innes Inc**

For the Respondent: Counsel: **L Hollander**

Attorneys: **Messrs Schindlers Attorneys**