




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

CASE NO: 2429/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
	<u>12 /06/2026</u>
SIGNATURE	DATE

In the matter between:

NICOLAS JOHANNES DE WET

FIRST APPLICANT

MARIA CATHRINA ORIANI-AMBROSINI

SECOND APPLICANT

and

THEODOR WILHELM VAN DEN HEEVER N.O

FIRST RESPONDENT

MUHAMMAD FAIZAL SULAIMAN N.O

SECOND RESPONDENT

(In their capacity as the appointed liquidators of **Tinique 0031 CC t/a Standerton Petroleum** (In Liquidation))

TINIQUE 0031 CC t/a STANDERTON PETROLEUM

THIRD RESPONDENT

(In Liquidation)

Summary of the Facts

[3] Tinique, part of the Winkelhaak Bafana group, was placed under final liquidation on 2 September 2024 following an application by Engen Petroleum Ltd.

[4] The applicants, as members and creditors of Tinique, launched a business rescue application on 4 September 2024, which remains pending.

[5] The liquidators initiated enquiry proceedings under section 415 of the Companies Act 61 of 1973 ("the Companies Act of 1973"), issuing subpoenas for the applicants to attend a creditors' meeting and provide information on Tinique's affairs. The applicants objected, arguing that section 131(6) suspends all liquidation proceedings, including enquiries, pending the outcome of the business rescue application.

[6] Pursuant to the applicants' failure to attend the enquiry, warrants of arrest were issued but suspended. The applicants then sought urgent court intervention to suspend or set aside the enquiry, subpoenas, and warrants.

[7] During the proceedings, it emerged that Tinique had been deregistered by the Companies and Intellectual Property Commission ("CIPC") on 7 February 2025 but was subsequently reinstated to the register.

Issues for Determination

[8] This Court is therefore called upon to determine the following issues:

8.1 Whether section 131(6) of the Companies Act suspends all liquidation proceedings, including enquiry proceedings under sections 415 to 418 of the Companies Act of 1973, upon the filing of a business rescue application.

8.2 The legal effect of Tinique's deregistration and subsequent reinstatement on the authority of the liquidators and the validity of actions taken during the period of deregistration.

The Legal Position

[9] Section 131(6) of the Companies Act 71 of 2008, provides that:

“If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until-

- (a) the court has adjudicated upon the application; or
- (b) the business rescue proceedings end, if the court makes the order applied for.”

[10] Enquiry proceedings under sections 415 to 418 of the Companies Act of 1973 are part of the liquidation process and are intended to investigate the affairs of the company for the benefit of creditors.

[11] In *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd*,¹ the Supreme Court of Appeal per Brand JA remarked as follows:

“... Once ‘reinstatement’ in s 82 (4) is construed as indicating retrospective operation, there is no justification for construing it to mean that retrospective operation must stop halfway, in the sense that it pertains to revestment of the company’s property only. As appears from the court a quo’s judgment (para 51) it clearly held the view that its interpretation of s 82(4) read with s 83(4) of the Act has ‘the preferred result given the choice of meanings available’. Although the preference of outcome may be debatable, my real problem is that I do not think the wording of the section renders the meaning preferred by the court a quo available. As I see it, the wording of the section leaves no room for the pragmatic approach adopted by the court a quo. The only meaning available on that wording, as I see it, is that s 82 (4) has automatically retrospective effect, not only in revesting the company with its property but also in validating its corporate activities during the period of its deregistration. In short, there is no textual basis to distinguish between revesting of property and revesting the company with the capacity to continue operating. It follows that, in my view, the arbitration proceedings and related court proceedings during the period of deregistration, together with the awards and orders made in those proceedings, were automatically validated by the reinstatement of Newlands under s 82(4) ...”

¹ *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd* 2015 (4) SA 34 (SCA) para 29.

Evaluation

[12] The court must therefore consider whether the enquiry proceedings in terms of sections 415 to 418 of the Companies Act of 1973 constitute "liquidation proceedings" for the purposes of section 131(6).

[13] In *GCC Engineering (Pty) Ltd and Others v Lawrence Maroos and Others*,² the Supreme Court of Appeal remarked as follows:

"In terms of s 131(6) of the Act, it is liquidation proceedings, not the winding-up order, that is suspended. What is suspended is the process of continuing with the realisation of the assets of the company in liquidation with the aim of ultimately distributing them to the various creditors. The winding-up order is still in place; and prior to the granting or refusal of the business rescue application, the provisional liquidators secure the assets of the company in liquidation for the benefit of the body of creditors."

[14] *GCC Engineering* is clear that what is suspended is the process of continuing with the realisation of the assets of the company in liquidation, with the aim of ultimately distributing them to various creditors. It was agreed on behalf of the respondents that this was not the case. In my view, the respondents could have presented themselves to the Magistrates' Court for the inquiry, but instead they elected to shun the proceedings.

[15] On the deregistration issue, CIPC's retrospective reinstatement of Tinique validates the liquidators' actions during the period of deregistration. (see *Newlands Surgical Clinic (supra)*)

[16] In any event, the applicants' delay in raising the deregistration point weighs against granting the relief sought. In *Director of Hospital Services v Mistry*,³ the then Appellate Division held that:

² *GCC Engineering (Pty) Ltd and Others v Maroos and Others* [2018] ZASCA 178; 2019 (2) SA 379 (SCA) para 17.

³ *Director of Hospital Services v Mistry* 1979 (1) SA 626 (A) at 636A.

“It is not permissible to make out new grounds for the application in the replying affidavit.”

[17] It is therefore settled that a party to the proceedings stands and falls by his founding papers and the facts alleged therein. The applicants' introduction of new facts in the replying affidavit should not take their case any further than what they alleged in the founding affidavit.

[18] I am persuaded by the respondents' submission that general and special meetings of creditors in terms of sections 415 and 416 are administrative, not investigatory. Formal enquiries in terms of section 417 are judicial and intended to investigate the company's affairs, but are not suspended by a business rescue application.

[19] In my view, the application may be characterised as an abuse of process, brought to delay or frustrate the enquiry and to avoid scrutiny.

Costs

[20] The fourth respondent seeks a punitive costs order due to the applicants' vexatious and abusive conduct. It is an established principle of our law that the award of costs is in the discretion of the court.

[21] The Constitutional Court in the matter of *Public Protector v South African Reserve Bank*,⁴ stated that:

“A punitive costs order is justified where the conduct concerned is 'extraordinary' and worthy of the court's rebuke.”


[22] In view of the fact that I have already found that the applicants are abusing the court process, I am of the view that a punitive costs order is appropriate in the circumstances of this case.

⁴ *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) para 226.

Order

[23] Having considered the papers, arguments, and applicable law, the following order is made:

1. The application is dismissed.
2. The applicants are ordered to pay the costs of the first and second respondents (the liquidators) and the fourth respondent (Engen Petroleum Ltd) on the attorney and client scale, including the costs of two counsel where so employed.



KF PHAHLAMOHLAKA
JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the Appellants: Adv JA Klopper
Instructed by: Cavanagh & Richards Attorneys

For the 1st and 2nd Respondent: Adv P Van der Berg
Instructed by: Van Veijeren Inc.

For the 4th Respondent: Adv S Aucamp
Instructed by: Mathopo Moshimane Malungaphuma Inc.

Date judgment reserved: 12 February 2026