

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO.: 3543/2023

- | | |
|-----|--|
| (1) | <u>REPORTABLE: YES/NO</u> |
| (2) | <u>OF INTEREST TO THE JUDGES: YES/NO</u> |
| (3) | <u>REVISED: YES/NO</u> |

SIGNATURE

09/06/2026
DATE

In the matter between:

ANITA GRIFFIOEN

APPLICANT

AND

GRIFFIES EIENDOMME CC

FIRST RESPONDENT

JOHANNES GRIFFIOEN

SECOND RESPONDENT

GERHARD HEINRICK OLIVIER

THIRD RESPONDENT

COMPANIES AND INTELLECTUAL

FOURTH RESPONDENT

PROPERTY COMMISSION

ALAN JORDAAN N.O.

FIFTH RESPONDENT

JUDGMENT

NGOBENI J

- [1] The applicant is Anita Griffioen, an adult female person residing at plot 6[...], P[...] Street, Kameeldrift West, Gauteng.
- [2] The first respondent is Griffies Eindomme CC, with registration number 1988/017465/23, a close corporation duly registered in terms of the Close Corporations Act 69 of 1984, with registered address at site 2[...] Jejane Private Nature Reserve, Hoedspruit.
- [3] The second respondent is Johannes Griffioen, with identity number 4[...], an adult male, who is the former (ex) husband of the applicant, and they were married in community of property until 14 August 2015, residing at 8[...] Beckedan Agricultural Holdings X2, Gauteng.

- [4] The third respondent is Gerhard Heinrich Olivier, with identity number 6[...], an adult male residing at 1[...] J[...] Street, Fairland.
- [5] The fourth respondent is the Companies & Intellectual Property Commission (CIPC), a commission established in terms of section 185 of the Companies Act 71 of 2008, with its principal place of business at DTI Campus, Block F, 7[...] M[...] Street, Sunnyside, Pretoria, Gauteng.
- [6] The fifth respondent is Advocate Alan Jordaan, in his official capacity, being the agreed liquidator of the joint estate of the applicant and the second respondent. No legal relief is requested against the fifth respondent, and he is cited in so far as he may have an interest in this matter.
- [7] This is an application for the court to declare that the 10% membership interest of the third respondent (Gerhard Heinrich Olivier) in the first respondent (Griffies Eindomme CC) to be in contravention of subsection 15(2)(c) of the Matrimonial Property Act¹ (MCA) and therefore to be declared *null* and *void*. The applicant further applies for declaration that the second respondent and herself (applicant) as the only two members of the first respondent (Griffies Eiendomme CC) with each having 50%

¹ 88 of 1984.

interest. Lastly, the applicant seeks an order for the winding up of the first respondent in terms of section 49 of the Close Corporations Act² (CCA), or alternatively in terms of section 81(1)(d)(iii) of the Companies Act³ (CA).

[8] Section 49 of the CCA, deals with unfairly prejudicial conduct, and it allows the applicant as a member of the corporation to make an application before a court of competent jurisdiction, to allege unfair and unjust conduct or act of one or more members of the corporation, which is unfairly prejudicial to that member. Section 81(1)(d)(iii) of the CA states that if the company or one of its directors applies to the court for the winding up of the company on the grounds that are mentioned in subsection (i) and (ii), if it just and equitable for the company to be wound up, the court must order as such.

[9] The applicant and the second respondent (Johannes Griffioen) were married to each other in community of property up until their divorce on 15 August 2015. Mr. Alan Jordaan (fifth respondent/liquidator) was appointed as the liquidator of their joint estate. Prior to the year 2012 all the members' interest in the first respondent was an asset in the joint estate of the applicant and the second respondent. In the process of liquidation of the joint estate, the liquidator alluded to the fact that the

² 69 of 1984.

³ 71 of 2008.

third respondent (Gerhard Heinrich Olivier) allegedly received 10% of the interest in the first respondent during 2012.

[10] The applicant disputes the validity of the transaction which allegedly gave the third respondent the 10% member's interest because she submits that, the said transaction was made while she was still married in community of property to the second respondent without her prior knowledge and consent. That is the reason why the applicant in her prayers prays for that transaction to be declared *null* and *void*.

[11] The third respondent in answering to the application raised two points *in limine*. The first point *in limine* raised by the third respondent is *Lis Alibi Pendens*, which simply means that the same litigation that is before court is pending elsewhere. The third respondent states in his answering affidavit that during February 2023 he caused summons to be issued against the first, second and fifth respondents, and the applicant has already filed her notice of intention to defend although she has not pleaded yet. The third respondent submits that in the said summons that he issued, on paragraph 3 he stated the following:

"It is declared that the plaintiff holds a 10% members interest in the third defendant"

[12] The third respondent submits that what is claimed in the notice of motion by the applicant regarding the third respondent's 10% member's interest is the same issue as in paragraph 3 of the summons that he issued in the High Court of South Africa, Gauteng Division, Pretoria (Gauteng). The third respondent further submits that there is pending litigation against the same parties. The third respondent requests that prayers 1 and 2 be stayed pending the final determination of the action proceedings in Gauteng.

[13] The second point *in limine* raised by the third respondent is that the applicant has no *locus standi* to deal with the joint estate at this stage because one Mr Jordaan (liquidator) has been appointed to deal with the joint estate of the applicant and the second respondent (parties) and the parties cannot therefore deal with the joint estate because the liquidator has been appointed to prepare a liquidation and distribution account regarding the joint estate of the parties.

[14] The second point *in limine* also relates to the third prayer by the applicant, which seeks liquidation of the first respondent, and the third respondent submits that because the joint estate of the parties falls under the control and direction of the liquidator, neither the applicant nor the second respondent has the power to divest any asset of the joint estate, including making an application to liquidate the first respondent.

[15] In issue between the parties is as to whether this court must allow litigation that had been initiated in Gauteng to be finalised first, and whether the issues involved in the Gauteng case are the same as the ones to be adjudicated in this case. The applicant submits that the third respondent was joined in these proceedings on a peripheral issue, and he cannot be said to have been joined. Case law gives guidance on how the issue should be approached. The case number in the Gauteng case is 21744/2023, in which the plaintiff is Heinrich Gerhard Olivier and the first to fourth defendants are Johannes Griffioen, Anita Griffioen, Griffies Eindomme CC and Alan Jordaan N.O. respectively.

[16] The case that deals with the doctrine of *lis alibi pendens* extensively, is the case of *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite CC*⁴ (*Caesarstone case*), and on paragraph 2 of the judgment the Supreme Court of Appeal (SCA) said the following:

"As its name dictates, a plea of lis alibi pendens is based on the proposition that the dispute (lis) between the parties is being litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in

⁴ (741/12) [2013] ZASCA 129 (26 September 2013).

litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions”

[17] The court went further in the *Ceasarstone* case, *supra*, by quoting paragraph 3 of the judgment, which refers to the Writings of Johannes Voet on ‘The Exception of Res Judicata’ on the identifying features to determine if the suit is pending before another court, as follows:

“... Thus the suit must already have started to be mooted before another judge between the same persons, about the same matter and on the same cause, since the place where a judicial proceeding has once taken up is also the place where it ought to be given its ending”

[18] In *Nestle (South Africa) (Pty) Ltd v Mars Inc*⁵ (*Nestle* case), Nugent AJA in dealing with the similar aspect said the following:

“... Once a suit has been commenced before a tribunal that is competent to adjudicate upon it, the suit must generally be brought to its conclusion before that tribunal and should not be replicated (lis alibi pendens)”.

[19] The third respondent in *casu*, demonstrated that he instituted an action in 2023, which relates to his alleged 10% member’s interest in the first

⁵ 2001 (40 SA 542 (SCA)).

respondent. Having read the prayers in the notice of motion and paragraph 3 of the particulars of claim as quoted, I find that the issues are the same because both refer to the 10% which is the subject of the dispute in both matters. The parties that are involved in both litigation is the applicant, the first, second, third and fifth respondents. In my view the involvement of the third respondent in this application cannot be said to be peripheral, because that is the crux of prayers 1 and 2 of this application. In the application at hand although the second respondent is now deceased, but his portion in the joined estate is still the subject matter.

[20] I find it prudent that the litigation that was initiated first be dealt with first. One of the reasons why I find that to be viable is because the third respondent in his answering affidavit gave valid reasons as to why he chose to institute action proceedings instead of application proceedings. He submits that the matter will be dealt with comprehensively through the hearing of evidence than just arguing the matter in application proceedings. That submission by the third respondent is persuasive or cogent, and I find that the Gauteng matter must be dealt with first, because the court is required to decide as to which matter should be heard first⁶.

⁶ Spencer v Memani (675/12) [2013] ZASCA 146 (1 October 2013).

[21] At the time of the institution of the application that is before this court, the liquidator was still in charge of the joint estate. It is so that all the powers regarding the joint estate were abdicated to him until he was able to give account in the form of a liquidation and distribution account. I therefore find that indeed the parties themselves cannot deal with any of the assets until the liquidator is finished and gives full account. In the result the applicant is not competent to deal with the joined estate nor to bring the liquidation application in relation to the first respondent. The points *in limine* are bound to succeed, and the third prayer is bound to fail.

[22] In the result the following order is made:

- (i) the two points *in limine* are upheld,
- (ii) this case 3543/2023, is stayed pending the final determination of case number 2023-021744 (21744/2023) in the High Court of South Africa, Gauteng Division, Pretoria,
- (iii) the third prayer in the notice of motion, being the prayer for the liquidation of the first respondent is dismissed, with costs on party and party scale, including counsel's fees on party and party scale B.

J.T. NGOBENI

JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant:

Adv. W.C. Carstens

Instructed by:

Lourens & Schwartz Attorneys Inc.

For the 3rd respondent:

Adv. M. Louw

Instructed by:

Otto Krause Inc.

For the 1st, 2nd, 4th, 5th respondents: No appearances

Date heard:

30 April 2026

Date delivered:

09 June 2026