


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Numbers: 24140/2019

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
11/06/2026	
DATE	SIGNATURE

In the matter between:

LADY LUCK TRADING 2 CC t/a WATERFORD  
CARRIERS

Applicant

And

AFRICAN BORDER MANAGEMENT (PTY)  
LIMITED

First Respondent

AFRICAN SPIRIT TRADING 103 (PTY) LIMITED  
t/a PXL FREIGHT AND LOGISTICS

Second Respondent

BALLOT, JOHN GEORGE

Third Respondent

BROWN, BERNICE

Fourth Respondent

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JUDGMENT IN THE LEAVE TO APPEAL APPLICATION

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MALINDI, J

## Introduction

- [1] This is an application for leave to appeal against the whole of the judgment and order which I delivered on 20 February 2026, declaring that the third and fourth respondents in the main application are jointly and severally liable, together with the first and second respondents to the application, in the two amounts owed to the applicant by the first and second respondents. The costs order is also appealed against.
- [2] For convenience, the parties are henceforth referred to as in this application for leave to appeal.
- [3] The applicants submit, first, that I erred in accepting that the allegations before Twala J, who granted prayers 1 and 2 of the notice of motion in the main application, as established facts, whereas the orders were obtained by default. In other words, it is submitted that as the allegations were not subjected to the *Plascon-Evans Rule*<sup>1</sup> it cannot be said that the applicants did not have a version to be weighed against the respondent's version.
- [4] Mr C Rip, for the applicants, concedes that Twala J would not have granted the order if not supported by the papers before him. Mr Pottas, for the respondent, submits that, further to this concession, the same facts were repeated before this court, together with further allegations by the respondent. Therefore, that this court reached its decision not only on the basis of the allegations or facts before Twala J.
- [5] Secondly, the applicants submit that I attributed the statements in *Ex Parte Gore and Others NNO*<sup>2</sup> at paragraph [4] to what was held by Twala J. This submission is mistaken. Paragraph [9] of my judgment means that the orders granted by Twala J could only be granted because he was satisfied that the test

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<sup>1</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A).

<sup>2</sup> 2013 (3) SA 382 (WCC).

for declaring that the requirements of section 20(9) have been met as set out in *Gore* is satisfied. This is so because, though the orders were granted by default, Twala J had to be satisfied that such orders are justified, or a case is made there for on papers before him. His orders, which could only be granted on the application of the *Gore* principle, have not been challenged or set aside.

- [6] Thirdly, the applicants submit that paragraph [16] of my judgments is erroneous because on the facts before Twala J and before me, the respondent had not made out a case for reckless conduct of the applicants' businesses, let alone fraudulent conduct as contemplated in *Gore*, or that the two companies were the applicants, alter egos. Paragraph [16] of my judgment is clear that I considered, among others, that holding himself out as the managing director of both companies when he was not a managing director of African Border Management, to be recklessness, short of fraudulent trading. This is in addition to ordering one company to pay the debts of the other, with total disregard of their separate legal identities.
- [7] The applicants rely on *Hulse-Reutter and Others v Godder*<sup>3</sup> for the proposition that the piercing of the corporate veil can only follow where "as a matter of principle... there must at least be some misuse or abuse of the distinction between the corporate entity and those who control it which results in an unfair advantage being afforded to the latter." In this case, the applicants seek the benefit of escaping liability for the debts owed by their companies to the respondents in circumstances where Twala J has, in effect, declared that the two companies have disregarded their separate legal entities or juristic personalities with the collusion of the applicants. It is unconscionable abuse of the two companies, juristic personalities, by the applicants to have used them as they did. They treated them as their alter egos.
- [8] Paragraphs [29] – [33] of my judgement make it clear that section 20(9) of the Companies Act embraces principles further applied to "*piercing*", "*lifting*" or "*look behind*" the corporate veil. It is the circumstances of each case that will

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<sup>3</sup> 2001 (4) SA.

dictate whether juristic personality between interrelated companies and between a corporation and its directors and shareholders has been abused. It becomes irrelevant where the conduct is reckless trading, fraud or other violations of statutory provisions for holding a juristic person true to the precepts of the law. At paragraph [34] of *Gore*, it was stated:

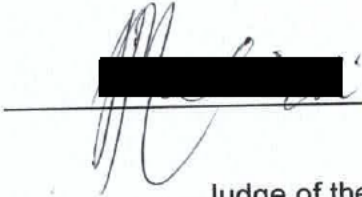
*"The provision brings about that a remedy can be provided whenever the illegitimate use of the concept of juristic personality adversely affects a third party in a way that reasonably should not be countenanced."*

- [9] Section 20(9) is supplemental to the common law and not substitutive, and it is not only granted in the absence of any alternative remedy.<sup>4</sup>
- [10] In the circumstances, I do not agree with the applicants that the judgment conflated concepts of piercing the corporate veil with the application of section 20(9) and that a selection had to be made based on one of them.

*Order*

[11] Therefore, the following order is made:

1. The application for leave to appeal is dismissed.
2. The applicants are to pay the costs, including the costs of counsel on Scale B.

  
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**G MALINDI**  
Judge of the High Court,  
Johannesburg

<sup>4</sup> *Gore* at [34].

**Appearances**

For the Applicant: Adv R Pottas  
Instructed by: Duff & Associates

For the 3<sup>rd</sup> and 4<sup>th</sup>

Respondents: Adv CM Rip  
Instructed by: Lautenberg Morris Attorneys

Date of Hearing: 26 February 2024

Date of Judgment: 20 February 2026

Date of leave to appeal hearing: 8 June 2026

Date of leave to appeal judgment: 10 June 2026