REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2025-062022

REPORTABLE: NO OF INTEREST TO OTHER JUDGES: NO REVISED: ~~YES~~ NO. **12 JUNE 2026** [redacted] DATE SIGNATURE

In the matter between:

JOHAN FRANCOIS ENGELBRECHT N.O	First Applicant
PETRUS JACOBUS CORNE VAN STADEN N.O	Second Applicant
AMANDA LINDOKUHLE VILAKAZI N.O	Third Applicant
and	
INDEPENDENT DEVELOPMENT TRUST	First Respondent
KARABO SIYILA N.O	Second Respondent
NTHABISENG MKHWANAZI N.O	Third Respondent
MPILO MBAMBISA N.O	Fourth Respondent
KRISHEN SIKDEV N.O	Fifth Respondent

LUFUNI NEVONDWE N.O	Sixth Respondent
MATODZI RATSHUMBILAMI N.O	Seventh Respondent
DEREK NAIDOO N.O	Eighth Respondent

JUDGMENT

FRANCIS-SUBBIAH, J:

[1] This application concerns the alleged wrongful post-liquidation payment by the first respondent, Independent Development Trust (IDT) of a debt due to Ntsangalala Holdings (Pty) Ltd, (Ntsangalala) a company in liquidation. The payment was made to the account of Nukeri Attorneys, who acted on behalf of the company during liquidation and prior to the appointment of the liquidators.

[2] The core issue revolves around a payment of R655,352.57 made by IDT to Nukeri Attorneys, intended for Ntsangalala in liquidation and whether the applicants have a right of recourse against IDT.

[3] The applicants, as liquidators of Ntsangalala allege that Nukeri Attorneys was not authorised by them to receive funds on behalf of the insolvent estate. However, the liquidators were not appointed when the letter of demand was sent on 21 November 2023. Ntsangalala was finally liquidated on 14 December 2023. Payment in terms of the letter of demand dated 21 November 2023 was made on 11 January 2024 by IDT. The applicants were appointed as liquidators on 7 February 2024 after

the payment was made. The enquiry by the liquidators took place only, on 18 March 2024 when the IDT and the MEC of the Department of Education were summoned for an inquiry into the affairs of the insolvent estate of Ntsangalala.

[4] The applicants demanded payment from the IDT in March 2025 which demand was refused. Applicants further contend that the debt owing to the insolvent estate was therefore not expunged as there was no effective payment made to the insolvent estate.

[5] Further to the above, the applicants contend that the payment should have been made to the liquidators of the insolvent estate and that payment of any debt to other parties other that the insolvent estate is legally impermissible and severely prejudicial to the *concursus creditorium*. They submit that the payment by the IDT to Nukeri Attorneys is wrongful and the fact that it was paid into the business account of Nukeri Attorneys is alarming and negligent.

[6] The IDT denies that it owes the applicants the aforesaid amount and that the applicants have no claim against the IDT. It contests the claim emphasizing that payments made by IDT were in good faith and under the belief of proper authority as the letter of demand required the payment into the attorney's trust account. There was a longstanding relationship with the company having done work at Matimba Secondary School. There was no reason for IDT to doubt the authority of the Ntsangalala's attorneys to receive payment and acted in good faith in discharging the debt. There

was nothing to suggest that payment into the attorneys' account would be wrongful, unauthorised or ineffective in the circumstances.

[7] IDT argues a point *in limine* that Nukeri Attorneys and Ms Mashego, director of Ntsangalala have a direct interest in the proceedings due to their involvement in debt collection and ought to have been joined in the proceedings. Ms Mashego, as Director appointed Nukeri Attorneys by a resolution on 18 November 2023 to represent the company in the liquidation proceedings in an attempt to have the provisional liquidation order of 28 August 2023 set aside.

[8] IDT submits that there were improper collection efforts by the applicants, after the liquidation, since they make allegations of misrepresentation and unlawful instructions, the parties having a direct interest in the proceeding should have been joined.

[9] On 31 March 2025 IDT sent a letter to the applicants in response to their letter of demand dated 11 March 2025 and expressed that the Director of Ntsangalala, Ms Mashego would have a duty of disclosure of the payment made by IDT on 10 January 2024 to the applicants. It was further emphasised that at the time of making the payment IDT was not aware of the liquidation orders and unaware that the demand from Nukeri Attorneys may constitute a misrepresentation. Especially since Ms Mashego indicated her intention to employ the service of her attorneys to collect outstanding debt when it is now questionable whether she had authority to do so.

[10] Ordinarily a provisional liquidation order does not automatically extinguish all powers of Directors in every respect. Directors may retain certain residual powers during provisional liquidation, particularly where no liquidator has been appointed and there is no one else able to act for the company. At the time of demand and payment the Director's action appeared compatible with the purpose of the winding-up and aimed at preserving or recovering assets of the company.

[11] Collecting a debt owed to the company generally increases the assets available to creditors. If there was no provisional liquidator in office and the attorney successfully recovered money that belonged to the company there is a strong argument that the recovered funds belong to the company and later form part of the insolvent estate.

[12] IDT further highlights the applicants' failure to join interested parties and point out the role of the Master of High Court in liquidation proceedings. The Master is vested with the powers of regulating the insolvent estate until the appointment of liquidators ought to have acted with diligence by either informing IDT that Ntsangalala is placed under provincial liquidation or at least engaged with Ms Mashego by informing her that she has no authority to instruct her attorneys.

[13] The test for joining a party in proceedings was considered in ***Absa Bank Limited v Naude N.O and Others (20264/2014) [2015] ZASCA 97; 2016 (6) SA 540 (SCA) (1 June 2015) (at paragraph 10)*** where the court held that:

"The rule is that any person is a necessary party and should be joined if such person has a direct and substantial interest in any order the court might make, or if such an order cannot be sustained or carried into effect without prejudicing, that party, unless the court is satisfied that he or she has waived his or her right to be joined."

[14] Further, as stated by the applicants in their founding affidavit that Nukeri Attorneys had no authority to act on behalf of the insolvent company and mandate from the liquidators to collect debts. This acknowledges that Nukeri Attorneys are directly involved in the subject matter of this litigation in that they were the creators of the letter of demand that caused IDT to make payment to them. The evidence is undisputed that IDT made payment following a demand to settle the debt it owed to Ntsangalala. The applicants case stems from the same payment already made to Nukeri Attorneys, claiming that Ntsangalala is still owed.

[15] IDT did not simply pay an unrelated third party. IDT made previous payments to Ntsangalala in terms of their contractual association. The payment in question was made to Nukeri Attorneys who had issued a formal demand for payment from Ntsangalala. IDT was never informed of any termination of authority and paid Nukeri Attorneys who had presented itself as the company's authorized representative. The estate of Ntsangalala would have benefited from the payment, or at least the funds came under the control of the company's attorney. IDT acted reasonably and in good faith. These facts provide a substantial basis for a defence that the debt was discharged upon payment.

[16] To require IDT to pay the same debt twice, where it acted *bona fide* and the payment was made to someone who appeared authorized to receive it. The applicants would need to establish why the payment did not legally discharge the debt and why the payment was void or ineffective. It remains unknown whether Nukeri Attorneys retained the money or paid it over to Ntsangalala.

[17] The applicants have produced no evidence concerning the whereabouts of the money, investigations undertaken and demands made to the attorneys. The most significant facts are the liquidators themselves had not yet been appointed when the payment was made and there was no liquidator communicating with IDT.

[18] The applicants fail to tell whether they contacted the attorney, whether they demanded payment and whether they investigated the attorney's accounting records, whether they attempted recovery from the attorney. The applicants case remains incomplete. The fact that the liquidators never received the money does not automatically establish that the IDT still owes the debt. It is however, evident from the papers before court that the applicants have no interest in joining the interested parties and proceeded with litigation against IDT.

[19] The legal question is whether IDT validly discharged the debt by paying Nukeri Attorneys. In accordance with the principle established in ***Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984),*** it sets out that where final relief is sought on motion and disputes of fact arise, the matter must be decided

on the facts stated by the respondent together with those facts admitted by the applicant, unless the respondent's version is so far-fetched or clearly untenable that it can be rejected on the papers.

[20] In the present matter, IDT's evidence is that the debt was paid in full to Nukeri Attorneys when a demand for payment is not genuinely with facts disputed. Nor have the applicants produced evidence capable of demonstrating that the payment did not occur or that the funds were not received by the attorneys concerned. Therefore, IDT's version must be accepted for purposes of determining the application.

[21] On the accepted facts, IDT discharged its indebtedness in good faith by making payment to the attorneys who purported to act on behalf of the company. There is no evidence that the IDT acted improperly, nor is there evidence that IDT was aware of any alleged lack of authority on the part of the attorneys to receive payment. Accordingly, IDT cannot be compelled to pay the same debt a second time merely because a dispute has subsequently arisen regarding the authority of the recipients of the original payment.

[22] Furthermore, the applicants seek relief that directly affects the rights and interests of the attorneys who received the payment and any other parties who may have received, controlled, or accounted for those funds. Those parties have a direct and substantial interest in the outcome of the proceedings. The applicants' failure to join such interested parties is fatal to their relief sought, as no court should determine issues affecting parties rights in their absence.

[23] Accepting IDT's version as required by the Plascon-Evans rule, the debt was discharged by payment legally effective after a letter of demand, the debt was discharged and the applicants have failed to establish a legal basis upon which IDT can be ordered to repay an obligation that has already been discharged. It would further be inequitable to require IDT to bear the consequences of circumstances of which it had no knowledge and over which it had no control.

[24] The issue before court is not whether the insolvent estate ultimately received the money, but whether IDT validly discharged its obligation by paying the party who, at the time, appeared authorized to receive payment. IDT was entitled to assume that payment into the attorneys' account would validly discharge its obligation. In terms of the Plascon-Evans rule the court accepts this for purposes of final relief on the papers that IDT discharged its obligation.

[25] Court Order:

The application is accordingly dismissed with costs on scale C.

[redacted]

R. FRANCIS-SUBBIAH

Judge of the Gauteng High Court

Pretoria

Appearances

For Applicant:	Adv. Raubenheimer
	Adv. GJ Lotter
Instructed by:	Van der Merwe & Associates
For Respondent:	Adv M.O Mudimeli
Instructed by:	Mmakola Matsimela Attorneys

Hearing: 28 May 2026

Judgment: 12 June 2026