

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

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: YES / ~~NO~~

CASE NO: 2024-106528

1/07/2026
DATE

SIGNATURE

In the matter between:

P[...], M[...] G[...] M[...]

Applicant
(Respondent a quo)

and

P[...], L[...] M[...]

Respondent
(Applicant a quo)

In re:

P[...], L[...] M[...]

Applicant

and

P[...], M[...] G[...] M[...]

Respondent

This judgment is handed down electronically by circulation to the applicant's legal representatives and the respondent's legal representatives by email and by publication on Case Lines. The date for the handing down is deemed 1 JULY 2026.

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

LANGE, AJ

Introduction

[1] This is an application for leave to appeal brought by the Applicant, Mr M[...] G[...] Montague P[...] ("Mr P[...]"), against the judgment and order delivered by this Court on 16 April 2026 ("the judgment"), in terms of which Mr P[...] was declared to be in contempt of the order granted by consent by this Honourable Court on 26 May 2025 ("the consent order"), directed to pay forthwith the arrear maintenance and contribution towards costs due to the Respondent, Mrs L[...] M[...] P[...] ("Mrs P[...]"), committed to imprisonment for a period of 30 days, which committal was suspended on conditions set out in the order, and ordered to pay the costs of the application on the attorney and client scale as per Scale C.

[2] The application for leave to appeal is opposed by Mrs P[...].

[3] Before dealing with the grounds of appeal and the merits of this application, it is necessary to record two procedural matters. First, it was agreed at the hearing of the leave to appeal application that wherever the phrase "ought to have found" appears in the notice of application for leave to appeal, it should read "ought not to have found." Second, the Applicant withdrew the ground of appeal relating to *res judicata* as set out in paragraphs 4.4 and 4.5 of the notice of application for leave to appeal. These concessions and withdrawals are significant and will be referred to where relevant in this judgment.

Background

- [4] The background to this matter has been set out fully in the judgment and need not be repeated in detail. For present purposes, it suffices to record the following: The parties have been engaged in protracted and bitterly contested divorce proceedings since 2019. During the course of those proceedings, a number of Rule 43 and Rule 43(6) orders were granted. Mr P[...] fell into substantial arrears in respect of his obligations under those orders, and Mrs P[...] launched an application for his committal to prison for contempt of court.
- [5] On 26 May 2025, during the hearing of the contempt application, Mr P[...] made a proposal to pay R1 000 000.00 (one million rand) in instalments in respect of the arrear maintenance and contribution towards costs, which proposal was accepted by Mrs P[...]. Dlamini J granted a consent order accordingly. The consent order also provided for the ongoing payment of interim maintenance in the amount of R37 000.00 (thirty-seven thousand rand) per month in terms of the Rule 43 order, and authorised Mrs P[...] to approach this court on supplemented papers for the committal of Mr P[...] in the event of any default on the instalments.
- [6] Mr P[...] defaulted on every instalment payable in terms of the consent order. He also failed to pay the ongoing interim maintenance after July 2025. Mrs P[...] accordingly filed a supplementary notice of motion and supplementary founding affidavit. The matter was heard before me on 12 March 2026. Mr P[...] filed no fewer than three answering affidavits. After considering the papers and the arguments presented, I granted the order on 16 April 2026.

- [7] Mr P[...] filed his notice of application for leave to appeal on 29 April 2026. Mrs P[...]’s heads of argument were filed on 2 June 2026 and Mr P[...]’s heads of argument were filed on 5 June 2026.

The test for leave to appeal

- [8] Leave to appeal is governed by section 17(1) of the Superior Courts Act 10 of 2013, which provides in relevant part:

"(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that - (a) (i) the appeal would have a reasonable prospect of success; or (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration."

- [9] It is common cause that the test under section 17(1)(a)(i) is that the appeal "would" have reasonable prospects of success. It is no longer sufficient to show that the appeal "may" have such prospects. As both sets of heads of argument acknowledge, the Applicant faces what has been described as "a higher and stringent threshold" compared to the provisions of the repealed Supreme Court Act 59 of 1959.

- [10] As regards section 17(1)(a)(ii), it has been confirmed that there can be no compelling reason where a case merely involves the application of settled law to the facts. In *Fairtrade Tobacco Association v President of the Republic of South Africa and*

*Others*¹, the Full Court of this Division confirmed that the compelling reason requirement cannot be met by a mere allegation that the court a quo erred in its application of well-established legal principles to a particular set of facts. I am satisfied that the present application involves only the application of settled principles to a specific factual matrix, and the section 17(1)(a)(ii) threshold accordingly does not assist Mr P[...].

Grounds of appeal

Ground 1: The time period afforded to Mr P[...]

[11] Mr P[...] contends that the order of 16 April 2026 erred in not affording him the full period of 15 days within which to apply for leave to appeal in terms of Rule 49(1)(b) of the Uniform Rules of Court. He argues that when the 5 court days afforded to Mrs P[...]'s attorneys to prepare a reconciliation and the 7 court days afforded to Mr P[...] to make payment are added together, the effective time available to him before execution of the imprisonment order would be 12 court days, which is less than the 15-day period prescribed by Rule 49(1)(b).

[12] This ground fails for several reasons. First, and most fundamentally, Rule 49(1)(b) prescribes the period within which an application for leave to appeal must be brought. It says nothing about, and does not prescribe how, a judge should structure the operative provisions of an order. The rule confers a right to bring an application for leave to appeal within 15 days. It does not impose an obligation on the court to build that period into the order itself.

¹ (21688/2020) [2020] ZAGPPHC 311 (24 July 2020)

[13] Second, and in any event, Mr P[...] suffered no prejudice whatsoever. His notice of application for leave to appeal was filed on 29 April 2026, which was within 15 days of the date of judgment. As Mrs P[...]’s counsel correctly points out in the opposing heads of argument, the mere filing of a notice of application for leave to appeal within that period is sufficient to invoke the automatic suspension of the order in terms of section 18(1) of the Superior Courts Act. The order was accordingly suspended before any obligation to make payment arose and before any risk of arrest existed.

[14] Third, Advocate Swart’s heads of argument effectively concede the absence of prejudice by acknowledging that Mr P[...] was not arrested and was able to bring the present application timeously. I am satisfied that this ground has no reasonable prospect of success on appeal.

Grounds 2, 3 and 5: Fintrom CC - the findings relating to the R17 million payment to Fintrom CC, the liquidation of Fintrom CC, and the failure to refer to oral evidence

[15] Grounds 2, 3 and 5 of the notice of application for leave to appeal are interconnected and are conveniently dealt with together. They raise the following contentions: that this Court erred in finding that R17 million was paid to Fintrom CC for the sale of its business; that Fintrom and its liquidators were not before court and could not ventilate the allegation; and that I ought to have referred the disputes relating to Fintrom to oral evidence, including by having the liquidators appear before court. Properly understood, all three grounds are directed at the same underlying issue, namely whether the findings I made about Fintrom CC and Mr P[...]’s relationship to it were properly made on the papers before me.

[16] Before addressing these grounds specifically, it is necessary to set out the statutory framework governing the voluntary liquidation of close corporations, which framework is directly relevant to the assessment of Mr P[...]’s evidence and his alleged inability to account for the financial position of Fintrom CC.

The statutory framework: voluntary liquidation of a close corporation

[17] Close corporations are regulated by the Close Corporations Act 69 of 1984 ("the CC Act"). Section 66(1) of the CC Act provides that a close corporation may be wound up in the same manner and subject to the same provisions as apply to the winding up of companies, as provided in the Companies Act 61 of 1973 ("the 1973 Companies Act"), with such modifications as the context requires. Section 66(2)(b) of the CC Act specifically provides that references to "members" in the context of a close corporation are to be read as references to members of the close corporation. The 1973 Companies Act accordingly governs the winding up of Fintrom CC by virtue of section 66 of the CC Act. It is common cause that Fintrom CC was placed under voluntary liquidation on 31 July 2025. The relevant provisions of the 1973 Companies Act applicable to such a voluntary liquidation are sections 349 and 350 (members' voluntary winding up) and sections 351 to 356 (creditors' voluntary winding up) read with section 66 of the CC Act.

[18] There are two types of voluntary winding up under the 1973 Companies Act, and the distinction between them is of considerable relevance to the present matter. The first is a *members' voluntary winding up*, which applies where the members of the entity are of the view that it is solvent and able to pay its debts in full within 12 months of

the commencement of the winding up. The second is a *creditors' voluntary winding up*, which applies where no such solvency declaration is made, whether because the entity's liabilities exceed its assets or because the member does not believe the debts can be paid within 12 months.

[19] Under a *members' voluntary winding up*, section 349 of the 1973 Companies Act read with section 66 of the CC Act requires that before the special resolution to wind up is passed, the sole member must make a sworn declaration of solvency in the prescribed form, stating that a full inquiry into the affairs of the entity has been conducted and that the entity will be able to pay its debts in full within 12 months of the commencement of the winding up. Section 350 further requires that security be furnished to the Master of the High Court for payment of the entity's debts within that period. Critically, in the case of Fintrom CC, Mr P[...] as sole member would himself have been required to make the sworn declaration of solvency, to conduct the full inquiry into Fintrom CC's affairs that the declaration presupposes, and to procure the security required by the Master.

[20] Under a *creditors' voluntary winding up*, section 351 of the 1973 Companies Act read with section 66 of the CC Act requires that a meeting of creditors be convened and that the member furnish to that meeting a full statement of affairs of the entity. That statement of affairs must include a full account of the entity's assets and liabilities, the names and addresses of its creditors, the securities held by each creditor, and the dates upon which those securities were given. Section 363(1) of the 1973 Companies Act, read with sections 66(2)(b) and 67 of the CC Act, further provides that in a creditors' voluntary winding up the sole member of a close corporation would have been required to pass the special resolution to wind up and to furnish the prescribed statement of affairs at the creditors' meeting, which statement would

necessarily have disclosed the full financial position of Fintrom CC, including the receipts and disposition of the proceeds of the R17 million business sale and the R15 million property sales.

[21] The significance of this statutory framework for the present application is as follows. In a members' voluntary winding up, Mr P[...] as sole member would necessarily have made a sworn declaration of solvency, conducted a full inquiry into Fintrom CC's affairs, and provided security to the Master. In a creditors' voluntary winding up, he would necessarily have furnished a full statement of Fintrom CC's affairs to the creditors' meeting. In either case, he would, at the time he deposed to his answering affidavits in these proceedings, have had full and detailed knowledge of the financial affairs of Fintrom CC, including what happened to the proceeds of the R17 million business sale and the R15 million property sales. The notion that these questions could only be answered by the liquidators, and that the liquidators needed to be brought before the court for that purpose, is without foundation. Mr P[...] himself was the repository of that information and was legally obliged to possess it.

[22] There is a further point of significance. Mr P[...] as sole member would have been required in a members' voluntary winding up to produce the resolution passed for the voluntary winding up and to show that security was furnished to the Master for payment of Fintrom CC's debts. In a creditors' voluntary winding up, he would have been required to produce the statement of affairs furnished to the creditors' meeting. Mr P[...] produced none of these documents in any of his three answering affidavits. He did not state whether the voluntary liquidation was a members' or a creditors' voluntary winding up. He did not produce the relevant resolution, the solvency declaration, or the statement of affairs. He did not explain what had happened to the proceeds of the

R17 million business sale or the R15 million property sales. The absence of all of this information was not the result of any external constraint. It was a deliberate choice by a party who had every means and every legal obligation to have that information at his fingertips.

- [23] The timing of the voluntary liquidation is also significant and was noted in the judgment. Fintrom CC sold its business for R17 000 000.00 in June 2020 and sold two properties for a total of R15 000 000.00 prior to the voluntary liquidation. The voluntary liquidation took place on 31 July 2025, after approximately R32 million in assets had been realised by an entity of which Mr P[...] was the sole member. Yet Mr P[...] was simultaneously defaulting on a consent order whose payment terms he himself had proposed and was failing to pay the ongoing interim maintenance of R37 000.00 per month. He offered no explanation in any of his affidavits for the disposition of those proceeds, or for why they were not available to fund his obligations under the court orders. The only inference reasonably available on these facts is the one I drew in the judgment, namely that the proceeds were deliberately kept out of reach of Mrs P[...] and the court.

Ground 2: The finding that Fintrom CC received R17 million

- [24] Mr P[...] contends that I erred in finding that R17 million was paid to Fintrom CC for the sale of its business and ought not to have made that finding. He submits that no money was paid or received on behalf of Fintrom CC as a matter of fact.
- [25] This ground is factually unsustainable on Mr P[...]’s own papers. In his answering affidavit to the original Rule 43 application in July 2021, Mr P[...] stated that Fintrom

CC owed him R4 200 000.00 and that he was drawing R55 000.00 per month from Fintrom CC. He subsequently stated in his Financial Disclosure Form completed in November 2023 that Fintrom CC owed him R6 545 500.00. In his answering affidavit to Mrs P[...]’s supplementary founding affidavit, Mr P[...] himself acknowledged that Fintrom CC sold a business to Vundile Agri (Pty) Ltd in June 2020 for R17 000 000.00. The finding in the judgment that Fintrom CC received R17 million was accordingly based not on an allegation by Mrs P[...] but on an admission by Mr P[...] himself. The difficulty for Mr P[...] was never that the sale was in dispute. His difficulty was that he never explained what happened to the proceeds of that sale after receipt, and why those proceeds were not available to meet his obligations under the various court orders. The submission on appeal that no money was paid or received contradicts his own version as placed before me and is not a ground upon which a court of appeal can interfere with the findings of the court a quo.

Ground 3: Fintrom’s liquidators not before court

[26] Mr P[...] contends that I erred in making findings about Fintrom CC when Fintrom and its liquidators were not before the court, and that Mrs P[...] had the right to use the rules of discovery to obtain information from the liquidators. This contention is misconceived for the reasons already set out in the analysis of the statutory framework above. Mr P[...] is the sole member of Fintrom CC. By virtue of the applicable provisions of the 1973 Companies Act read with the CC Act, he was personally obliged to conduct a full inquiry into Fintrom CC’s affairs as part of the voluntary liquidation process, to make a declaration of solvency or to furnish a statement of affairs, and to procure the provision of security to the Master. At the time of deposing to his answering affidavit he accordingly had complete and detailed knowledge of the financial position of Fintrom CC and the disposition of its assets.

The liquidators could add nothing to what he himself was required to know and to disclose.

[27] The suggestion that Mrs P[...] should have pursued the liquidators by way of discovery is an attempt to place the burden of disclosure on the wrong party. In contempt proceedings, once the applicant has established the three requisite elements, the evidential burden shifts to the respondent to establish a reasonable doubt as to wilfulness and mala fides. That burden required Mr P[...] to explain, with particularity and supporting documentation, why he was unable to comply with the court orders. It did not entitle him to deflect inquiry to third parties while himself remaining silent on matters within his exclusive knowledge. This ground has no reasonable prospect of success.

Ground 5: The failure to refer Fintrom-related disputes to oral evidence

[28] Mr P[...] contends that I ought to have referred the disputes relating to Fintrom CC and Incor Properties to oral evidence and that the liquidators of Fintrom CC should have been called to testify. He relies in this regard on Rule 6(5)(g) and on the principles set out in *Bocimar MV v Kotor Overseas Shipping Ltd*², *Law Society, Northern Provinces v Mogami and Others*³, and *Greyling v George Randell High School*⁴.

[29] The principles applicable to referrals to oral evidence are settled. As confirmed in *Mogami*, an application for oral evidence must as a rule be made *in limine* and not

² 1994 (2) SA 563 (AD)

³ 2010 (1) SA 186 (SCA)

⁴ (PR11/22) [2023] ZALCPE 2

once it becomes clear that the applicant is failing to convince the court on the papers. As established in *Bocimar*, the court must weigh the prospects of oral evidence tipping the balance against the state of the papers, and where the preponderance of probabilities on the affidavits favours the respondent, oral evidence will be ordered only in rare cases. As confirmed in *Greyling*, an application for referral must specify who is to give evidence, what that evidence will establish, and why it would tip the balance.

[30] None of those requirements were met. The request made by counsel for Mr P[...] was informal and non-specific. No indication was given of precisely what evidence the liquidators of Fintrom CC would give, or how that evidence would address the established fact that Mr P[...] himself had access to and control over Fintrom CC's financial information by virtue of his role as sole member in the voluntary liquidation process. No explanation was offered as to why Mr P[...] could not simply have placed the relevant information before the court himself through his own affidavits, as the statutory framework required him to do.

[31] Moreover, the purported disputes about Fintrom CC did not constitute genuine disputes of fact in the sense established in *Whitman trading as JW Construction v Headfour (Pty) Ltd and Another*⁵. The test for a genuine dispute of fact requires that the party purporting to raise the dispute must have seriously and unambiguously addressed the fact said to be in dispute. Mr P[...] necessarily possessed, by virtue of his status as sole member and by virtue of his statutory obligations in the voluntary liquidation process, the knowledge required to address the allegations made against him. His failure to produce the resolution, the solvency declaration or statement of affairs, and the documentation explaining the disposition of R32 million in proceeds

⁵ 2008 (3) SA 371 (SCA)

was not a matter of inability. It was a deliberate choice to withhold information from the court. A party who withholds information they are required to disclose and then seeks a referral to oral evidence on the basis that the withheld information is disputed does not raise a genuine dispute of fact. These grounds accordingly have no reasonable prospect of success.

Ground 4: The withdrawn res judicata ground

[32] As recorded above, Mr P[...] withdrew the grounds relating to res judicata at the hearing of this application. Nothing further need be said in this regard, save to observe that the withdrawal was appropriate given that the res judicata defence was never properly raised in the affidavits filed before me and was not argued with any substance at the hearing of the contempt application.

Grounds 7, 8, 9 and 10: Tswane Petroleum

[33] Grounds 7, 8, 9 and 10 of the notice of application for leave to appeal all arise from Mr P[...]’s reliance on Tswane Petroleum as the primary justification for his failure to comply with the consent order. Because these grounds share a common factual foundation, they are conveniently addressed together. However, before dealing with each ground in turn, it is necessary to place the Tswane Petroleum defence in its proper context and to examine with some care the documents on which Mr P[...] relies.

The Tswane Petroleum defence: context and chronology

[34] Mr P[...]’s case, as it eventually emerged, was that he entered into an arrangement with Tswane Petroleum in terms of which he advanced a loan of R6 000 000.00 to that entity, that Tswane Petroleum in turn advanced R11 000 000.00 to an entity called Kenenao Petroleum (Pty) Ltd, that Kenenao Petroleum defaulted on its obligations to Tswane Petroleum, and that as a result Tswane Petroleum was unable to repay Mr P[...]. He contends that it was his expectation of repayment from Tswane Petroleum that caused him to agree to the terms of the consent order on 26 May 2025, and that the failure of Tswane Petroleum to pay him meant that he was unable to comply with the consent order. He submits that his conduct was accordingly bona fide and that his non-compliance did not constitute mala fide contempt of court.

[35] There are several immediately striking features of this defence. The first is the point at which it was raised. The supplementary founding affidavit by Mrs P[...] was delivered on 1 December 2025. Mr P[...] filed his supplementary answering affidavit on 10 November 2025. It was only in his additional supplementary answering affidavit filed on 6 February 2026, some three months after Mrs P[...]’s supplementary founding affidavit and some eight months after the consent order, that Mr P[...] for the first time revealed the existence of Tswane Petroleum as an alleged source of income and as the basis of his defence. The second striking feature is that on Mr P[...]’s own version, the Tswane Petroleum deal fell through in or about July 2025, which was before Mrs P[...] delivered her supplementary founding affidavit in December 2025. Mr P[...] accordingly knew when he filed his supplementary answering affidavit in November 2025 that the Tswane Petroleum arrangement had already collapsed. Yet that affidavit makes no mention of Tswane Petroleum. The Tswane Petroleum defence was reserved for the further additional supplementary answering affidavit filed in February 2026, which was itself filed in direct response to

the criticism in Mrs P[...]’s heads of argument of the inadequacy of the supplementary answering affidavit. This chronology is inconsistent with bona fides and is consistent with the defence having been constructed incrementally in response to the mounting pressure of the proceedings.

- [36] The third striking feature is the manner in which the Tswane Petroleum documents were produced. They were handed up at the hearing on 12 March 2026 in a sealed envelope, accompanied by a request by counsel for Mr P[...] that they be returned to his client on grounds of high confidentiality. Upon examination, I found that the documents were directly relevant to the proceedings and directed that they be uploaded to Case Lines as part of the court record. I found nothing in the documents that warranted the theatrical manner of their production. Indeed, as I now set out in more detail, those documents raised more questions than they answered and contained internal inconsistencies that were immediately apparent upon examination.

The five documents and their inconsistencies

- [37] The five documents produced by Mr P[...] in the sealed envelope were: a wholesale licence certificate issued to Tswane Petroleum (company registration number 2017/661433/07); an affidavit of indebtedness between Tswane Petroleum (company registration number 2016/234705/07) and Mr P[...], signed by one Mr Kunene as chairperson of the board of Tswane Petroleum, acknowledging that Tswane Petroleum is indebted to Mr P[...] in the amount of R5 457 000.00; a non-disclosure and non-compete agreement between Mr P[...] and Tswane Petroleum; a share certificate stating that Mr P[...] holds 50% of the issued shares in Tswane Petroleum (company registration number 2016/234705/07); and a formal notice of material

impairment dated 23 June 2025 addressed to the shareholders of Tswane Petroleum.

[38] These documents suffer from a series of fundamental inconsistencies and deficiencies that I set out below.

First inconsistency: the mismatched company registration numbers

[39] The wholesale licence certificate is issued to Tswane Petroleum with company registration number 2017/661433/07. However, the share certificate and the affidavit of indebtedness both refer to Tswane Petroleum with company registration number 2016/234705/07. These are different registration numbers. A company registration number is the unique identifier assigned to a legal entity by the Companies and Intellectual Property Commission. Two different registration numbers denote two different legal entities. Mr P[...]’s explanation, which appears for the first time in the notice of application for leave to appeal rather than in any of his affidavits, is that 2017/661433/07 is the registration number of the holding company and 2016/234705/07 is the registration number of the trading company. Even if that explanation were accepted, it gives rise to further questions that Mr P[...] never addressed: if the licence was issued to the holding company, what is the relationship between the holding company and the trading company; which entity is indebted to Mr P[...]; and which entity received the loan he claims to have advanced. These questions remain unanswered. A court hearing a leave to appeal application cannot accept a factual explanation that was never placed before the court a quo, and the absence of that explanation from any of Mr P[...]’s three affidavits is itself significant.

Second inconsistency: the contradiction between solvency and contingent repayment

[40] The formal notice of material impairment dated 23 June 2025 is addressed to the shareholders of Tswane Petroleum. Mr P[...] holds 50% of the issued shares and accordingly received this notice in his capacity as shareholder. The notice states, in terms, that the board of directors of Tswane Petroleum had concluded that the debt of R11 000 000.00 owed to it by Kenenao Petroleum (Pty) Ltd was not recoverable and should be written off in the 2024/2025 financial year. Significantly, the notice also states that Tswane Petroleum remains able to pay its debts as they fall due in the ordinary course of business and that the company's assets fairly valued exceed its liabilities fairly valued.

[41] The affidavit of indebtedness, signed by Mr Kunene and dated 18 July 2025, acknowledges that Tswane Petroleum is indebted to Mr P[...] in the amount of R5 457 000.00 in respect of a shareholder's loan. The affidavit of indebtedness then ties repayment of Mr P[...]’s loan to receipt by Tswane Petroleum of the funds due from Kenenao Petroleum. This creates an immediate and irreconcilable internal contradiction. The notice of material impairment, issued on 23 June 2025 and received by Mr P[...] as a 50% shareholder, states that the Kenenao Petroleum debt has been written off as irrecoverable. Yet the affidavit of indebtedness, issued less than four weeks later on 18 July 2025, ties repayment of Mr P[...]’s loan to recovery of that same irrecoverable debt. On the face of it, Tswane Petroleum and Mr P[...] agreed to repayment terms that both of them knew at the time of signing the affidavit of indebtedness were contingent on an event that had already been declared irrecoverable. This is not, as Advocate Swart suggests, merely an unusual feature of commercial debt collection. It is a contradiction that fundamentally undermines the credibility of the Tswane Petroleum defence.

[42] The contradiction is further compounded by the state of Tswane Petroleum's solvency as described in its own documentation. The notice of material impairment asserts that Tswane Petroleum remains solvent with assets exceeding liabilities. If that is correct, there is no explanation for why Tswane Petroleum could not repay Mr P[...]s loan directly from its own assets without waiting for Kenenao Petroleum to pay a debt that had already been written off as irrecoverable. Mr P[...] offered no answer to this question in any of his affidavits.

Third inconsistency: the loan advanced during the period of non-compliance

[43] The affidavit of indebtedness records that Mr P[...] received payments from Tswane Petroleum totalling R543 000.00. This is consistent with the finding in the judgment that between August 2022 and July 2025 Mr P[...] loaned Tswane Petroleum R6 000 000.00 and was repaid R543 000.00. The significance of this finding for the present application is as follows: Mr P[...] was advancing substantial sums to Tswane Petroleum during the very period he was defaulting on the Rule 43 order from June 2023 onwards. He was accordingly channelling financial resources away from his obligations to Mrs P[...] and into an entity that he now claims was unable to repay him. His claimed inability to comply with the court orders was, at least in part, self-induced. A party who deliberately advances funds to a third party during a period of non-compliance with a court order, and who then relies on the non-repayment of those funds as a defence to contempt, cannot credibly assert that his non-compliance was bona fide and involuntary.

Fourth inconsistency: the non-disclosure and non-compete agreement

[44] The non-disclosure and non-compete agreement between Mr P[...] and Tswane Petroleum was produced as one of the five sealed documents but was never discussed or explained by Mr P[...] in any of his affidavits. Its existence and content are significant. A non-disclosure and non-compete agreement of this nature is not typically concluded between a passive lender and a borrower. It is the kind of agreement entered into between parties who have a closer commercial relationship, such as a relationship involving the sharing of business information, the protection of trade secrets, or the restraint of competitive activities. The existence of such an agreement raises questions about the true nature of Mr P[...]’s relationship with Tswane Petroleum that he was required to address in his affidavits and did not. It is not sufficient to produce a document and leave the court to speculate about its significance. The failure to explain the non-disclosure and non-compete agreement is consistent with the broader pattern of selective and incomplete disclosure that characterised Mr P[...]’s affidavits.

Fifth issue: the absence of basic particulars

[45] As noted in the judgment, the Tswane Petroleum defence was advanced without the most basic particulars being furnished. Mrs P[...]’s heads of argument at paragraph 29(a) identify in detail the information that was never supplied: the date on which Mr P[...] entered into an agreement with Tswane Petroleum; the terms of that agreement; the nature of Mr P[...]’s involvement with Tswane Petroleum; the amount owed to him by Tswane Petroleum and the date upon which it fell due; confirmation from Tswane Petroleum of the indebtedness in the form of an affidavit from a

representative with authority to bind the entity; and whether the agreement was oral or written, and if written, a copy thereof. The failure to furnish these particulars was not a matter of oversight. It was the inevitable consequence of a defence that had been constructed incrementally and inadequately in response to the developing pressure of the proceedings.

The Plascon-Evans and Wevell Trust arguments

[46] Advocate Swart advances two related arguments in support of the Tswane Petroleum grounds. First, at paragraph 6.1 of his heads of argument, he relies on *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*⁶ and submits that because Mrs P[...]’s counsel declined the invitation to file a replying affidavit to the Tswane Petroleum annexures, she cannot complain about a lack of sufficient detail and the court should have accepted the annexures at face value. Second, at paragraph 6.2, he relies on *Minister of Land Affairs and Agriculture v D&F Wevell Trust*⁷) for the proposition that a failure to reply to new facts in an answering affidavit does not automatically mean those facts are admitted.

[47] Neither argument assists Mr P[...]. The *Plascon-Evans* rule operates in the context of a genuine factual dispute on the papers. Where the respondent raises a version that the applicant has not contradicted, the court must generally accept the respondent’s version unless it is so far-fetched or clearly untenable as to warrant rejection on the papers. However, the *Plascon-Evans* rule does not require a court to accept documents that are internally inconsistent on their own terms. The inconsistencies I identified in the Tswane Petroleum documents did not arise from any dispute

⁶ 1984 (3) SA 623 (A)

⁷ 2008 (2) SA 184 (SCA)

between the parties about what the documents said. They arose from contradictions within the documents themselves. A court is always entitled to examine documents for internal coherence and to draw inferences from inconsistencies that are objectively apparent from the face of those documents. The failure by Mrs P[...]’s counsel to file a replying affidavit is irrelevant to that exercise.

[48] The *Wevell Trust* principle is equally inapplicable. It is correct, as a general proposition, that a failure to reply to new facts in an answering affidavit does not automatically constitute an admission of those facts. The applicant takes the risk of leaving the respondent’s version uncontradicted, but that version does not thereby become established fact. What *Wevell Trust* does not establish is that a court is required to accept documents that are internally contradictory simply because the opposing party elected not to file a reply. The court’s function in motion proceedings is to assess the probabilities on all the material before it, including the inherent credibility and internal consistency of the documents produced. The Tswane Petroleum documents were assessed and found wanting not because of anything Mrs P[...] said in a replying affidavit, but because of what the documents themselves revealed. The *Wevell Trust* principle does not immunise a party from the consequences of producing documents that contradict each other at face value.

Ground 7: The company registration numbers

[49] Mr P[...] contends that I erred in drawing a negative inference from the discrepancy between the company registration numbers in the Tswane Petroleum documents and that I ought not to have found a negative connotation in that discrepancy. He submits

that the 2017/661433/07 registration number was the number of the holding company and the 2016/234705/07 number belonged to the trading company.

[50] As already noted, this explanation appears nowhere in any of the affidavits filed by Mr P[...] before me. It emerged for the first time in the notice of application for leave to appeal. A court of appeal cannot have regard to factual explanations that were not placed before the court a quo. A party is bound by the case they made in their affidavits, and Mr P[...]’s affidavits were silent on this point. His failure to explain the discrepancy when he had ample opportunity to do so in three separate affidavits is itself a matter from which an inference may be drawn. This ground has no reasonable prospect of success.

Ground 8: The finding regarding the contingent repayment terms

[51] Mr P[...] contends that I erred in finding that it was nonsensical for the repayment of his loan to Tswane Petroleum to be contingent on Kenenao’s repayment of its debt to Tswane Petroleum. He submits that debt collection is not a simple process and requires ongoing communication with promises made. He further submits that the content of the affidavit of indebtedness expresses what it says and that no negative inference ought to have been drawn.

[52] This submission does not engage with the specific basis of the finding. The finding was not that contingent repayment terms are inherently impermissible or commercially unusual. The finding was that it was nonsensical for Tswane Petroleum and Mr P[...] to agree to repayment terms contingent on recovery from Kenenao Petroleum when both parties knew, at the time of signing the affidavit of

indebtedness on 18 July 2025, that the Kenenao Petroleum debt had already been declared irrecoverable and written off by the board of Tswane Petroleum in the notice of material impairment of 23 June 2025. Mr P[...] as a 50% shareholder of Tswane Petroleum was a recipient of that notice. He knew that the Kenenao debt had been written off. Yet he signed an affidavit of indebtedness less than four weeks later agreeing to repayment terms contingent on recovery of that same written-off debt. Advocate Swart's submission that debt collection requires ongoing communication with promises made does not address this contradiction. This ground has no reasonable prospect of success.

Ground 9: No explanation for tying repayment to Kenenao's debt

[53] Mr P[...] contends that I erred in finding that no explanation was given for why the affidavit of indebtedness ties repayment of his loan to Tswane Petroleum to the repayment by Kenenao of their debt to Tswane Petroleum. He submits that the affidavit of indebtedness expresses what it purports to say and that no negative inference ought to have been drawn.

[54] This submission adds nothing to the argument already addressed under Ground 8. The finding was not that the structure of the affidavit of indebtedness was impermissible as a matter of form. The finding was that the substantive commercial logic of that arrangement, when examined against the contemporaneous notice of material impairment, was inexplicable and internally contradictory. Mr P[...] offered no explanation in his affidavits for why two parties who knew that the Kenenao debt had been written off agreed to repayment terms contingent on recovery of that debt. The

absence of an explanation was the basis of the adverse finding. This ground has no reasonable prospect of success.

Ground 10: The details of the loan to Tswane Petroleum

[55] Mr P[...] contends that I erred in requiring him to furnish details of the loan advanced by him to Tswane Petroleum and that the details of that loan were not the issue before court in a Rule 43 application.

[56] This submission misses the point entirely. The loan to Tswane Petroleum was directly relevant to the contempt application for the following reasons:

- (a) First, Mr P[...]’s entire defence to the allegation of mala fides rested on his asserted inability to pay arising from the failure of Tswane Petroleum to repay the loan. If that was the foundation of his defence, he was required to establish it with sufficient particularity to enable the court to assess whether it was genuine.
- (b) Second, the manner in which he deployed the loan as a defence, without furnishing the date of the agreement, its terms, the security arrangements, or any documentation establishing when and how the loan was advanced, was precisely what gave rise to the finding that the defence was unsubstantiated.
- (c) Third, and critically, the broader picture of Mr P[...] advancing R6 000 000.00 to Tswane Petroleum between August 2022 and July 2025 while simultaneously defaulting on the Rule 43 order from June 2023 is directly relevant to the issue of his financial priorities and hence to mala fides. He was channelling funds into an entity that he now claims could not repay him, while simultaneously failing to meet his obligations to Mrs P[...] under court orders made against him.

- (d) Fourth, the existence of the non-disclosure and non-compete agreement raises the question of whether Mr P[...] was merely a passive lender to Tswane Petroleum or had a more involved relationship with it, which is directly relevant to the credibility of his claim that he could not obtain repayment. This ground has no reasonable prospect of success.

Ground 6: The lavish lifestyle finding

[57] Mr P[...] contends that I erred in attaching weight to the allegations regarding his lavish lifestyle and that I ought not to have found that the question was capable of determination on affidavit. He submits that the Facebook posts relied upon by Mrs P[...] related to the pages of Mrs Gent and Mrs Wightman and could not be linked as a matter of undisputed fact to him.

[58] This ground mischaracterises the basis of the finding. The issue in the judgment was not simply that Mr P[...] was alleged to be living lavishly. The issue was that the allegations were specific, supported by photographic evidence and contextual detail, and yet Mr P[...] responded with nothing more than a bare denial accompanied by a request that the issue be referred to oral evidence. As established in *Whitman*, where a party necessarily possesses knowledge of the facts alleged against him and responds with a bare or ambiguous denial, the court will generally find that the dispute is not genuine. Mr P[...] clearly knew whether he was or was not living at a level inconsistent with his alleged financial incapacity. He could have supported his denial with confirmatory affidavits, financial evidence, or his own detailed account of his circumstances. He did not. His bare denial, accompanied by an attempt to deflect attention to the question of who was funding the alleged lifestyle, fell far short of what

was required. The finding that his omission to deal adequately with these allegations amounted to a tacit admission was correct in law and on the facts. This ground has no reasonable prospect of success.

Grounds 11 to 14: The central question of mala fides and wilfulness

[59] The central grounds of appeal are those directed at the finding that Mr P[...]’s non-compliance with the consent order was mala fide and wilful. These grounds are set out in the notice of application for leave to appeal in various forms, but their common thread is that Mr P[...] acted bona fide in reliance on expected income from Tswane Petroleum, that he should have been given the benefit of the reasonable doubt required by the criminal standard applied in civil contempt proceedings, and that his partial compliance with maintenance obligations in earlier periods demonstrated bona fides.

[60] The applicable legal principles were correctly set out in the judgment. It is trite that an applicant who alleges contempt of court must establish three elements: that an order was granted against the alleged contemnor; that the alleged contemnor was served with the order or had knowledge of it; and that the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed, and the respondent bears an evidential burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established. These principles were confirmed by the Supreme Court of Appeal in *Snowy Owl Properties 284 (Pty) Limited v Celliers & another*⁸ at paragraph 22 and applied in the judgment.

⁸ [2023] ZASCA (31 March 2023)

[61] The standard of proof is beyond reasonable doubt. This was confirmed by the Supreme Court of Appeal in *Fakie N O v CCII Systems (Pty) Ltd*⁹ at paragraph 42. However, the beyond-reasonable-doubt standard does not require a court to accept a respondent's bare, unsubstantiated, and internally inconsistent version simply because it is asserted. It requires the court to assess whether the respondent's version raises a genuine and reasonable doubt as opposed to a merely theoretical one. As established in *Whitman*, a version that fails to seriously and unambiguously address the facts alleged against the respondent will not satisfy the evidential burden.

[62] In the present matter, the finding of mala fides was not based on speculation or inference from isolated facts. It was based squarely on Mr P[...]’s own version, which established the following cumulatively: he was aware of the consent order and its terms, having proposed those terms himself; he knew by approximately July 2025 that Tswane Petroleum would not be in a position to pay him the funds on which he had allegedly relied when agreeing to the consent order, because the notice of material impairment of 23 June 2025, received by him as a 50% shareholder, had already declared the Kenenao Petroleum debt irrecoverable; despite knowing this, he took no steps to notify Mrs P[...] of his changed circumstances, to approach the court for a variation of the consent order, or to attempt to comply with even a portion of his ongoing obligations; he continued to advance funds to Tswane Petroleum during the very period he was defaulting on the Rule 43 order; between July 2021 and November 2023 he lent a further R2 345 500.00 to Fintrom CC whilst simultaneously failing to comply with the Rule 43 order; he caused Fintrom CC to lend money to Khumhold instead of causing it to repay the amounts it owed him so that he could

⁹ [2006] ZASCA 52; 2006 (4) SA 326 (SCA)

meet his obligations; he was able to fund maintenance, repairs, and renovations to the former matrimonial home; he was able to borrow money to fund his own expenses but did not borrow money to comply with the court orders made against him; and Fintrom CC was placed into voluntary liquidation on 31 July 2025 after realising approximately R32 million in asset sales, without any explanation being offered as to what happened to those proceeds.

[63] The analysis of the Tswane Petroleum documents set out above reinforces the mala fides finding in a specific and important respect. Mr P[...], as a 50% shareholder of Tswane Petroleum, received the notice of material impairment on 23 June 2025 in which the Kenenao Petroleum debt was declared irrecoverable. He then, less than four weeks later, entered into an affidavit of indebtedness with Tswane Petroleum tying repayment of his loan to recovery of a debt he knew had been written off. He did not disclose the existence of Tswane Petroleum as a source of income until February 2026, despite knowing since July 2025 that the arrangement had collapsed. He produced the Tswane Petroleum documents in a sealed envelope at the hearing in a manner designed to impede scrutiny. When those documents were examined, they were found to be internally inconsistent in the respects set out above. This accumulation of conduct is wholly inconsistent with the conduct of a person who genuinely believed he had a legitimate reason for non-compliance and who took reasonable steps to address his obligations.

[64] The analysis of the statutory framework governing the voluntary liquidation of Fintrom CC reinforces the mala fides finding in a further respect. Mr P[...], as sole member of Fintrom CC, was personally required by statute to conduct a full inquiry into Fintrom CC's affairs and to account for its assets and liabilities as part of the voluntary liquidation process. He produced none of the documents that that process would

have generated. He offered no explanation for the disposition of R32 million in realised proceeds. His silence on these matters, in circumstances where he was legally obliged to have that information and where the information was directly relevant to his defence, was itself evidence of deliberate non-disclosure.

[65] Mr P[...]’s reliance on his payment of maintenance between September 2021 and June 2023 as evidence of bona fides is misplaced. The payment of maintenance during a period when Fintrom CC was generating income and was able to fund him is not evidence that his later non-compliance was bona fide. The question was what he did when he encountered financial difficulty, and on his own version the answer was that he prioritised unsecured loans to entities under his control over his obligations to Mrs P[...] and over compliance with court orders made against him.

[66] The submission that I ought not to have found mala fides given his payments of R37 000.00 in June and July 2025 is equally unpersuasive. Those payments were made in the month of, and the month immediately following, the granting of the consent order. They were the only payments he made under the consent order. He thereafter made no further payments, despite the fact that the consent order had been proposed by him and despite the fact that, as the evidence demonstrated, he had access to financial resources that he chose to deploy elsewhere.

[67] I am satisfied that no other court would, on a proper application of the beyond-reasonable-doubt standard to Mr P[...]’s own version, to the Tswane Petroleum documents and their internal inconsistencies, and to the statutory framework governing the voluntary liquidation of Fintrom CC, reach a different conclusion on the question of mala fides. These grounds, both individually and collectively, have no reasonable prospect of success.

Ground 15: The punitive costs order

[68] Mr P[...] contends that I erred in granting a punitive costs order against him and that each party ought to have been ordered to pay their own costs.

[69] A punitive costs order on the attorney and client scale is warranted where a party's conduct has been dishonest, vexatious, or so unreasonable as to amount to an abuse of court process. The conduct that led to the costs award in this matter has been described in full in the judgment. Briefly stated, Mr P[...] filed three answering affidavits while failing in each to disclose information that was already within his knowledge at the time of his first affidavit; he withheld the Tswane Petroleum documents until the day of the hearing and produced them in a sealed envelope in circumstances designed to prevent scrutiny; those documents, when examined, were found to be internally inconsistent in material respects; he adopted what I described in the judgment as a "catch me if you can" approach to the court orders made against him; he failed, as sole member of Fintrom CC, to produce any of the documents that the statutory voluntary liquidation process would have generated; and he showed a complete absence of transparency as to his actual financial position. The cumulative effect of this conduct was to prolong and complicate proceedings that should have been straightforward, and to impose unnecessary costs on Mrs P[...] in the process of attempting to enforce court orders made in her favour.

[70] I am satisfied that the punitive costs order was correctly granted and that no other court would interfere with it on appeal. This ground has no reasonable prospect of success.

Section 17(1)(a)(ii): Is there any other compelling reason?

[71] For completeness, I address section 17(1)(a)(ii) of the Superior Courts Act. Mr P[...] has not expressly invoked this provision, but I have considered whether any of the grounds raised might constitute a compelling reason why the appeal should be heard.

[72] The present application involves the application of settled law to a specific factual matrix. The law of civil contempt is settled by *Fakie N O v CCII Systems (Pty) Ltd* and *Snowy Owl Properties*. The principles governing disputes of fact in motion proceedings are settled by *Whitman*. The principles governing referrals to oral evidence are settled by *Bocimar*, *Mogami*, and *Greyling*. The principles governing the effect of an applicant's failure to reply to an answering affidavit are settled by *Wevell Trust*. The statutory framework governing voluntary liquidation of close corporations is settled by the 1973 Companies Act read with the CC Act. None of the grounds raise any novel legal question, nor is there any conflict between judgments in any of the areas engaged by this application. Consistently with the principle confirmed in *Fairtrade Tobacco Association*, there can accordingly be no compelling reason within the meaning of section 17(1)(a)(ii). Mr P[...] is not assisted by this provision.

Conclusion

[73] For all of the reasons set out above, I am not satisfied that any of the grounds of appeal have a reasonable prospect of success on appeal, or that there is any other

compelling reason why the appeal should be heard. The application for leave to appeal falls to be dismissed.

[74] As regards costs, there is no reason to depart from the ordinary rule that costs follow the result. Mrs P[...] has successfully opposed this application and is entitled to her costs. Given the nature of the application and the manner in which it has been prosecuted, I am of the view that the costs should be granted on the attorney and client scale as per Scale C.

Order

[75] For the reasons set out above, the following order is made:

IT IS ORDERED THAT:

1. The application for leave to appeal is dismissed.
2. The Applicant shall pay the costs of the application for leave to appeal on the attorney and client scale as per scale C including the costs of one counsel.

LANGE AJ

Acting Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 8 JUNE 2026

Date of judgment: 1JULY 2026

For the applicant:

Adv FAG Swart

Cell: 082 903 7172

Email: frik@cpma.cc

Instructed by:

Jan Kriel Attorneys

TEL: 082 324 7260 / 067 901 5168

EMAIL: jan@jankrielattorneys.co.za

nadia@jurgensbekker.co.za For the respondent:

For the Respondent:

Adv S Georgiou

Cell: 083 777 2559

E-mail: sgeorgiou@law.co.za

Instructed by:

Houghton Harper Inc

TEL: 011 648 1066

E-MAIL: duncan@houghtonharper.co.za

tshumane@houghtonharper.co.za