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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 2026-073454

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: YES/~~NO~~

DATE: 20/08/26

SIGNATURE:

DURF KAPITAAL (PTY) LTD

Applicant

and

GARAGE PROPCO HOLDINGS (PTY) LTD

Respondent

(Registration number: 2019/617217/07)

JUDGMENT

HERSHENSOHN AJ

Introduction

[1] This is an unopposed application for the compulsory winding-up of the respondent, a private company, on the ground that it is unable to pay its debts as contemplated in section 344(f) read with section 345(1)(a) of the Companies Act 61 of 1973, those provisions being retained in force for the winding-up of

companies by item 9 of Schedule 5 to the Companies Act 71 of 2008. The application was enrolled on the unopposed motion roll of this Division, sitting at its main seat at Pretoria, and served before me on 28 July 2026.

[2] When the matter was called I raised, *mero motu*, a question going to the competence of this court to entertain it. On 2 July 2026 the Minister of Justice and Constitutional Development published Government Notice 7648 in Government Gazette 54935, which, purportedly with effect from 1 July 2026, re-determined the areas under the jurisdiction of the main and local seats of, among others, this Division, and in doing so brought to an end the long-standing regime of concurrent jurisdiction between the main seat at Pretoria and the local seat at Johannesburg. The respondent's registered office is situated at Johannesburg, within the area now assigned to the local seat. The question that arises is whether, notwithstanding that notice, this court remains clothed with the jurisdiction to hear and determine this application.

[3] I invited Mr Hewitt, who appeared for the applicant, to address me on the point, and directed that heads of argument be delivered. I am indebted to counsel for the assistance rendered, and I found his heads of argument most useful and helpful in delivering this judgement. For the reasons that follow, I am satisfied both that this court is clothed with the jurisdiction to entertain the application, and that the applicant has made out a proper case for a final order of winding-up. I deal first with the question of jurisdiction, and then with the merits.

The relevant facts and chronology

[4] The material facts are common cause and may be shortly stated.

- [5] The debt on which the application is founded arises from a written loan facility agreement concluded at Pretoria on 21 October 2020. The application was issued out of this court on 27 March 2026. It was served on the respondent, its employees (if any) and the relevant trade union, the South African Revenue Service and the Master of the High Court between 31 March and 8 April 2026. The respondent delivered a notice of intention to oppose on or about 17 April 2026 but filed no answering affidavit. An application for a hearing date was made on 1 June 2026, and the notice of set down was served on the respondent's attorneys of record on 2 June 2026.
- [6] The chronology matters. The application was issued, served, enrolled, and the notice of set down given, by 2 June 2026, a full month before Government Notice 7648 took effect. The respondent's registered office is at 3[...] P[...] Street, Oaklands, Johannesburg, which falls within the magisterial districts now assigned to the local seat at Johannesburg.

The jurisdictional framework

- [7] "Jurisdiction" means the power or competence of a court to hear and determine an issue between parties: *Gcaba v Minister for Safety and Security* 2010 (1) SA 238 (CC) at para 74, adopting the definition of Watermeyer CJ in *Graaff-Reinet Municipality v Van Ryneveld's Pass Irrigation Board* 1950 (2) SA 420 (A) at 424.
- [8] The High Court of South Africa is a single court, constituted under section 6(1) of the Superior Courts Act 10 of 2013 ("the Act") in Divisions, each with a main seat and, where the Minister has so established, one or more local seats. The Act gave effect to the rationalisation of the courts envisaged by item 16(6) of Schedule 6 to the Constitution and repealed the former Supreme Court Act 59

of 1959. Since its commencement there are no longer “provincial” and “local” divisions; there are Divisions, with main and local seats: *Murray NNO v African Global Holdings (Pty) Ltd* 2020 (2) SA 93 (SCA) at paras 16 to 18.

- [9] The power to determine the area under the jurisdiction of a Division, and of a local seat, is conferred on the Minister by section 6(3) of the Act, which provides in material part:

“(a) The Minister must, after consultation with the Judicial Service Commission, by notice in the Gazette, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice.

(b) The area under the jurisdiction of a Division may comprise any part of one or more provinces.

(c) The Minister may, after consultation with the Judicial Service Commission, by notice in the Gazette establish one or more Local Seats for a Division ... and determine the area under the jurisdiction of such a local seat, and may in the same manner amend or withdraw such a notice.

(d) The publication of a notice referred to in paragraph (a) or (c) does not affect any proceedings which are pending at the time of such publication.” (My emphasis)

- [10] Section 21(1) of the Act provides that a Division has jurisdiction over all persons residing or being in, and in relation to all causes arising within, its area of

jurisdiction, that area being the area determined by the Minister under section 6(3).

[11] Until 1 July 2026 the main seat at Pretoria and the local seat at Johannesburg exercised concurrent jurisdiction. That concurrency was expressly provided for in the Ministerial determination, Government Notice 30 in Government Gazette 39601 of 15 January 2016 having recorded that the local seat “*has concurrent jurisdiction with the main seat until such time that the area of jurisdiction of the local seat is determined in terms of section 6(3)(c)*”. Under that regime the main seat enjoyed jurisdiction throughout the province, including the areas of the local seats, and, being seized of a matter within its jurisdiction, was obliged to entertain it and had no discretion to decline, this per the well-known judgement of *Standard Bank of South Africa Ltd and Others v Thobejane and Others*; *Standard Bank of South Africa Ltd v Gqirana NO and Another* 2021 (6) SA 403 (SCA) (“*Thobejane*”).

[12] On 2 July 2026 the Minister, acting under section 6(3)(a) and (c) of the Act read with item 16(6)(a) of Schedule 6 to the Constitution, published Government Notice 7648 in Government Gazette 54935, expressed to take effect from 1 July 2026. The notice withdrew earlier determinations affecting the Limpopo, Gauteng and North West, and Mpumalanga Divisions, and determined afresh the areas of the main and local seats as set out in the Schedule. For this Division, the main seat at Pretoria was assigned the Tshwane metropolitan and specified adjacent districts, and the local seat at Johannesburg the Ekurhuleni, Johannesburg, Sedibeng and West Rand districts. Critically, the provision for concurrency between the two seats was omitted. It appears, and from my understanding, that the effect of the notice, going forward, is to bring the

concurrent regime to an end and to confer on the Johannesburg local seat jurisdiction, to the exclusion of the main seat, over matters falling within its area.

[13] Paragraph 2 of the notice contains a saving provision in the following terms:

“Despite the publication of this Notice and the withdrawal of the Government Notices ... in paragraph 1(a)(b) and (c) above, proceedings which have already been placed on the court roll for trial, but have not been concluded before the coming into effect of this Notice, must be concluded as if this Notice has not been published ...”

The question restated

[14] It is common cause, and, in my view, plainly correct, that prior to 1 July 2026 this court had jurisdiction to entertain the application. Under the winding-up regime, the court within whose area a company’s registered office is situated is the court with jurisdiction to wind it up, again as dealt with in insolvency context in the well-known judgement of *Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf & Country Estate (Pty) Ltd* 2013 (1) SA 191 (WCC) at paras 21 to 23. The respondent’s registered office is at Johannesburg. Under the concurrent regime, however, the main seat at Pretoria enjoyed jurisdiction over the whole province, including the area of the Johannesburg local seat, and was bound to entertain such a matter (per *Thobejane*). Jurisdiction was accordingly validly established in this court when the application was launched.

[15] Two consequences follow, and they usefully narrow the enquiry. First, the fact that the loan agreement was concluded at Pretoria does not, of itself, found the

jurisdiction of this seat. For the winding-up of a company, jurisdiction follows the registered office and not the place where the underlying cause of action arose (*Sibakhulu*). Secondly, the true question is therefore not whether this court ever had jurisdiction, it plainly did, but whether the coming into operation of Government Notice 7648 divested this court of the jurisdiction it had, in respect of a matter already pending before it. That is a question about the temporal reach of the notice.

Government Notice 7648 is subordinate legislation

[16] Government Notice 7648 owes both its existence and its authority to the empowering provisions of section 6(3) of the Act. It is therefore subordinate or delegated legislation, and falls to be interpreted as such: *Minister of Environmental Affairs and Tourism and Others v Pepper Bay Fishing (Pty) Ltd; Minister of Environmental Affairs and Tourism and Others v Smith* 2004 (1) SA 308 (SCA) at 320E–F. Two things follow. The notice is subject to the ordinary principles governing the temporal operation of legislation, including the presumption against retrospectivity; and, more fundamentally, it can neither exceed nor override the terms of its empowering statute.

The decisive provision: section 6(3)(d)

[17] The empowering statute itself answers the question. Section 6(3)(d) provides, in terms, that “[t]he publication of a notice referred to in paragraph (a) or (c) does not affect any proceedings which are pending at the time of such publication”. Government Notice 7648 is, on its face, a notice made under section 6(3)(a) and (c). The statutory saving in section 6(3)(d) therefore applies to it directly.

[18] The notice was published on 2 July 2026. On that date these proceedings were, beyond argument, pending: the application had been issued on 27 March 2026, served by early April, and enrolled, with the notice of set down having been served on 2 June 2026. By the plain terms of section 6(3)(d), the publication of the notice “does not affect” them. The jurisdiction that this court possessed over the application when it was launched is thus expressly preserved by the very statute under which the notice was made. That, in my view, is dispositive of the question.

[19] It makes no difference that the notice purports to take effect from 1 July 2026, being the day before its publication. The saving in section 6(3)(d) is keyed to the date of publication, and on that date the proceedings were pending; and they were, in any event, equally pending on 1 July 2026. On either date the saving operates.

The presumption against retrospectivity

[20] The same conclusion is reached through the presumption against retrospectivity, which section 6(3)(d) may be regarded as codifying in this context. In *Veldman v Director of Public Prosecutions, Witwatersrand Local Division* 2007 (3) SA 210 (CC) the Constitutional Court affirmed (at paras 26 to 27) that, generally, legislation is not to be interpreted so as to extinguish existing rights and obligations unless the statute so provides or its language clearly shows that meaning; that legislation is presumed to affect only future matters.

[21] There is nothing in Government Notice 7648 that, expressly or by necessary implication, purports to divest the courts of jurisdiction over matters already pending when it took effect. On the contrary, the words “with effect from 1 July

2026” fix a date from which the notice is to operate *in futuro*. Read with the presumption, and with section 6(3)(d), the notice operates prospectively only, and does not reach back to strip this court of a jurisdiction already vested and being exercised in a pending matter.

The notice’s own proviso does not narrow the statutory saving

[22] Mr Hewitt fairly drew my attention to paragraph 2 of the notice, which preserves only “*proceedings which have already been placed on the court roll for trial*” and which have not been concluded before the notice takes effect, and which is in terms tied to “*the withdrawal of the Government Notices ... in paragraph 1(a)(b) and (c)*”. It might be contended that, by expressly saving only trial-roll matters affected by the withdrawals, the Minister evinced an intention not to save other pending matters.

[23] I do not accept that contention, for three reasons. First, paragraph 2 of the notice is itself subordinate legislation and cannot cut down the saving conferred by the empowering statute. Whatever paragraph 2 does or does not preserve, section 6(3)(d) independently preserves all proceedings pending at publication, and a Ministerial notice cannot lawfully abridge that statutory protection. Secondly, *expressio unius* is no more than an aid to construction and yields readily to context. Here it must yield to the wider statutory saving, and to the presumptions against retrospectivity and against the ouster of the jurisdiction of the High Court. Thirdly, and in any event, paragraph 2 is directed at the withdrawal notices in paragraphs 1(a) to (c), whereas the re-determination of this Division’s areas, the operative act that removes the concurrency, is effected under paragraphs 1(d) and (e) of the notice. Paragraph 2 does not, on

its own terms, even engage the determination on which the jurisdictional question turns. Section 6(3)(d), by contrast, does.

- [24] I would add that the reference in paragraph 2 to matters “*placed on the court roll for trial*” sits uneasily with motion proceedings such as the present, which are not enrolled “*for trial*”. That is a further reason why the answer is not to be found in the proviso to the notice, but in the broader language of the statute, which speaks of “*proceedings which are pending*” without any such limitation.

Perpetuatio jurisdictionis

- [25] The conclusion I have reached accords, too, with the settled principle of our common law expressed in the maxim *perpetuatio jurisdictionis*. That a court which has validly acquired jurisdiction over a matter at the commencement of the proceedings retains that jurisdiction, and is not divested of it, by a subsequent change in the facts or circumstances that founded it. Jurisdiction having been established in this court when the application was launched under the concurrent regime then in force, the later re-determination of the Division’s area does not divest this court of the authority to carry the pending matter to completion.

No discretion to decline

- [26] It follows that this court not only retains jurisdiction but is bound to exercise it. A court seized of a matter within its jurisdiction has no discretion to refuse to determine it (*Thobejane*). There is accordingly no room for this court to decline the application on the footing that, under the new dispensation, such a matter would now be brought at Johannesburg.

Jurisdiction: conclusion

[27] For these reasons I am satisfied that this court, sitting at its main seat at Pretoria, is clothed with the requisite jurisdiction to hear and determine this application, notwithstanding the publication of Government Notice 7648 in Government Gazette 54935. The jurisdictional objection which I raised of my own accord is accordingly resolved in favour of the exercise of jurisdiction. I turn to the merits.

The merits

[28] Having found that the court is competent to entertain the application, I turn to the merits. Given the manner in which the respondent has conducted itself, they may be dealt with shortly.

[29] The application is unopposed. The respondent delivered a notice of intention to oppose on 17 April 2026, but thereafter did nothing: it delivered no answering affidavit, no heads of argument and no practice note, and there was no appearance on its behalf at the hearing. The applicant's attorney confirms in a compliance affidavit, and it is not disputed, that the respondent is aware of the application and has elected not to oppose it. In these circumstances the allegations in the founding affidavit stand uncontroverted, and the application falls to be determined on those allegations.

[30] The deponent to the founding affidavit is Mr Le Roux Abraham van Wyk, the sole director of the applicant. He sets out the following, none of which is met by any answer.

Locus standi and the indebtedness

[31] The applicant applies as a creditor of the respondent, and is competent to do so under section 346(1)(b) of the 1973 Act. The indebtedness arises from a written loan facility agreement concluded on 21 October 2020 (annexure “C” to the founding affidavit), in terms of which the applicant advanced R2 000 000 in capital to the respondent, repayable together with interest of R1 000 000 over a period of five years. The respondent duly paid the first four annual interest instalments of R200 000 each, in January of 2022, 2023, 2024 and 2025. It failed, however, to pay the final instalment of R2 200 000, being the capital of R2 000 000 together with the last interest instalment of R200 000, which fell due on 31 January 2026. That debt remains unpaid, and, importantly, is not disputed. The applicant’s standing as a creditor is beyond question.

The ground: inability to pay debts

[32] The application is founded on section 344(f) read with section 345(1)(a) of the 1973 Act. On 18 February 2026 the applicant caused a demand in terms of section 345(1) to be served on the respondent at its registered office, as the Sheriff’s return of service confirms. More than three weeks elapsed without the respondent paying the sum demanded, or securing or compounding for it to the reasonable satisfaction of the applicant. By operation of section 345(1)(a), the respondent is therefore deemed to be unable to pay its debts.

[33] That statutory deeming is amply borne out on the facts. The respondent was reminded of the impending final payment on 19 January 2026; a notice of breach affording five days to pay was delivered on 10 February 2026; and the statutory demand followed. Although its attorneys corresponded with the applicant on more than one occasion, the respondent has at no stage paid,

tendered payment, furnished security, or disputed either its breach or its indebtedness. The only inference reasonably open, as the deponent submits, is that the respondent is unable to pay its debts.

- [34] Where a creditor establishes that a company is unable to pay a debt that is itself undisputed, and where there is no *bona fide* dispute of the debt on reasonable grounds, the creditor is ordinarily entitled to a winding-up order (see the principle in *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T)). There is no hint of any *bona fide* dispute in this matter; the respondent's posture has been one of unexplained and persistent default.

Compliance with the statutory formalities

- [35] I am satisfied that the formalities prescribed for a winding-up order have been met. The compliance affidavit of the applicant's attorney, Ms Merike Pienaar, deposed to on 1 July 2026, establishes these facts, and which affidavit I accept.

Whether a final order should be granted

- [36] The applicant seeks, as its primary relief, a final order of winding-up. A provisional order with a rule *nisi* is sought only in the alternative. The court has a discretion in the matter. Although a winding-up is often granted provisionally in the first instance, with a rule *nisi* to afford other interested parties an opportunity to intervene, that course is not invariable. A final order may be granted at the first hearing where the court is satisfied that the requirements for such an order are met and that the interests of those who may be affected have been safeguarded.

[37] I am so satisfied in this case. The statutory ground for winding-up is established on uncontroverted facts; the debt is undisputed; the formalities under sections 346(3) and 346(4A) have been complied with; the South African Revenue Service, the Master, the employees and any trade union have received the notice the Act requires, and the respondent's known creditors have been notified of the application and have not sought to be heard. The respondent, though aware of the application, has chosen not to oppose it, to deliver no answering affidavit, heads of argument or practice note, and not to appear. In these circumstances no purpose would be served by the grant of a provisional order and a rule *nisi*, and the applicant is entitled to the final relief that it seeks.

Costs

[38] The applicant seeks that the costs of the application be costs in the winding-up of the respondent. That is the ordinary order, and I see no reason to depart from it.

Order

[39] In the result I make the following order:

1. The respondent, Garage Propco Holdings (Pty) Ltd, is placed under final winding-up in the hands of the Master of the High Court.
2. The costs of the application are costs in the winding-up of the respondent.

**ACTING JUDGE HERSHENSOHN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 20 **AUGUST 2026**.

APPEARANCES

For the applicant: Mr D Hewitt

Instructed by: Delberg Attorneys, Pretoria

For the respondent: No appearance

Date of hearing: 27 July 2026

Date of judgment: August 2026