



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case number no: 2024-145838

In the urgent intervention application of:

BRIGHT IDEA PROJECTS 1402CC

First Intervening Applicant

JOHN ANDREW BARNES

Second Intervening Applicant

FOR LEAVE TO INTERVENE AS AN APPLICANT IN THE FOLLOWING
PENDING APPLICATION FOR THE WINDING-UP OF THE RESPONDENT:

Case No: 2024-145838

In the matter between:

FLUERY KWEKERY (PTY) LTD

Applicant

and

MISCHA PREMIER VINES CC

Respondent

(Reg. No.:1987/002460/23)

[Converted to a company under registration number:

2019/234022/07 on or about 13/05/2019]

Registered address: Mischa Estate, Oakdene Road, Wellington, Western Cape

Coram : Nziweni, J

Heard : 11 August 2026

Delivered : 14 September 2026 (electronically)

Summary : **Insolvency Law - *Concursus Creditorum***- An intervening creditor who alleges a desire to protect the collective interest of creditors, but subsequently withdraws their application upon receiving a private, preferential debt settlement from the respondent, acts incompatibly with the principles of the *concursus creditorum*. Such a party leverages the judicial process for personal preference and cannot claim "substantial success" or seek to fund a private, tactical exercise from the corporate estate.

Practice - Motion Proceedings & Evidence- Motion proceedings are decided on proven facts, not conjecture. - A party alleging an improper motive or lack of genuine intent by an applicant bears the onus of producing clear, unassailable evidence. - Speculative and generalised assertions cannot displace objectively established statutory rights when jurisdictional requirements are met.

Practice - Costs on Withdrawal - A party who unilaterally withdraws an application following a private settlement is generally liable for the wasted costs and is not entitled to a costs order in its favour. - A rule nisi inviting parties to show cause regarding costs creates no prima facie entitlement to a costs order.

Company - An unpaid creditor who clearly establishes a company's commercial insolvency is entitled to a winding-up order as a matter of right - *ex debito justitiae*. Where the primary application is unopposed and commercial insolvency is proven, alternative internal disputes, domestic deadlocks, or 'just and equitable' grounds raised by an intervening shareholder become secondary and redundant.

Insolvency - Costs of Superfluous Intervention- An intervening party's costs will only be borne by the insolvent estate if their intervention contributes significantly to the Court's decision to grant the winding-up order. If the intervention fails to alter the inevitable statutory consequence of the company's financial demise, it is entirely superfluous and does not entitle the intervenor to costs order out of the estate.

ORDER

1. The respondent company is placed under final winding-up in the hands of the Master of the High Court.

2. The costs of the applicant creditor shall be costs in the liquidation of the respondent estate.
3. The application for costs in the liquidation by the first intervening party is dismissed.
4. The first intervening party shall bear its own costs incurred in these proceedings.
5. The application for costs in the liquidation by the second intervening party is dismissed.
6. The second intervening party shall bear his own costs incurred in these proceedings.

JUDGMENT DELIVERED ELECTRONICALLY

Nziweni, J

Introduction and background

[1] This matter presents two distinct interesting questions regarding the entitlement to costs in liquidation: first, whether an intervening creditor who withdraws their application upon being paid by the respondent company is entitled to costs; and second, whether a shareholder who intervenes in those same proceedings as an applicant is also so entitled to costs.

[2] The main application entails an application for the respondent's compulsory winding up as envisaged in section 66 and 69 of the Close Corporations Act, Act 69 of 1984 read with section 344 (f) and 345 (1) of the Companies Act, Act 61 of 1973 (as amended). The applicant commenced the proceedings for the respondent's winding up. The first intervening party was the respondent's unpaid trade creditor when it brought the application to intervene.

[3] The first intervening party is Bright Idea Projects 1402 CC that is trading under name and style of Hugo & Hugo Electrical. When the first intervening party lodged its application to intervene, the respondent in the main application, operating as Mischa

Premier Vines (Pty) Ltd ("the respondent"), was indebted to the first intervening party for R 141 823.66.

[4] In his founding affidavit, the second intervening party reveals that on 11 July 2025, he instituted an independent urgent application for the compulsory winding-up of the respondent, which is enrolled for hearing in October 2026. He subsequently withdrew that application and instead sought leave to intervene in this application.

[5] The second intervening party is intervening in these proceedings in his capacity as a 50 % shareholder of the respondent. The second intervening party is also a director of the respondent. The second intervening party stated in its founding papers that he intervened in this application for purposes of supporting the winding up of the respondent. The second intervening party also holds the view that, given that the *concurso creditorium* is created on the date of presentment of the application to the Registrar, it would be to the advantage to the general body of creditors to do everything possible to support this application so that in the event that the applicant or the first intervening applicant do not persist with or unsuccessful in the main application, then the application should be wound up on the basis of his application.

[6] The debt of the first intervening party was fully paid shortly after its intervening application and the winding up application were delivered. The first intervening party contended that after the payment of the debt no tender was made for costs of the appearance.

[7] On 20 June 2025, pursuant to the first intervening party being paid in full, the application to intervene by the first intervening party was removed from the roll and the issue of costs was postponed for later determination.

[8] On 12 March 2025, the main application was postponed to 24 March to afford the applicant and the respondent an opportunity to explore a settlement.

[9] On 24 March the application was once more postponed to 09 May 2025, for the applicant and the respondent to explore settlement.

[10] On 09 May 2025, the matter was postponed to 20 June 2025, for the applicant and the respondent to explore settlement.

[11] The first intervening party launched its application to intervene in these proceedings on 05 June 2025.

[12] On 20 June 2025, after the court heard submissions from the first intervening party's counsel, its application was removed from the court's roll and the costs were stood over for later determination.

[13] On 18 March 2026, the second intervening party lodged its application to intervene as applicant in the main application.

[14] In its founding affidavit, the first intervening party averred that it brought the intervening application in support of Fleury Kwekery (Pty) Ltd ("the applicant") and to protect the first intervening party's interest should the applicant decide not to proceed with the main application.

[15] On 18 March 2026, the second intervening applicant launched its application to intervene.

[16] On 03 June 2026, the second intervening applicant was granted leave to intervene as an applicant. Additionally, a rule nisi was issued placing the respondent on provisional liquidation and inviting parties to amongst others, show cause on 11 August 2026, as to why the costs of the intervening parties should not be part of the insolvent estate.

[17] This application came before me as one of the cases on an unopposed motion roll [referred to in the Western Cape Division as the Third Division], on 11 August 2026.

[18] On 11 August 2026, it was a return date of the provisional winding up order that was granted by Mapoma, AJ on 3 June 2026. When Mapoma, AJ granted the provisional liquidation order, he reserved the issue pertaining to the intervening parties'

entitlement to costs and whether such costs are to form part of the costs in the liquidation.

[19] On the return day, the applicant and two intervening parties addressed this Court in relations to the intervening parties' entitlement to costs and whether such costs are to form part of the costs in the liquidation of the respondent.

[20] The parties then argued and I requested them to also submit written submissions.

The applicant's submissions

[21] It is the applicant's contention that it is entitled to an order confirming the Rule Nisi insofar as its own costs are concerned. The applicant also contended that it does not dispute that the second intervening party is entitled to an order awarding him costs of his application to intervene, since he was successfully joined as a party to the applicant's liquidation application. However, the applicant disputes that the second intervening party's costs of his application to intervene in the applicant's liquidation application should be costs in the liquidation of the respondent.

[22] As far as the first intervening party is concerned the applicant disputes that it is entitled to any costs whatsoever as against the respondent (whether in liquidation or otherwise).

[23] Regarding the costs pertaining to the second intervening party, the applicant places reliance on various authorities for the proposition that the second intervening party is only entitled to an ordinary concurrent costs award as opposed to administrative costs.

[24] In respect of the submissions made by the first intervening party, the applicant asserted that it [the first intervening party] launched its intervention application in order to obtain an order establishing a *concurso creditorium* and failed to obtain such an order or any form of order at all. Accordingly, it was submitted on applicant's behalf that a party that fails to obtain any relief whatsoever that was substantially successful.

[25] The applicant further submitted that its application for the winding up of the respondent was an arm's-length proceeding, predicated primarily upon the respondent's inability to pay its debts. The applicant contended that this unopposed liquidation application was launched for the benefit of the collective body of creditors. Consequently, the applicant argued that it is difficult to conceive why either of the interventions was necessary, or how the information disclosed by the second intervening party to substantiate a 'just and equitable' case could be of any significance or assistance to the Court in determining whether the respondent should be wound up on the ground of commercial insolvency.

[26] The applicant further contended that both intervening applications were simply obvious attempts to extract legal costs from the respondent under circumstances where neither contributed anything to the decision to liquidate the respondent at the applicant's insistence on the basis that it could not pay its debts. To support this argument, the applicant pointed out that this was made all the more obvious when regard is had to the fact that the applicant's application ran to only 50 pages, whereas the combined papers in the two intervening party's applications ran to approximately 500 pages.

[27] On that premise, applicant's counsel submitted that the second intervening party's conduct is rendered even more disturbing when one considers that he is the director of the respondent who is, in any event, duty bound to disclose all relevant information concerning the respondent during the course of the liquidation process.

First Intervening Party's submissions

[28] The first intervening applicant argues that it brought the application to intervene in the liquidation application on the basis that it has a direct and material interest in the outcome of the litigation.

[29] The first intervening party also mentioned in its founding affidavit that the respondent's director [Mr Barns], seem to be disposing of assets in security and otherwise and borrowing money against future income in an attempt to pay certain creditors whilst leaving the balance of its creditors in the dark.

[30] According to the first intervening party, it sought leave to intervene as a co-applicant, as it also sought an order for the winding up of the respondent. During the course of its written and oral submissions the first intervening party stated that shortly before the hearing of the provisional winding up application, before Mapoma AJ, the respondent paid the entire claim of the first intervening applicant. The first intervening party argues that the payment of its claim left the issue of costs open for determination.

[31] The first intervening party argues that the rule nisi issued by Mapoma, AJ, invited parties on the return date to show cause why the costs of the intervening parties should not be part of the insolvent estate.

[32] The first intervening party submits that its cost should form part of the administrative costs of the insolvent estate for the following reasons:

- It acted in the best interests of the concursus creditorium;
- Its affidavit contained information that assisted the Court in making a just determination in this matter;
- The first intervening party was substantially successful as its claim was paid and the respondent was placed in liquidation; and
- The prima facie order in the liquidation case.

[33] Thus, the intervening party argued that if it was not for its intervention in the liquidation proceedings, the respondent would not have settled the debt, resulting in the application being withdrawn. And in so doing the respondent benefitted one creditor to the prejudice of the balance of creditors.

[34] The first intervening party further submitted that it asserted in its founding affidavit that the applicant instituted liquidation proceedings against the respondent and the applicant's claim is subject to settlement negotiations and the matter was postponed to 20 June 2025, to explore negotiations. It is further stated in the first intervening party's founding affidavit that the most likely result was that the applicant would withdraw the application and would be paid its claim.

[35] It is further submitted that it appears that the applicant does not have genuine intention to liquidate the respondent but rather to use the application to leverage a settlement of its claim. The first intervening party developed these submissions in the course of its written argument. It submitted that given the clear insolvency of the respondent, such a payment and misuse of a liquidation application cannot stand in way of the expedited resolution of this matter to the advantage of the whole body of creditors.

[36] In respect of bona fides the first intervening party submitted that it acted in good faith and intervened in the main application to ensure that the respondent is liquidated, rather than the applicant withdrawing its liquidation application having received a settlement to the prejudice of the *concursum creditorium*.

[37] In relation to the question posed in the applicant's written submission as to why it was necessary for an intervention in the liquidation proceedings, it was submitted on behalf of the intervening party that it could not take the gamble on whether or not the applicant would indeed press forwards with the application to liquidate the respondent.

[38] The first intervening party further submitted that in these proceedings all three intervening parties were substantially successful in the relief sought and the information provided by all parties combined, resulted in the liquidation order being granted. So far as a substantially successful party is concerned, the first intervening party submitted that the general rule that a substantially successful litigant should be entitled to a cost order should not be departed lightly.

[39] In respect of the rule nisi granted by Mapoma, AJ, the first intervening party argued that the rule nisi is formulated as a prima facie case in favour of including the intervening applicant's costs as it serves as an invitation for parties to show cause why the costs of the intervening parties should not be part of the respondent's estate. On that premise the first intervening party submitted that the applicant has not shown any additional evidence as to why this prima facie position should be disturbed by this Court.

Submissions by the second intervening party

[40] The second intervening party contends that his intervention serves to advance an alternative basis for the company's liquidation, arguing that the withdrawal of his initial application yields a dual advantage. First, in the event that the primary applicant or the first intervening party fails to prosecute or succeed in the main application, the company would nonetheless be wound up under his alternative ground to the benefit of the general body of creditors. Second, this procedure precludes the court from being burdened with competing winding-up applications in respect of the same respondent.

[41] Accordingly, the second intervening party submitted that he placed before the Court essential information pertaining to the financial position of the Company and the rest of the entities in the family group. He asserts that an irretrievable breakdown in the relationship between himself and his estranged brother, who holds the remaining 50% shareholding in the respondent, renders it impossible to conduct the respondent's business to the advantage of its shareholders. He also asserts that his brother has failed to discharge his fiduciary duties to the respondent and its shareholders.

[42] He also asserts that his brother has failed to inform him of the financial crisis being suffered by the respondent. He states that it is evident that the respondent is not functioning as a corporate entity, or even as partnership, with joint consensual decision making as intended by their late father. According to him there is insurmountable deadlock between him and his brother in relation to the affairs of the respondent. He also states that he has lost confidence and trust in his brother who has not conducted himself reasonably and honest vis-à-vis the affairs of the respondent.

[43] He also maintains that there is no longer a reasonable possibility of running the respondent through a majority vote.

[44] The second intervening party asserts that his brother has run the business into the ground and refusing to accept that the respondent is trading in insolvent circumstances.

[45] The second intervening party further states in his founding affidavit that the respondent, Vineyard Logistics and Mischa Wines carried on business on the farms

Mischa, Dunedin, Eventide and Talana Hill. According to the second respondent, the three farms that the respondent relied on for its vineyard nursery business were recently sold by his mother. As such, it is highly unlikely that the respondent will be able to continue with its business.

[46] The second respondent submits that the respondent has lost its substratum and it is unable to fulfil its objects and/or continue its business. On this basis, the second intervening party argued that it is just and equitable that the respondent should be wound up. He further submits that his brother is unable to accept the inevitable.

[47] The second intervening party also relies on the authority of *Confrees (Pty) Ltd v Oneanate Investments (Pty) Ltd* 1996 (1) SA 759 (C) at 766, for its contention that it is entitled to costs in the winding up.

Evaluation

[48] As previously mentioned, the fundamental and the key question in this matter which immediately occurs to one is whether the first and second intervening applicants are entitled to an order that orders that their costs should be costs in the winding up, and whether, on the bottom line, any cost order should be awarded to the intervening parties. I am bound to state that, looking at the history of the matter, it is apparent that the respective applications to be join these proceedings as intervening parties were not opposed.

(a) Costs of the first intervening party

[49] In this matter, it is common cause that the first intervening party joined the proceedings on the basis that it was a creditor of the respondent and subsequently withdrew its application after its debt was settled by the respondent. Although the validity of this settlement payment is not directly before me, I consider it necessary to comment on the transaction. The timing of the payment, made after the party had already intervened in these liquidation proceedings, is highly questionable and raises critical concerns under established principles of insolvency law.

[50] It is a trite principle of our law that motion proceedings are decided on proven facts and not on conjecture, speculation, or subjective impressions. Where a party seeks to impute an improper motive or allege a lack of genuine intention on the part of an applicant, it bears the onus of placing clear, unassailable evidence before this Court to substantiate such a claim. Generalised and speculative assertions, no matter how forcefully pleaded in written argument, lack evidentiary value and cannot serve to displace objectively established statutory rights. Courts will not allow the judicial process to be diverted by hypothetical theories regarding a litigant's state of mind when the objective jurisdictional facts required for the relief sought have been plainly met.

[51] Additionally, the first intervening party's submissions in this regard are entirely unavailing and expose a profound contradiction. In its written argument, it heavily censured the applicant, accusing it of lacking a genuine intention to liquidate and using these proceedings merely to leverage a private settlement. Yet, the subsequent conduct of the first intervening party demonstrates that it did precisely what it accused the applicant of doing. Upon receiving payment of its own debt from the respondent, it immediately sought to withdraw its intervention.

[52] Balancing all factors I hold the view that a litigant cannot complain of an abuse of the court process or an infringement of insolvency law principles when it is entirely willing to participate in that very same conduct for its own financial benefit. Even if I were to assume that the first intervening party's initial concerns regarding the applicant had merit, its own actions have entirely stripped its arguments of any equitable or legal weight.

[53] The first intervening party further averred in its founding affidavit that it brought the intervening application in support of the main applicant and to protect its own interests should the applicant decide not to proceed with the main application. While this is frequently framed as a protective litigious measure, the first intervening party's subsequent conduct completely belies this stated purpose. If the intervention was genuinely launched to support the winding-up of a demonstrably insolvent company for the collective benefit of the *concursum creditorum*, the first intervening party would not have abandoned the proceedings the moment its own pocket was satisfied. By accepting a private settlement and immediately seeking to withdraw, it demonstrated

that the intervention was deployed purely to leverage a personal preference. It cannot now seek to fund that private, tactical exercise at the expense of the corporate estate.

[54] This self-serving conduct similarly disposes of the first intervening party's arguments regarding its alleged bona fides, its reluctance to 'take a gamble' on the applicant's persistence, and its claim to 'substantial success'. A party that leverages an intervention to secure a preferential, private payout, thereby attempting to escape the *concursum creditorum*, cannot claim to have achieved substantial success in terms of the main winding-up application. Furthermore, the rule nisi granted by Mapoma AJ did not create a prima facie entitlement to costs; it merely invited the parties to show cause why such an order should or should not be made. The first intervening party has failed to show such cause.

[55] The withdrawal of the application to intervene was prompted by the respondent's settlement of the intervening party's debt. It is a well-established principle that a party who unilaterally withdraws an application is generally liable for the wasted costs of the proceedings and is not entitled to a costs order in its favour. It is thus axiomatic that the first intervening party is not entitled to any costs order in these proceedings. Moreover, I could find nothing in insolvency law to authorise the granting of the relief sought by the first intervening party.

(b) Costs of the second intervening party

[56] In considering the parties' arguments, I need to first state certain established principles that govern the issue of costs in winding up. In terms of section 97 of the Insolvency Act 24 of 1936, read with the relevant provisions of the Companies Act, the costs of liquidation enjoy top statutory preference as administrative expenses, paid out of the free residue of the estate before claims of general preferent and concurrent creditors.

[57] Because liquidation costs enjoy this absolute priority, allowing unnecessary or self-serving legal costs, such as a shareholder's internal dispute or a withdrawn creditor's application, to be classified as a 'cost in the liquidation' would directly drain the finite asset pool, leaving less money for the genuine creditors whom the statute is

designed to protect. Consequently, this Court must exercise its discretion guardedly to ensure that the estate is not burdened by litigation that does not advance the interests of the *concursum creditorum*.

[58] The applicant does not dispute that the second intervening applicant is entitled to a costs order but maintains that the costs order should be an ordinary costs order and not costs in administration.

[59] It is true that the second intervening party's founding affidavit sets forth serious charges against the management of the respondent. However, it is common cause that he approaches this Court strictly in his personal capacity as a shareholder, and not as a director. Under our law, while an individual shareholder possesses independent statutory standing to seek a winding-up on just and equitable grounds, he lacks the authority to act on behalf of, or bind, the corporate entity itself without a valid board or shareholder resolution. As a fundamental principle, an individual seeking to involve a corporation in liquidation proceedings under the guise of corporate representation must present clear credentials demonstrating their authority to do so. Absent such a resolution, the second intervening party cannot be said to speak for or act on behalf of the respondent company.

[60] It is clear from the facts that the second intervening party is not acting on behalf of, or in the interest of, the respondent company. The second intervening party argued in the application to intervene [which heads of arguments have been incorporated in this application and founding affidavit], that he wishes to promote an alternative ground upon which the Company should be wound up, namely that such winding up would be just and equitable in terms of section 344(h) of the Companies Act, Act 61 of 1973 (alternatively in terms of section 81 (1) (d) of the 2008 Companies Act). It is further argued that this is on the basis inter alia, of the insurmountable deadlock between the shareholders and directors. Additionally, it was argued that as a consequence of this deadlock the business of the Company cannot be conducted to the advantage of the shareholders. It was also argued that, moreover, and in any event, the Company has lost its substratum, and it is therefore just and equitable to wind it up.

[61] Of course, there may be circumstances the court could order of the intervening party to be paid out of the estate. This will inevitably be a much more sophisticated question and entirely dependent on the facts of the particular case.

[62] In *Silwer Heinings (Pty) Ltd v Standard Bank of South Africa Ltd* 1984 (2) SA 821 (W), the court clarified that the legal system permits the costs incurred by an intervening creditor to be ordered as costs in the liquidation. The court stated the following at pages 824-825:

“[t]here is perhaps a more compelling reason for holding that the statute does not disentitle a Court from awarding an intervening creditor his costs in a proper case. . .

In my opinion, it could hardly have been intended that the costs of an intervening creditor, incurred by him in bringing to the notice of the Court important information regarding the application, could not come out of the estate as a preference when his purpose was to ensure that an order of sequestration or liquidation was made, whereas if he unsuccessfully opposed the grant of such relief, the Court would be empowered to make an order in his favour.

I believe that that anomaly is decisive of the proper meaning to be attached to the section, and accordingly, so long as it can be said that the intervention arises in connection with the application for sequestration or liquidation, as the case may be, and the circumstances warrant an order being made, the intervening creditor's costs are properly incurred and payable out of the assets of the estates as a preference. In those circumstances, the intervening creditor acts in the interests of and for the benefit of all the creditors. Emphasis added.

[63] In *Oneanate Investments* supra, the court stated that the question to be asked in relation to an intervening creditor's cost is whether the information furnished by the intervenor has contributed significantly to the reaching by the court of the conclusion that the order should be granted.

[64] The second intervening party seeks to justify its intervention by introducing alternative grounds for the winding-up of the respondent, albeit an independent

creditor has already sealed the respondent's fate through objective financial demise. A shareholder cannot leverage internal disputes to interfere with the *concursum creditorum*.

[65] Specifically, when relying on section 344(h) of the Companies Act 61 of 1973 (alternatively section 81(1)(d) of the Companies Act 71 of 2008), contending that a liquidation is warranted on a 'just and equitable' basis due to an insurmountable deadlock between the shareholders and directors, a resulting inability to conduct business to the advantage of the shareholders, and a total loss of the company's substratum.

[66] While these submissions raise classic grounds for a just and equitable winding-up, they are entirely redundant in the present proceedings. The main application was brought by an unpaid creditor on the ground that the respondent is commercially insolvent and unable to pay its debts. In our law, an unpaid creditor who establishes commercial insolvency is entitled to a winding-up order *ex debito justitiae* [as a matter of right]. See in this regard: *Afri Operations Ltd v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) at para 12. To this end, the second intervening party's allegations did not advance the primary inquiry before this Court.

[67] As previously noted, the second intervening party contended that his intervention was necessary to alert the Court to the respondent's internal mismanagement. This intervention was, however, entirely superfluous. The applicant creditor had already established a clear case for liquidation based on the respondent's commercial insolvency.

[68] Once a company is proved unable to meet its current liabilities, its internal management affairs, shareholder deadlocks, and the potential loss of its substratum become secondary issues. Introducing a complex, fact-heavy 'just and equitable' inquiry cannot alter the statutory consequences of a company's financial demise, nor does it assist the Court in determining the primary question of commercial insolvency.

[69] By forcing these internal disputes into an otherwise clear-cut commercial insolvency matter, the second intervening party merely added unnecessary paperwork without advancing the primary inquiry.

[70] Over and above these reasons, an important submission advanced by the second intervening party was that it appears that his brother has run the business of the respondent into the ground and obstinately refusing to accept that the respondent is obviously trading in insolvent circumstances.

[71] Even on his own version, it was clear that the respondent was trading in insolvent circumstances, rendering an alternative ground for winding up wholly redundant. Consequently, he has failed to demonstrate any justification or entitlement to an order for costs out of the estate. Obviously, in this matter, on the second intervening party's own version, there was no need for an alternative ground to bring a winding-up application, as the respondent was indeed insolvent.

[72] It is trite, though worth repeating, that the disappearance of the substratum, that occurs where the purpose for which the entity was established has become objectively impossible or has fallen away, constitutes an established ground for the winding-up a company on just and equitable principles. In the present matter, this failure of substratum is directly manifested by the insurmountable and irretrievable breakdown in the relationship between the applicant and his estranged brother. As equal 50% shareholders in the respondent, their absolute operational and structural deadlock has resulted in total corporate paralysis, thereby rendering it objectively impossible to conduct the business of the respondent to the advantage of its shareholders generally.

[73] Furthermore, and perhaps importantly, the second intervening party approaches this Court purely to protect his personal interests as a shareholder. Despite his assertions to the contrary, this intervention was not launched to protect or advance the interests of the respondent or the general body of its creditors (*concursum creditorum*); rather, the alternative ground was advanced merely as a secondary mechanism to secure his own position.

[74] Hence, I am of the view that by forcing these issues into the present matter, he conflated two entirely different areas of corporate law. A shareholder cannot unilaterally expand a straightforward commercial insolvency application into a

battleground for internal corporate disputes and then expect the insolvent estate and, by extension, the concurrent creditors, to shoulder the legal costs of doing so.

[75] While a shareholder may well have a meritorious case for the liquidation of a company under different circumstances, I express no opinion on the merits of those allegations in this instance. As noted earlier, this is because the submissions made in this case, while raising classic grounds for a just and equitable winding-up, are entirely redundant in the present proceedings.

Conclusion

[76] The mere fact that the second intervening party's application to intervene was granted by this Court and was not opposed by the other parties at that juncture, does not automatically entitle him to a costs order. An order granting leave to intervene determines nothing more than the party's locus standi to be heard. It does not bind this court's ultimate, unfettered discretion regarding costs. Given my finding that the intervention was legally redundant, served a purely private shareholder interest, and failed to advance the primary insolvency inquiry, it would be an injustice to burden the respondent's estate with these costs. Consequently, despite the lack of initial opposition to his intervention, no order as to costs will be made in his favour.

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

- 77.1 The respondent company is placed under final winding-up in the hands of the Master of the High Court.
- 77.2 The costs of the applicant creditor shall be costs in the liquidation of the respondent estate.
- 77.3 The application for costs in the liquidation by the first intervening party is dismissed.
- 77.4 The first intervening party shall bear its own costs incurred in these proceedings.
- 77.5 The application for costs in the liquidation by the second intervening party is dismissed.

77.6 The second intervening party shall bear his own costs incurred in these proceedings.



CN NZIWENI
JUDGE OF THE HIGH COURT

Appearances:

Counsel for Applicant : Advocate Alan Newton

Instructed by : Lombard & Kriek Inc.

Counsel for First Intervening Party : Advocate Bennu Viljoen

Instructed by : Duvenhage & De Villiers Attorneys

Counsel for Second Intervening Party: Advocate Craig Cutler

Instructed by : Bernadt Vukic Potash & Getz Attorneys