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

JUDGMENT

Reportable

Case No: 2025-242944

In the matter between:

ANTON LEE	**Applicant**
and	
ADRIAAN WILLEM VAN ROOYEN N.O.	**First Respondent**
HERMAN BESTER N.O.	**Second Respondent**
CHRISTOPHER JAMES ROOS N.O.	**Third Respondent**
JACOLIEN FRIEDA BARNARD N.O.	**Fourth Respondent**
DEIDRE BASSON N.O.	**Fifth Respondent**
CHAVONNES BADENHORST ST CLAIR COOPER N.O.	**Sixth Respondent**
KEVIN TITUS N.O.	**Seventh Respondent**

DANIEL SANDILE NDLOVU N.O. **Eighth Respondent**

(in their capacities as the Joint Liquidators of
Mirror Trading International (Pty) Ltd (in liquidation))

Neutral citation: *Lee v Van Rooyen N.O. and Others* (Case No 2025-242944) [2026] ZAWCHC ... 30 October 2026)

Coram: Anderssen AJ

Heard: 1 & 2 June, 8 & 9 July 2026

Delivered: Electronically on 30 October 2026

Summary: Liquidation - removal of liquidators sought - no case made out - respondents raised a genuine dispute of facts

Interdictory relief - no case made out - relief sought not competent - aim to interdict liquidators to perform statutory duties in manner prescribed by applicant, not statute

Supervisory relief sought - no case made out - relief sought not competent - applicant seeking to bypass statutory remedies - no policy considerations that warrant court's interference - would usurp functions of Master

Application an abuse - ulterior motive attributable to applicant - non-compliance with rule 6(1) and (12) - cost order on punitive scale warranted

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ORDER

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1. The application is dismissed with costs.
2. Costs shall be taxed on an attorney and client scale.

JUDGMENT

Anderssen AJ:

Introduction

[1] The applicant (*'Mr Lee'*) launched an application in the fast lane on two days' notice to the respondents (*'the liquidators'*) on 10 December 2025. The relief in the notice of motion was sought under Part A (urgent interdictory interim relief) and Part B (substantive relief). The matter came before me, in fourth division, after the matter was postponed from the urgent court, with no relief having been granted in respect of Part A. The liquidators, having filed only a preliminary answering affidavit to meet the relief sought in Part A, were granted leave to file a supplementary answering affidavit. By the time the matter came before me, the papers had proliferated and spawned several supplementary affidavits, including two founding affidavits as well as three answering affidavits and three replying affidavits. Counsel for Mr Lee informed me, on the first day of the hearing, that Mr Lee only seeks relief in terms of Part B of the notice of motion.

[2] The substantive relief sought in Part B of the notice of motion seeks the removal from office of the liquidators in terms of section 379 of the Companies Act 61 of 1973 ('the 1973 Act') ('the removal relief). In addition, Mr Lee seeks orders directing the liquidators:

(a) to file and serve a full and detailed updated liquidation and distribution account as at December 2025, verified by affidavit;

(b) to provide a comprehensive written explanation, supported by affidavit, for the decline in the value of the estate from approximately R1,1 billion to approximately R550 million;

(c) to disclose all amounts paid or committed to the United Kingdom ('UK') legal advisors, counsel, expert witnesses and other service providers in respect of the UK proceedings since their commencement; and

(d) to account fully for all adverse cost orders and penalties incurred in the UK proceedings, including (without limitation) the costs order of approximately £37

000 (R723 000) made by ICC Judge Barber on 8 November 2024 (*'the interdictory relief')*.

[3] In the alternative to this prayer (aimed at directing the liquidators to perform certain duties), and in the event that the court is not disposed to remove the liquidators at this stage, Mr Lee seeks an order directing that the UK proceedings by the liquidators shall be subject to certain supervisory conditions, including that:

(a) no further steps may be taken in the UK proceedings without the prior written approval of creditors obtained at a duly convened and properly noticed meeting of proved creditors;

(b) the liquidators are to file monthly reports with the Master of the High Court containing full particulars of all expenditure and commitments in the UK proceedings and all material developments therein;

(c) the total expenditure in the UK proceedings is to be capped by this court, which cap may not be exceeded without the prior leave of this court; and

(d) an independent insolvency practitioner be appointed by the Master to review the commercial viability of the continued UK litigation on a quarterly basis and that this independent practitioner should report to this court and to creditors (*'the oversight relief'*).

[4] The term 'the UK proceedings' was not defined in the notice of motion. It refers to 44 processes that the liquidators have instituted in the UK in the Insolvency and Companies List of the Business and Property Courts in the Chancery Division of the High Court of England and Wales. The total aggregated bitcoin value of the claims currently being pursued in the UK proceedings by the liquidators amount to 493 bitcoin. 'ICC' was similarly not defined - it refers to the International Criminal Court.

[5] The liquidators oppose the relief sought on the basis that the application constitutes an abuse of the process of court. They also point out that Mr Lee has not demonstrated, in his founding affidavit, that he is entitled to the relief sought for the removal of the liquidators or the interdictory relief and oversight relief. The latter is compounded, they say, by the fact that, apart from the removal relief, Mr Lee does not have locus standi to seek either the interdictory relief or the oversight relief. Furthermore, the oversight relief falls within the purview of the Master and not the court.

Background

[6] Mirror Trading International (Pty) Ltd (*'MTI'*) was provisionally liquidated by this court on 29 December 2020 subsequent to an application instituted by Mr Lee, a creditor of MTI. The provisional order was made final on 30 June 2021 and eight liquidators were subsequently appointed (although one person passed away since his appointment). The liquidators are from different firms but are all insolvency practitioners and two of them are also attorneys. Mr Lee sought the winding-up of MTI on the basis that it was unable to pay its debts and that the circumstances attendant upon MTI rendered it just and equitable to do so. At all material times MTI was, and remains, unable to pay its debts within the meaning of sections 339 and 340 of the 1973 Act as read with Item 9 of Schedule 5 of the Companies Act 71 of 2008 (*'the 2008 Act'*).

[7] MTI was registered in April 2019 as a private for-profit company with limited liability and commenced trading in 2019. The only two shareholders were Mr Johann Steynberg, the founder and CEO, and Mr Clynton Marks, the co-founder. Mr Steynberg was the only director registered with the Companies and Intellectual Property Commission ('CIPC') but others also acted as *de facto* directors. Mr Steynberg and Mr Marks, together with six other individuals, comprised the management team. MTI professed to conduct an internet-based crypto-currency club, which performed its business through the website w[...]. The benefits offered to members were in the form of crypto-currency bitcoin where members' bitcoin would grow through forex trading by a registered and regulated broker. The financial benefits promised to member investors

included not only a share of the trading profits but also a variety of incentive-based remunerations triggered by the referral of new individuals who also joined MTI and invested in the scheme.

[8] According to MTI, an investor could receive trading profits derived from five different types of income streams, which would be paid from MTI's daily profits generated through its trading activities - and not from any of the bitcoin invested by investors. In pursuance of its business and multi-level marketing strategy, MTI's management and marketing team represented to its investors and prospective investors that: (a) the bitcoin of its investors were pooled and held in one account with a broker; (b) it is trading profitably; (c) the investors' bitcoin wallets (an account created for the investor within MTI) would accrue daily in fractions of percentages based on alleged trading profits; and (d) the bitcoin wallet would also reflect referral commissions, in fractions of percentages based on the trading profit, for direct referrals by existing members of new investors.

[9] MTI members and prospective investors were informed that MTI's positive trading results were due to a 'bot' (electronic code) written by Mr Steynberg. The bot possessed artificial intelligence that could predict foreign currency trades accurately. Its accuracy grew the daily profits exponentially but there was, nevertheless, a built-in risk management programme ensuring that only limited funds were being traded.

[10] In truth, however, MTI was a Ponzi scheme. A Ponzi scheme is a form of fraud that lures investors into investing in a scheme and operates by paying returns (profits) to earlier investors with funds generated from investments made by more recent investors. MTI's management and marketing team led the victims of this scheme to believe that profits were coming from trading on the foreign currency exchange. In reality, the profits the investors derived came from investments by newer investors whose invested bitcoin sustained the payments of the returns on earlier investments. A Ponzi scheme therefore relies on a constant inflow of new investments to continue to

provide returns to older investments and eventually collapses when the income from new investors becomes insufficient to sustain payments to earlier investors.

[11] The business model of MTI was illegal and hundreds of thousands of individuals were eventually, over a period of 20 months, lured into depositing bitcoin in this Ponzi scheme. This court has already declared that MTI's business constituted an illegal scheme.[1]

[12] The liquidators, because they were of the view that MTI's business activities were fraudulent and unlawful for a number of reasons, approached the Western Cape High Court for certain declaratory relief. They sought orders declaring MTI's business model to be illegal and/or unlawful, declaring all agreements concluded between MTI and its investors to be unlawful and *void ab initio* and declaring that MTI had been factually insolvent from 18 August 2019 until its date of winding-up on 29 December 2020. In addition, they, *inter alia*, sought orders declaring that:

> (a) any and all dispositions made by MTI to its investors or any third parties as payment or part-payment of profits, referral commissions or any other remuneration pursuant to this unlawful investment scheme, to be dispositions without value in terms of section 26(1) of the Insolvency Act 24 of 1936 ('the Insolvency Act'); and
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> (b) any dispositions made by MTI to its investors or any third parties as payment or part-payment of any purported claim or entitlement pursuant to this unlawful investment scheme, made within six months before the *concursus creditorum*, to be dispositions which had the effect of preferring one or more creditors above others in terms of section 29(1) of the Insolvency Act.

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[1] See in this regard the judgment of De Wet AJ in *Bester NO and Others v Mirror Trading International (Ply) Ltd (in liquidation) t/a MTI and Others* [2023] ZAWCHC 83; [2023] 3 All SA 101 (WCC); 2024 (1) SA 112 (WCC). All applications for leave to appeal against this judgment have been dismissed.

[13] Several parties, including a group of which Mr Lee is (or was) a member, intervened - or sought to intervene - in that application, reported as *Bester NO and Others v Mirror Trading International (Pty) Ltd (in liquidation) t/a MTI and Others*,[2] and opposed the relief sought by the liquidators. During the proceedings various interlocutory applications, ranging from postponement applications, intervention applications, applications to strike out and applications for the stay of the declaratory proceedings pending other proceedings were launched by various parties. By the time the matter came before the court the record consisted of more than 7 000 pages. I thus count myself lucky that the record in the matter currently serving before me spawned less than 3 000 pages.

[14] The issues traversed in the court's judgment included, inter alia: (a) non-joinder (of all investors of MTI), (b) whether bitcoin is 'movable property' in terms of the Insolvency Act, (c) whether the disputes of fact could be resolved without oral evidence, (d) whether certain evidence was admissible, (e) the 'existence' or non-existence of a witness residing in the UK, (f) *locus standi* and (g) the alleged contractual relationship between MTI and its investors. The opposition was clearly wide-ranging and explains the allegation by the liquidators that the opposing parties left 'no stone unturned in an attempt to prevent the liquidators from obtaining the relief sought'.

[15] The liquidators, later in the same year, in a second application, also received directions from this court regarding the winding up of MTI.[3] Three types of investors were identified by this court in that application, being (a) net losers who made no withdrawals, (b) net losers who made some withdrawals but did not make a profit, and (c) net winners. This court has ruled that the first class of investors - those who invested and received nothing in return - should be permitted to submit a claim against the MTI estate equal to their investment. This should be calculated in rands as at the date of the investment. The second class - those who withdrew less than they invested - would have to account to the liquidators for any returns received, and any benefit received

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[2] Supra fn 1.
[3] In an unreported judgment by Maher AJ: *Bester NO and Others v The Master of the High Court, Cape Town and Others* (1372/2022) delivered on 9 November 2023.

would reduce the size of their claim against MTI (the investments are to be calculated in rands on the date of investment and the date of withdrawal). The third class - those who withdrew more than they invested - would not have a claim against MTI, and liquidators would have a claim for the repayment of profits received, calculated in rands on the date of receipt.

[16] In terms of a referral bonus system, the founding members and any investors who were the effective cause for new investors investing in the Ponzi scheme would receive a 10% referral bonus. This referral bonus was not to be deducted from the new investment but was to be paid from MTI's share in purported profits. As the 10% referral bonuses were, in truth, funded from new bitcoin investments made into the scheme, the bitcoin being deposited with MTI was effectively being diluted and eroded. The 10% referral bonuses soon outgrew even the disproportionate returns promised to the investors. In addition, certain investors within the scheme established their own fraudulent schemes within the scheme through the creation of 'ghost accounts'. Essentially, these investors would represent to MTI that they had secured new investors for the scheme when, in truth, such 'new investors' did not exist. The ghost accounts were opened by the same investors using pseudonyms, which resulted in one investor holding more than one account albeit under different names. This was done for the purpose of accruing the 10% referral bonuses.

[17] MTI's internal records of transactions were kept electronically, and its database was hosted by Maxtra Technologies in India ('the Maxtra database'). The liquidators obtained this database on 10 May 2021. MTI used the Maxtra database to onboard new investors, present bonuses and related earnings, and reflect the investors' earnings. The liquidators contracted with a third party to render the data and information stored on the Maxtra database user-friendly so that the liquidators could access and use the database in administering the estate. The analysis of this database was a complex task that was only finalised in June 2022. The IT specialists created a computer program called MARS (an acronym for 'MTI Administrative Reporting System'), which was capable of being overlayed onto the Maxtra database and thus allowed the liquidators

access to the data recorded on it. MARS permitted the liquidators to extract investor specific information, confirming the amount of bitcoin invested and received by an investor.

[18] During the process, the liquidators encountered challenges as MTI had not instituted any know-your-client protocols, which permitted several investors to open multiple accounts using pseudonyms or false identities {the ghost accounts). The liquidators needed to identify these ghost accounts in order to determine whether they had a claim against a specific investor as all transactions linked to that investor had to be identified. The liquidators thus had to establish the identity of each investor so that the ghost accounts could be clustered under the true investor. The true investor's account became known as the 'master account' and the ghost accounts were called 'slave accounts'.

[19] Conceptually, MTI was never a solvent company. It conducted an unlawful Ponzi scheme, which means that each investment was void and an investor was immediately entitled to claim restitution of the investment. Yet, restitution would have been impossible as there would have been running costs associated with the scheme, the payment of 'profits' and bonuses to earlier investors, and the theft of the invested bitcoin. Within months of the start of the scheme, in August 2019, MTI was unable to repay a specific investor. This is the first known date when MTI could not pay a creditor, and on which date the liabilities would have exceeded the 'assets'. The liquidators say that factual insolvency may even have been at an earlier date as Mr Steynberg and his cohorts were plundering the invested funds from the very beginning. The theft likely totalled the outstanding balance between the bitcoin deposited and the bitcoin withdrawn (possibly to be reduced by the bitcoin held by MTI's former broker, FX Choice Ltd, as explained below).

[20] MARS permitted the liquidators to establish that there had been a total inward flow of bitcoin from investors to MTI of 39 193 bitcoin. The total outflow of bitcoin

identified was 32 285.[4] The difference between these two figures (the inflow and outflow of bitcoin) remains unaccounted for and the subject of further investigation. During MTI's existence, 413 424 user accounts were created, of which at least 55 509 were master accounts and 128 419 were slave accounts. Ultimately, 58 117 investors received more bitcoin from MTI than what they deposited and 204 001 investors received less bitcoin than what they deposited.

[21] It is because of the information recovered from the Maxtra database and further investigations concerning information recorded on the blockchain (the indisputable general ledger of crypto transaction) that the liquidators have been able to determine what claims should be pursued against investors.

[22] By June 2020, MTI's broker, FX Choice, had become concerned about how MTI was trading and, because MTI did not satisfy its concerns, it terminated MTI's access to its trading account and banned MTI from its trading platform. This resulted in the freezing of about 1 281 bitcoin, then worth about R221 million. MTI did not disclose this to its investors but created the impression that the frozen bitcoin was transferred to a new broker, Trade300, which, as it would later transpire, did not exist. It also did not disclose that, at the time, their trading activities had resulted in a loss of 566.68 bitcoin (or about R80 million).

[23] In July 2020, the Financial Sector Conduct Authority ('FSCA') had also started its own investigation into the trade and dealings of MTI. As a result, the management team and top tier investors - who knew the true state of affairs - started, rapidly, to liquidate their investments in the scheme. On 7 July 2020, the Commissioner of the State of Texas, United States of America, issued a cease-and-desist order against MTI, Mr Steynberg, and various other persons.

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[4] To understand the scale of the Ponzi scheme one can convert the 39 193 bitcoin to the Rand value used by the liquidators at the time that the second respondent deposed to the first supplementary answering affidavit - the answer is approximately R42,5 billion in invested funds.

[24] The FSCA issued its own notice of suspicion of possible contraventions on 13 July 2020 and commenced its investigation. On 18 August 2020, in a press release, the FSCA expressed the view that the activities of MTI constituted financial services for which MTI should have a financial service provider licence. By 17 December 2020, in a second press release, the FSCA released its conclusion that there was no evidence of any *bona fide* trading. Despite the allegations by MTI that their members' bitcoin had been moved from FX Choice to Trade300, the FSCA concluded that the alleged transfer of bitcoin did not exist. On 18 January 2021, the FSCA issued a report in which it concluded that MTI's business was unlawful in a number of respects, most particularly that MTI operated a massively fraudulent and unlawful investment scheme in flagrant disregard of the relevant financial sector laws and that the investments by investors had been misappropriated.

[25] During this time, and prior to his disappearance, Mr Steynberg (as well as Mr Marks) represented to the FSCA and all MTI's investors by way of circulars, website notices, YouTube clips and public social media platforms, that MTI had moved the entire bitcoin trading pool of MTI from FX Choice to Trade300, that the bitcoin so moved belonged to MTI and Mr Steynberg and not the investors, and that 16 444 bitcoin had been transferred. All of these representations were false. FX Choice had, in fact, frozen the bitcoin. Trade300 was not a broker but Mr Steynberg's alter ego. The frozen bitcoin was neither MTI's nor Mr Steynberg's property but belonged to investors. The bitcoin from investors had been diverted to Mr Steynberg and Mr and Mrs Marks. Only a limited number of bitcoin had been traded at FX Choice and substantial losses had been incurred over extended periods. Thus, the daily published trading reports were false.

[26] Although MTI was a bitcoin-based network marketing scam that began in South Africa, it drew in members worldwide. The liquidators have, therefore, instituted claims for the recovery of the bitcoin disposed of by MTI in multiple jurisdictions - both in South Africa and abroad. The liquidators have instituted 754 recovery claims in foreign jurisdictions and 4 021 recovery claims in domestic jurisdictions. The claims in foreign jurisdictions amount to nearly R4,8 billion in value and the claims in domestic

jurisdictions to more than R11 billion. It is important to note that a claim for the setting aside of a disposition in terms of the Insolvency Act is not a claim for a debt or liquidated amount. The setting aside orders are akin to declarations that have the effect of bringing into existence a debt that did not exist prior to the setting aside order being granted. The liquidators must meet certain jurisdictional requirements- set out in the relevant sections of the Insolvency Act - before they can become entitled to the relief sought.

[27] Mr Lee avers that the liquidators are using estate assets, belonging collectively to the creditors, to fund the litigation. The liquidators' litigation decisions must therefore be conservative, proportionate, rational and properly risk-assessed. He is concerned because the estate has declined from approximately R1,1 billion to approximately R550 million and adverse cost orders were granted against MTI in the UK during November 2024. He is also concerned because a prescription defence has been raised in the UK proceedings and he is of the view that there is sufficient merit in this defence to have warranted a reasonable liquidator to proceed with caution. He believes the liquidators' conduct warrants their removal and either the interdictory relief or the oversight relief.

[28] The liquidators say that they have over many months, and indeed years, familiarised themselves with the information contained in the books and records of MTI. This task was complicated because Mr Steynberg, the founder, CEO and controlling mind of MTI was missing. They have also investigated MTI's trade dealings and affairs pursuant to weeks of insolvency enquiries and have relied on the assistance of numerous individuals, including attorneys and counsel, specialised forensic investigators (a forensic crypto currency investigator and two forensic accountants), and various other experts in different disciplines. The peculiarity in this liquidation is that both the deposits by the investors (who are now the creditors) as well as the dispositions to investors (some of whom are now debtors) were made solely by way of electronic transfer of the crypto currency known as bitcoin. To date, MTI has received 9 277 claims exceeding R6,49 billion.

[29] Thousands of actions have been instituted by the liquidators with the view to set aside impeachable dispositions of its property by MTI in the months prior to the commencement of the liquidation proceedings and to recover this property for the benefit of the creditors. These actions are predominantly based on sections 26 (dispositions without value), 29 (voidable preferences) and 30 (undue preference to creditors) as read with 32 (improper disposition proceedings) of the Insolvency Act. The 44 processes in various courts in the UK (the UK proceedings) to pursue the recovery of bitcoin withdrawn from MTI by these 44 UK-based respondents seek the recovery of 493 bitcoin, which the liquidators say they are entitled to recover under sections 26, 29 or 30.

[30] Mr Lee is not a party to the UK proceedings. He is represented in the proceedings before me by Mr Thyne, an attorney who has held himself out as an expert on South African prescription law in the UK proceedings and has filed, in those proceedings, a report on South African prescription law. I have some doubts as to the independence of this opinion in circumstances where Mr Thyne has been instructed by Mr Lee to act against the liquidators in these proceedings. I say this in the context of a criticism by Mr Lee in his founding affidavit. The liquidators had, in the UK proceedings, provided an opinion from senior counsel who had disclosed to the UK court in the opinion that he had, over a period of time, advised the liquidators. Mr Lee stated that the UK court had concluded that senior counsel 'was conflicted and that his report could not be accepted as independent expert evidence'.

[31] The liquidators, having liquidated the frozen bitcoin held by FX Choice, had just over R514 million in the bank in August 2025. They have settled a claim by the South African Revenue Service for more than R931 million and paid to them the compromised amount, of about R283 million, with the approval of this court. The liquidators also settled a complaint against Mr Steynberg and MTI filed by the Commodity Futures Trading Commission of the United States of America who sought civil penalties for violations of the Commodity Exchange Act and their regulations for the agreed penalty

amount of USD1,7 billion. This penalty ranks after concurrent creditors of MTI and payment thereof has been stayed.

[32] The auditors appointed by the liquidators have reconstructed the MTI balance sheets for various months during the 2019 and 2020 financial years. The liquidators are seeking, through the foreign and domestic recovery processes, to recover approximately R3,3 billion worth of assets for MTI in terms of section 26 of the Insolvency Act and a further R12,6 billion in terms of section 29 of the Insolvency Act. The liquidators say that the claims in the UK proceedings total approximately R125 million (in terms of section 26), R459 million (in terms of section 29) and R526 million (in terms of section 30). The proceeds from these claims would be used to fund a liquidation dividend to the MTI creditors. This is part of the recovery process, that is being targeted by Mr Lee in this application, in respect of the supervisory relief. Thus far the liquidators have recovered R1,8 million in the UK proceedings and have paid R1,6 million to local attorneys and R20,2 million to UK solicitors. They still owe R3,6 million in respect of the UK proceedings. An agreed timetable has been issued for these proceedings, and the parties are bound thereby. Of the 44 UK respondents, only 26 are actively participating in the process and 23 of them are represented by the same solicitors. The trial is set to commence during November 2026.

[33] The liquidators aver that newly appointed liquidators would need years to get up to speed and up to date with the winding up of MTI, and the effect thereof would be that the MTI liquidation proceedings would stagnate and costs for the estate would increase. By way of example, their discovery affidavit (containing only the index) in terms of section 424 proceedings ran up to 895 pages and included 836 931 items - the discovered documents equated to more than a million pages. Their removal would not benefit MTI's creditors but would benefit those who wish to derail the MTI liquidation proceedings and the liquidators' attempts to recover assets of MTI, from those who should not be possessed of same, for the benefit of all creditors. They aver further that this application is an application in subrogation to shield these individuals from the liquidators' pursuits.

Preliminary issues

[34] In application proceedings, it is trite that affidavits fulfil the dual role of pleadings and evidence.[5] They serve to define not only the issues between the parties but also to place the essential evidence before the court.[6] Therefore, the factual averments contained therein must be sufficient to support the cause of action or defence which is to be made out.[7] Furthermore, applicants must raise the issues as well as the evidence upon which they rely to discharge the onus of proof resting on them in their founding, and not their replying, affidavit.[8]

[35] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*[9] has been accepted as the defining authority on the principle that:

> 'Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met.'

[36] Admissible evidence is comprised of primary facts and secondary facts - the latter being conclusions drawn from the primary facts.[10] The question of drawing an

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[5] *Quartermark Investments (Pty) Ltd v Mkhwanazi* [2013] ZASCA 150; 2014 (3) SA 96 (SCA); [2014] 1 All SA 22 (SCA) para 13.
[6] *Gauteng MEC for Health v 3P Consulting (Pty) Ltd* [2010] ZASCA 156; 2012 (2) SA 542 (SCA) para 28.
[7] *Quartermark* fn 5 para 13; Lecuona v Property Emporium CC [2010] JOL 25266 (GSJ) para 4.
[8] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T} at 323J - 324A; Quartermark supra fn 5 para 13.
[9] *Swissborough* at 324F-G. See also *Minister of Land Affairs and Agriculture v D & F Wevell Trust and Others* [2007] ZASCA 153; 2008 (2) SA 184 (SCA) para 43; *Botha v Smuts and Another* 2025 (1) SA 581 (CC) para 329.
[10] Ibid *Swissborough* fn 8 at 324D-F.

inference can only properly arise once there is proof of the primary facts.[11] This exercise must not be based on matters of speculation or conjecture - there can be no inference unless there are objective facts from which to infer the other facts, which it is sought to establish.[12] The drawn inference must align with all proved facts and the proved facts must exclude every other reasonable inference.[13]

[37] It was held in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another*.[14]

> 'A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.'

[38] I raise these well-known principles as Mr Lee's founding affidavits and replying affidavits fall far short of what is expected of a litigant in motion proceedings:

> (a) A party cannot merely annex a stack of documentation to an affidavit and expect the court or the opposing party to search through it, find the relevant parts and piece together the case. Despite annexing multiple documents, Mr Lee often

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[11] *Knoop and Another NNO v Gupta (Tayob Intervening)* [2020] ZASCA 163; 2021 (3) SA 88 (SCA); [2021] 1 All SA 726 (SCA) para 19.
[12] Ibid.
[13] *R v Blom* 1939 AD 188 at 202-203.
[14] *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA); [2008] 2 All SA 512 (SCA) para 13.

failed to identity the specific part of the document he is relying upon and, furthermore, failed to state the exact case sought to be made out on the strength of the document.

(b) I have difficulty in finding that Mr Lee has seriously (or unambiguously) dealt with the averments raised by the liquidators. By way of example, in his replying affidavits, Mr Lee did not respond to the averments in the answering affidavits seriatim and, instead, chose to deal with themes identified by him in the answering affidavits. His first and second replying affidavits recorded that '[s]ave where expressly admitted, all allegations in the answering affidavit are denied as if specifically traversed'. The third replying affidavit, although purporting to answer the averments made seriatim, also included bare denials. The baldness of the denials is perfectly illustrated by the fact that the second supplementary affidavit totalled 30 pages and the *seriatim* 'reply' fit into a single page.

(c) In addition, Mr Lee's first two replying affidavits exceeded the boundaries of permissible content in replying affidavits - it was neither the shortest (in that it was much longer than the founding affidavits although, in respect of the second replying affidavit, this is likely attributable to the length of the first supplementary answering affidavit) nor did it confine itself to dealing with the averments in the answering affidavits - in that it sought to make out a case in reply.

(d) Finally, Mr Lee's founding affidavits are replete with conjecture and secondary facts. What one does not find is an affidavit that sets out the primary facts from which the inferences have been drawn. In argument, counsel for Mr Lee often referred me to annexures and their content when the content had not been addressed in the founding affidavit.

[39] Mr Lee seeks final relief in the notice of motion. When final relief is sought in motion proceedings, and there is a conflict of facts on the affidavits, a final order can be granted only if the facts stated by the respondent, together with the admitted facts in the

applicant's affidavits, justify the order. This rule applies unless it can be said that the respondent's version can be rejected out of hand because it consists of bald or uncreditworthy denials, raises fictitious disputes, or is palpably implausible, far-fetched, or clearly untenable.[15]

The removal relief

[40] Mr Lee has not set out clearly, in his founding affidavits, *why* he seeks the removal of the liquidators. He seems to argue that the liquidators owe a fiduciary duty to the estate, the creditors and the court and that they have breached that fiduciary duty by litigating and using estate assets that belong to the creditors collectively. He argues that they have done so by not approaching litigation decisions conservatively, rationally or wi1th proper regard to risks. The risk that was not properly assessed is in respect of the prescription defence raised in the UK proceedings. Apart from pursuing allegedly time-barred claims, he says that the liquidators have advanced contradictory pleadings in pursuit of their actions, have misled the courts and have not been transparent in their conduct. The further complaint is that their decisions caused the estate to decrease from R1,1 billion to R550 million and that the liquidators have attracted adverse costs orders in the UK proceedings.

[41] In the winding-up of companies, liquidators occupy a position of trust, not only towards creditors but also the companies in liquidation whose assets vest in them.[16] Liquidators are required to act in the best interests of creditors. A liquidator should be wholly independent, regard the interests of all creditors equally, and carry out their duties without fear, favour or prejudice.[17]

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[15] The rule was formulated in *Plascon-Evans Paints (Tvl) Ltd v Decro Paint and Hardware (Pty) Ltd* [1984] ZASCA 52; 1984 (3) SA 647 (A). See also *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA) para 26.
[16] *Standard Bank of South Africa v The Master of the High Court (Eastern Cape Division)* [2010] ZASCA 4; 2010 (4) SA 405 (SCA); [2010] 3 All SA 135 (SCA) para 1.
[17] Ibid para 1.

[42] Relying, inter alia, on *Nel NO and Another v Master of the High Court Eastern Cape and Others ('Nel NO')*,[18] Mr Lee argues that the court holds supervisory powers over liquidators and that the Supreme Court of Appeal has recognised that a liquidator's removal may be justified where confidence in their administration of the estate has been broken.

[43] I do not believe that *Nel NO* assists Mr Lee. That matter was an appeal which turned primarily on the proper interpretation of sections 384(1) and (2) of the 1973 Act relating to the determination by the Master of the High Court of the 'reasonable remuneration' to which a liquidator is entitled for his or her services as such. It raised the question of the nature and extent of the Master's powers to reduce or increase such remuneration if, in the Master's opinion, there is 'good cause' for so doing, as well as the ambit of the court's powers under section 151 of the Insolvency Act, read with section 339 of the 1973 Act, to review a ruling by the Master in this regard.[19]

[44] I pause to comment that I hold the same view as the Supreme Court of Appeal that 'there is certainly something to be said for the view that, in attacking the Master's ruling, the appellants should have formulated their grounds of review so as clearly to bring such grounds within the purview of those enumerated in s 6(2) of the AJA'.[20] It would have been helpful to the court (and the respondents) if it actually knew the grounds in section 379 of the 1973 Act that Mr Lee was relying on.

[45] A liquidator is not an officer of court[21] - despite the argument to the contrary put up by Mr Lee. The appointment and removal of a liquidator constitute administrative action subject to judicial review.[22] Our insolvency administration is wholly a creature of

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[18] *Nel NO and Another v Master of the High Court Eastern Cape and Others* [2004] ZASCA 26; 2005 (1) SA 276 (SCA).
[19] Ibid para 1.
[20] Ibid para 28.
[21] *James v Magistrate, Wynberg and Others* 1995 (1) SA 1 (C) at 14G-I; *Receiver of Revenue Port Elizabeth v Jeeva and Others, De Klerck and Others v Jeeva and Others* [1996] ZASCA 5; 1996 (2) SA 573 (SCA) at 579C-E.
[22] *The Master of the High Court (North Gauteng High Court, Pretoria) v Motala NO and Others* [2011] ZASCA 238; 2012 (3) SA 325 (SCA) para 5-6.

statute. Our courts are not entrusted with insolvency administration as courts are in England: the court, when called upon to do so, merely applies the law to a given situation.[23] Liquidators derive their power strictly from the Insolvency Act and the 1973 Act.[24]

[46] Section 379(2) of the 1973 Act permits the removal of a liquidator from office by the court, on application by the Master or any interested person, if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause. It appears from Mr Lee's founding affidavits as if he may be relying on either subsection (1)(b), because the complaint is that the liquidators have failed to perform satisfactorily any duty imposed upon them by legislation, or subsection (1)(e), because the liquidators are no longer suitable to be the liquidators of the company concerned, or subsection (2) generally for 'good cause'.

[47] This is not the first application in which the removal of these liquidators from office has been sought. Sher J, in *Marks and Another v Bester and Others*,[25] was also faced with such an application. In his judgment he summarised the legal principles applicable to an enquiry into whether a liquidator should be removed:

> '32. It has been held that the removal of a liquidator is an "extreme step" and a "radical form of relief' which will not be granted unless the Court is satisfied that a proper case for it has been made out. In considering such an application the Court must assess the conduct of the liquidator in its "full" context with reference to all relevant facts and circumstances, and must be satisfied that the removal of the liquidator will be to the general advantage of all parties interested in the winding-up. The relevant factors to be taken into account include the expense which will be incurred and the inconvenience which will be suffered in having to appoint a replacement, and the stage at which the application has been brought:

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[23] *Gilbert v Bekker and Another* 1984 (3) SA 774 (W) at 777G-H.
[24] *JP Fourie NO and Another v Master of the High Court, Mahikeng and Another* [2026] ZASCA 104.
[25] Marks and Another v Bester and Others [2024] ZAWCHC 82.

a Court will be less inclined to remove a liquidator at a late stage in the winding-up process.

33. Section 379 of the Companies Act sets out various grounds on which liquidators may be removed from office by a Court. For the purposes of this application the pertinent ones include a failure to satisfactorily perform any duty which has been imposed on them, or because they are no longer suitable to act as liquidators, or for any other "good cause".

34. As far as "good cause" is concerned, as was pointed out in an extensive review of the English and SA case law in *Ma-Afrika* this has been interpreted to mean 'sufficient grounds' for removal and is not confined to instances of misconduct or personal unfitness. Thus, there will be sufficient cause for the removal of a liquidator where it is shown that it will be to the advantage of the parties interested in the liquidation. To this end, the cause must be "measured" by reference to the "real, substantial (and) honest" interests of the liquidation.

35. "Good cause" for the removal of a liquidator will also be present where he/she has not been independent in the discharge of their duty or has allowed their personal or professional interests to conflict therewith. In this regard a liquidator is required to maintain an "even and impartial hand" between parties to the liquidation i.e. should have no "leaning" for or against any of them and should not side with a party or faction in any dispute and should be detached, independent and impartial in their dealings.

36. The fact that a liquidator has a fiduciary duty towards the company in insolvency does not mean that he/she can always be "even-handed" and there may be instances where they are obliged, should the occasion warrant it, to dispute a creditor's claim or to impeach a transaction which took place. In such circumstances a creditor cannot object to the liquidator's conduct on the grounds of a perception of bias, and the liquidator may only be removed on this basis if there is "sufficient suspicion" of partiality or a conflict of interest. In this regard a Court may remove a liquidator if there is evidence that he/she is in a position of actual or apparent conflict of interest because of some relationship, direct or

indirect, with the company, its management, or any person concerned in its affairs.

37. Simple complaints or allegations of a perception of bias, partiality, lack of independence or unfairness without more, will therefore not suffice, nor will it ordinarily be sufficient to show simply that the liquidator made questionable decisions or committed errors of judgement. Whilst these deficiencies may point to a lack of competence or experience, they will not necessarily constitute good or sufficient cause to justify the removal of a liquidator.'[26] (Footnotes omitted)

[48] I have some difficulty with Mr Lee's case, as made out in the founding affidavits, as, firstly, he is relying on inferences or conclusions without setting forth the primary facts from which the inferences or conclusions can be drawn. In seeking the removal of the liquidators, it was incumbent on him to set forth the facts on which he relies in a clear manner. He cannot offer his conclusions or inferences as primary facts. Secondly, although averring on the one hand that he does not expect this court to make a finding on the prescription defence, he nevertheless bases his argument on the success (merits) of the prescription defence. It should be borne in mind that thousands of actions have been instituted, both in domestic jurisdictions as well as foreign jurisdictions, and that the facts will differ from case to case. Prescription is always a fact-specific determination and cannot be considered *mero motu* by a court. I am informed by the liquidators that not all respondents/defendants have even raised prescription as a defence.

[49] It is not possible, or indeed permissible, for this court to make any findings in respect of the prescription defence as raised by Mr Lee. The claims are pending before other courts and it is for those courts to determine whether the prescription defence can succeed. This is of particular relevance to the UK proceedings where the liquidators are relying not only on the South African law of insolvency but also the UK law of

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[26] Ibid para 33-37.The reference to 'Ma-Afrika' is to *Ma-Afrika Groepbelange (Pty) Ltd & Another v Millman & Powel NNO and Another* 1997 (1) SA 547 (C).

insolvency.[27] Suffice to say that Mr Lee builds his argument around the start date for prescription - prescription begins once the creditor possesses the minimum facts necessary to institute action.[28] Constructive knowledge suffices where the facts could reasonably have been acquired.[29]

[50] Mr Lee argues that prescription commenced running once the liquidators had access to the Maxtra database (which he says was on 9 April 2021 based on a date provided in a replication in one of the domestic proceedings - referred to as the 'Van Sittert replication'). It follows from this event, he argues, that the liquidators failed to institute proceedings timeously despite having acquired the necessary knowledge. He further argues that the mere possibility that prescription could be raised as a defence should prevent the liquidators from instituting their claims.

[51] Yet, it is the evidence of the liquidators that once they had access to the Maxtra database they needed to employ two experts - an IT specialist team which wrote the MARS program and a crypto-currency expert who did the blockchain verification - to interpret the database. The expert analysis of this database was only finalised in June 2022. The liquidators contend that the earliest date, in the main, on which prescription could be considered to have commenced would be 1 June 2022. Furthermore, in the event that they are wrong (in that the facts could have been reasonably acquired before 1 June 2022), prescription could not have commenced before 4 February 2022, which is the date on which the creditors authorised the liquidators to institute legal proceedings, or 11 November 2021, which is the date the liquidators were finally appointed as such. In any event, the Maxtra database was obtained on 10 May 2021, and not on 9 April 2021. It is a misunderstanding of the *alternative* nature of these submissions that caused Mr Lee to complain that contrary submissions are being made in pleadings.

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[27] *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* [2022) ZACC 43; 2023 (3) SA 36 (CC); 2023 (3) BCLR 296 (CC) para 37. The Constitutional Court upheld the Supreme Court of Appeal's decision that matters which are properly before the jurisdiction of a high court should be heard by that court despite it having concurrent jurisdiction with a magistrate court.
[28] *Truter and Another v Deysel* [2006] ZASCA 16; 2006 (4) SA 168 (SCA) para 16-18.
[29] *Minister of Finance and Others v Gore NO* [2006] ZASCA 98; 2007 (1) SA 111 (SCA); [2007] 1 All SA 309 (SCA) para 17-18 and para 84.

[52] The facts put up by the liquidators in their first supplementary answering affidavit have not seriously been disputed by Mr Lee. His blanket denial in a replying affidavit- particularly of facts that he must have knowledge of (and which facts were supported by annexures to the first supplementary answering affidavit) - does not raise a genuine dispute of facts. In my view, the facts put up by the liquidators, together with the admitted facts introduced by Mr Lee, do not support the removal relief:

(a) This court cannot determine whether the prescription defence raised by some (not all) of the respondents / defendants in domestic and foreign jurisdictions will, in due course, be upheld. Not only is this court not privy to the facts of each case but it is also impermissible for this court to make findings in matters still to be ventilated based on facts that will be different for each case. As to the UK proceedings, the UK statute of limitations may be applicable as their procedural law applies, in which case the argument raised by Mr Lee would be moot as a six-year period, and not a three-year period, would apply.

(b) Mr Lee's whole argument regarding prescription appears to be built on an incorrect date. He relies on a date provided (incorrectly, according to the liquidators) in a replication in an unrelated matter serving before a domestic court. When the Maxtra database was received is a question of fact easily established through objective evidence. An incorrect date in a pleading can be corrected by amending same in terms of uniform rule 28. It is not a fact objectively established by a court to which another court would be bound, and it is not a 'judicial admission' as contended for by Mr Lee. The position in our law is that the court is bound by an admission, even if the court knows that it is untrue.[30] An admission may, however, be withdrawn with the leave of the court if there is a reasonable explanation for why the admission was made and why it is now being withdrawn and the amendment does not prejudice the opposition in such a way that it cannot be rectified by an appropriate order as to costs.[31]

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[30] *Dinath v Breedt* 1966 (3) SA 712 (T) at 716-717.
[31] *Gordon v Tarnow* 1947 (3) SA 525 (A) at 531-532.

'Admission' is not a defined term, save that section 15 of the Civil Proceedings Evidence Act 25 of 1965[32] stipulates that:

'It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such party to disprove any fact admitted on the record of such proceedings.'

(c) Mr Lee has, furthermore, confused the principle of stare decisis (where higher courts bind lower courts on matters of law) with factual findings (where a factual finding by a court in one case does not set a legal precedent for future cases) which a court, occasionally, may take judicial notice of.

(d) The liquidators have the support of the majority of creditors who have agreed, at a meeting of the creditors, to the claims being instituted in domestic and foreign jurisdictions.

(e) The UK proceedings are far advanced with substantial costs already having been incurred. The proceedings will be advancing to trial in November 2026 and are likely to be finalised before the end of this year.

(f) The liquidators are pursuing claims in the UK proceedings to the amount of about R1,1 billion (in terms of sections 26, 29 and 30 of the Insolvency Act). They have already successfully recovered R1,8 million in these proceedings. The past and anticipated future litigation costs, and even the adverse cost order of less than R800 000, appear justified and, indeed, proportional to the anticipated benefits when considered against the quantum of these claims.

(g) The complaint that the liquidators have advanced contradictory pleadings in pursuit of their actions also seem to be without merit as it relates to the date on

[32] See also the references to Voet and Wigmore as authority for the principles of our common law embodied in this legislation as summarised in *Gordon supra* at 531.

which the liquidators first obtained access to the Maxtra database and a misunderstanding of propositions made in the alternative.

(h) Despite an allegation by Mr Lee that the liquidators have not been transparent (another conclusion or unsubstantiated inference), it appears that, objectively, this cannot be so. The liquidators have issued regular detailed circulars to creditors and other interested parties, which have also been published online on their designated website. One, in particular, issued on 2 December 2024, dealt with the process of submitting and proving claims against the insolvent estate of MTI. Another, on 26 September 2025, dealt with the claims investigation process, certain issues raised by News 24 as well as Mr Lee, the first liquidation and distribution account, and the preparation of the second liquidation and distribution account. Mr Lee has addressed individual correspondence to the liquidators, to which they have answered in full - both documents were referred to and the detailed response also annexed to the circular on 26 September 2025. The same is true in respect of Mr Thyne (the attorney of record for Mr Lee) as his letter was also answered. Furthermore, meetings of creditors have been held and the section 418 enquiry is ongoing.

(i) The ambit of the investigation of the claims - both in volume and quantum - is clearly a massive undertaking with input having been required from an IT specialist, a crypto-currency expert and forensic auditors. The sheer volume of documents alone is such that it will take new liquidators substantial time to acquaint themselves with the facts. This will not only cause delay in the finalisation of the estate, where winding-up proceedings were already instituted in December 2020, but will also cost the estate unnecessary fees in the duplication of work.

(j) The explanations that the liquidators put up regarding their investigations, the scope of the work done and the determination of the prescription defenses are cogent and do not demonstrate that they lacked the necessary professional

caution, independence or impartiality required of them. Indeed, pursuing the claims in terms of sections 26, 29 and 30 of the Insolvency Act is an obligation imposed on them in terms of their fiduciary duties.

(k) MTI's financial and accounting records were either non-existent or in complete shambles when the liquidators took over and the company's books of account had to be written up. The Maxtra database had to be assessed and evaluated to be understood, with a special software program needing to be developed for this purpose. As for the liquidators' alleged failure, properly, to consider the possibility of a prescription defence being raised, there is likewise no basis to arrive at a finding that the liquidators were remiss or failed in the discharge of their duties.

[53] It appears to me, on the facts put forward by the liquidators, that they have met their statutory duties. I am mindful that the Constitutional Court has said in *Bernstein and Others v Bester NO and Others*[33] that the major statutory duties of liquidators in winding-up a company include:

'(a) to proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable;
'(b) to give the Master such information and generally such aid as may be requisite for enabling that officer to perform his or her duties under the Act;
'(c) to examine the affairs and transactions of the company before its winding-up in order to ascertain -

(i) whether any of the directors and officers or past directors and officers of the company have contravened or appear to have contravened any provision of the Act or have committed or appear to have committed any other offence; and

[33] *Bernstein and Others v Bester NO and Others* [1996] ZACC 2; 1996 (2) SA 751; 1996 (4) BCLR 449 para 15.

(ii) in respect of any of the persons referred to in subparagraph (i), whether there are or appear to be any grounds for an order by the court under section 219 of the Act disqualifying a director from office as such;

'(d) except in the case of a member's voluntary winding-up, to report to the general meeting of creditors and contributories of the company the causes of the company's failure, if it has failed;

'(e) if the liquidator's report contains particulars of contraventions or offences committed or suspected to have been committed or of any of the grounds mentioned in (c) above, the Master must transmit a copy of the report to the attorney-general.'

[54] I cannot find that any 'good cause' exists for the removal of the liquidators. Mr Lee has also not made out a case that the liquidators have failed to perform satisfactorily any duty imposed upon them by legislation or that they are no longer suitable to be the liquidators of MTI.

[55] I agree with Sher J[34] that, in the circumstances of this matter, even if there were to be some merit in the complaints which Mr Lee has raised, given the length of time that the company has been in winding-up and the considerable expenses that have been incurred, as well as the considerable work which has been done by the liquidators to date,[35] it would, in any event, be wholly against the interests of the creditors and interested parties for the respondents to be removed from their positions at this stage. That may explain why only 33 creditors, inclusive of Mr Lee, supported an application by the law firm Thyne Jacobs Sundstrom for the removal of the liquidators in a Google questionnaire that was circulated during December 2025 (another 11 creditors voted *against* the removal and the other approximately 9 200 creditors who had submitted claims remained silent).

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[34] *Marks* fn 25 para 44.

[35] In *Marks* (para 44), Sher J recorded that, at the time he heard the application, more than two and a half years ago, more than 154 witnesses had been questioned in enquiries before two commissioners (a retired judge and a magistrate), more than 60 summonses had been issued and various anti-dissipation applications had been brought, and the liquidators had participated in numerous applications involving the company and the applicants and groups of investors.

[56] It has also not escaped my notice that Mr Lee, shortly before approaching this court, made application to the Master in terms of section 381 of the 1973 Act. Section 381(1) directs that:

> 'The Master shall take cognizance of the conduct of liquidators and shall, if he has reason to believe that a liquidator is not faithfully performing his duties and duly observing all the requirements imposed on him by any law or otherwise with respect to the performance of his duties, or if any complaint is made to him by any creditor, member or contributory in regard thereto, enquire into the matter and take such action thereanent as he may think expedient.'

[57] Instead of waiting for the outcome of the section 381(1) application, Mr Lee rushed to this court on very short notice to the liquidators. That was not the first time Mr Lee sought the removal of the liquidators. He did so as early as December 2021. Mr Lee neither disclosed this attempt to this court nor disclosed that the Master had declined to remove the liquidators.

The interdictory relief

[58] It is trite that to obtain a final interdict, an applicant must prove three essential elements on a balance of probabilities: (a) a clear right established in terms of substantive law, (b) an injury actually committed or reasonably apprehended, and (c) the absence of a satisfactory alternative remedy.

[59] Notably, Mr Lee has not, in his founding affidavits, set out what clear right he relies upon. In respect of the interim relief he sought under Part A of the notice of motion, Mr Lee contended that the liquidators owe fiduciary duties to the body of creditors, which includes the duty to preserve and maximise the estate's assets and to avoid reckless litigation. He argues that the pursuit of time-barred claims at enormous costs in the face of 'binding judicial admissions' and a 'clear prescription risk' violates

these duties. When interim interdict relief is sought, it is only necessary to establish a prima facie right.

[60] It is clear that Mr Lee brings the application in his personal capacity. He is neither a representative of the total body of the MTI creditors nor of the company's estate and he does not have the authority to act on behalf of the MTI creditors or the company's estate. Even if he has submitted and proven a claim against the estate of the company, he is but one of many thousands of MTI investors. In addition, Mr Lee is not a party to the UK proceedings. The question thus arises as to what affords him the locus standi to seek the interdictory relief.

[61] The legal position is, in my view, succinctly set out in *Levi and Another v Blankitny and Another*,[36] where this court held that:

> 'To determine whether an applicant has a clear right is a matter of substantive law. Whether that right is clear is a matter of evidence. In order therefore to establish a clear right, the applicants have to prove on a balance of probability, facts which in terms of substantive law establish the right relied on.'[37] (Footnotes omitted)

[62] Our insolvency administration is wholly a creature of statute. Under section 339 of the 1973 Act, the law relating to insolvency applies in respect of any matter not specially provided for by the Companies Act. The Master assumes control of all the property of the company upon the commencement of the winding-up until a provisional liquidator is appointed.[38] Once appointed, the provisional liquidator assumes control of the assets and affairs of the estate and administers it under the supervision of the Master pending the appointment of a final liquidator at the first meeting of creditors. The final liquidator reports directly to the Master.

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[36] *Levi and Another v Blankitny and Another* [2023] ZAWCHC 149.
[37] Ibid para 61.
[38] Section 361(1) of the 1973 Act.

[63] Examples of where courts have granted interdicts against liquidators on behalf of creditors can be found in:

(a) *James v Magistrate, Wynberg, and Others*:[39] the court interdicted a liquidator from examining a creditor and sole member of a close corporation on the ground of perceived bias, the case being that the liquidator had sided with another creditor and created the impression of bias.

(b) *City of Cape Town and Others v Master of the High Court, Cape Town and Others*:[40] the court granted an interim interdict restraining liquidators from selling or disposing of certain immovable properties pending a broader review.

(c) *Jonker and Others v Myobizi NO and Others*:[41] as the liquidators did not comply with the provisions of the relevant legislation, they were directed by the full court to convene meetings of creditors.

[64] Although a creditor clearly has the *locus standi*, as a general proposition, to approach a court for interdictory relief, ·such a creditor, when seeking final relief, must establish a clear right and prove on a balance of probability facts which, in terms of substantive law, establish the right relied on. Unfortunately, primary facts are largely absent from Mr Lee's founding affidavits, which are replete with repetition, argument and secondary facts.

[65] First, Mr Lee seeks an interdict directing the liquidators to file a 'full and detailed' updated liquidation and distribution account. Mr Lee does not explain in his founding affidavits *why* he seeks this relief or *why* he would be entitled to such relief. He also does not disclose the circular sent by the liquidators to the proven creditors on 26 September 2025, which dealt, inter alia, with the drafting of the second liquidation and

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[39] *James* fn 21 at 14G-I.
[40] *City of Cape Town and Others v Master of the High Court, Cape Town and Others* [2025] ZAWCHC 586.
[41] *Jonker and Others v Myobizi N.O and Others* [2022] ZAFSHC 62.

distribution account. Further, he does not disclose that the first liquidation and distribution account had been approved by the Master.

[66] The circular of 26 September 2025 is an important one in the context of the relief sought. It explains that the liquidators had reviewed 9 412 claims submitted by MTI investors. It also records that the liquidators had made a proposal to the Master to refine the claims process and to expedite procedures in terms of the Insolvency Act and they were waiting for a response from the Master. It records further that the liquidators intended to send out notices to verify the identity of investors and the clustering of the master and slave accounts. It explains that investors may accept or reject the proposed compromises but that a rejection would delay the inclusion of the disputed claims in the second liquidation and distribution account.

[67] I am compelled to find that Mr Lee has neither established a clear right nor set out the primary facts from which it can be established that an injury was actually committed or reasonably apprehended. In fact, the circular of 26 September 2025 establishes the opposite. Mr Lee has also not set out why there is no satisfactory alternative remedy available to him. He merely averred that, in the context of the interim relief sought, a damages claim would not restore estate assets that were already paid to UK solicitors.

[68] Second, Mr Lee demands a comprehensive written explanation as to why the value of the estate had declined by half - a loss of R550 million. Once again, Mr Lee did not explain in his founding affidavits why he seeks this relief or why *he* would be entitled to such relief. In addition, he made no reference to the first liquidation and distribution account, which indicate total disbursements exceeding R275 million. This, together with the compromised claim of R283 million and its payment to the South African Receiver of Revenue, explains the approximately R550 million reduction in assets. The Master confirmed the first liquidation and distribution account in October 2023. As the liquidators obtained leave from this court, in terms of the provisions of section 387 of the

1973 Act, before making the payment to the South African Revenue Service, there was nothing untoward in this transaction.

[69] Once again, I cannot find that any clear right has been established to the relief sought. Furthermore, Mr Lee has failed to set out the primary facts from which it can be established that an injury was actually committed or reasonably apprehended or a satisfactory alternate remedy is absent.

[70] Third, Mr Lee prays for orders directing the liquidators to disclose what amounts had been paid or committed to the UK proceedings and to account fully for adverse cost orders. The facts relied on in respect of this relief are the same as those relied on for the removal of the liquidators and are largely based on his conclusion that the liquidators are pursuing time-barred claims. For this conclusion he relies on the opinion of Mr Thyne, which he annexed to his first founding affidavit. The opinion in respect of prescription is based on the witness statement of a Mr Pienaar which records that the liquidators had access to the Maxtra database from 9 April 2021. It is also based on the so-called Van Sittert replication in which the attorneys, acting on behalf of the liquidators, set out 9 April 2021 as the date on which they obtained access to the Maxtra database. The opinion concludes that, in terms of South African law, the claims would thus have prescribed on or about 9 April 2024.

[71] The problem that Mr Lee faces is the same as the one he faced in respect of the removal relief. He is essentially asking this court to make some sort of preliminary finding with regards to a factual dispute that is pending before a foreign court. In the circumstances, Mr Lee has neither on the basis of primary nor secondary facts made out a clear right or established an injury actually committed or reasonably apprehended or established the absence of a satisfactory remedy.

[72] Overall, I cannot find that Mr Lee has established that the liquidators are not representing the interests of the estate.

[73] I have noted that the liquidators say that they have instituted 754 recovery processes in foreign jurisdictions but that Mr Lee, who has not set out any facts upon which I should not accept this averment, has only taken issue with the 44 claims instituted as part and parcel of the UK proceedings. These 754 claims seek recovery of approximately R890 million in terms of section 26 of the Insolvency Act and a further R3,8 billion in terms of section 29 claims. In the domestic jurisdictions, 4 021 recovery processes have been instituted and these claims total R2,4 billion in terms of section 26 and RB,7 billion in terms of section 29. These recovery processes have as their aim the recovery of the property of MTI so that it can be realised and applied towards paying a liquidation dividend to the MTI creditors.

[74] I agree with the liquidators that Mr Lee's application seeks to stop the recovery processes - at the very least in respect of the UK proceedings - and that this application does not serve the interests of the majority of the MTI creditors. It likely does serve the interests of the few who profited from the Ponzi scheme. After all, the primary goal of liquidators is to determine what the assets and liabilities of the company are, to recover the assets and pay the liabilities, and to do so in a way which will best serve the interests of the company's creditors.[42]

[75] I have grave reservations as to whether the interdictory relief sought by Mr Lee is even competent. Its aim is to interdict the liquidators from performing their statutory duties or to oblige them to perform their statutory duties in a manner prescribed by Mr Lee and not by statute. Furthermore, the interdict sought would interfere with foreign proceedings, which this court does not have the power to regulate. Finally, it seems to me that the manner in which the order sought is framed would not meet the requirements of an order as set out in Eke v Parsons.[43] An order can only be made if it is competent and proper, and its terms must be capable, both legally and practically, of being included in a court order.[44]

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[42] *Bernstein* fn 33 para 16.
[43] *Eke v Parson*s [2015] ZACC 30; 2016 (3) SA 37 (CC); 2015 (11) BCLR 1319 (CC).
[44] Ibid para 25 and 26.

The oversight relief

[76] Mr Lee has already submitted a complaint to the Master in terms of section 381 of the 1973 Act. The liquidators assumed control of MTI's assets and the affairs of the estate and are administering them under the supervision of the Master.

[77] The Master's office plays a crucial role in overseeing the winding-up of companies. It supervises the liquidation process to ensure it is conducted fairly and transparently. This involves reviewing reports submitted by the liquidator and ensuring that creditors' claims are handled appropriately. Protecting the rights of creditors is a key responsibility and the Master's office ensures that all claims are evaluated and that the distribution of assets is done in accordance with legal priorities. It also serves the public interest by ensuring that the liquidation process complies with South African laws and regulations. The functions and duties of the liquidators and the Master are set out in legislation.

[78] By submitting the complaint to the Master, Mr Lee has triggered the Master's jurisdictional oversight. The Master is now seized with the subject matter of the complaint. Yet, Mr Lee is seeking relief from this court before the Master has even been afforded the opportunity to investigate and fulfil their duties. Even if, as a matter of general principle, a creditor or interested party could bypass the statutory procedures or remedies and proceed straight to court, I do not believe the oversight relief sought would be competent in these circumstances. Mr Lee has not referred me to any policy considerations that would warrant this court's interference with the functions of the Master in terms of statutorily recognised remedies. If Mr Lee is unhappy with the outcome of the application to the Master, he is entitled to take the Master on review.

[79] I am not prepared to usurp the functions of the Master and Mr Lee has made out no case in either of his founding affidavits as to why the court should interfere at this stage.

The abuse of process argument

[80] The liquidators argue that they have instituted many actions, in domestic and foreign jurisdictions, in which they seek the setting aside of impeachable dispositions made by MTI prior to the commencement of the liquidation proceedings. The actions are predominantly premised on sections 26, 29 and 30 of the Insolvency Act, which includes the UK proceedings. Mr Lee, being but one of many thousands of creditors, and not being a party to the UK proceedings, has no *locus standi* to represent any of the UK respondents in South Africa. The liquidators complain that the relief he sought was incoherent, not motivated (or not properly motivated), and unprecedented and that he is litigating at the expense of the MTI creditors as the liquidators have been compelled to answer the allegations made and resist the relief sought.

[81] Aside from this, the liquidators rely on the content of the second supplementary answering affidavit, and seek the court's leave for the introduction thereof. Mr Lee opposes the relief sought, stating that the second supplementary answering affidavit fails to comply with the requirements of admissibility (in respect of relevance, authenticity and probative value) and introduces hearsay evidence. In addition, he complains that the introduction of this affidavit would unfairly burden him with rebutting unverifiable electronic hearsay.

[82] The second supplementary answering affidavit amplifies the theme, introduced in the first supplementary answering affidavit, by the liquidators that Mr Lee did not institute the application in the *bona fide* pursuit of the relief sought in the notice of motion but rather in pursuit of an ulterior motive. The first supplementary answering affidavit mounted a defence to the application on the basis, inter alia, that the application constituted a *mala fide* abuse of this court's process and explained the establishment of the MTI Action Group. The latter group was described as comprising of individuals who were disgruntled by the liquidators' impartial and objective performance of their duties as most of them are defendants against whom the liquidators have instituted recovery proceedings. After the second respondent deposed to this affidavit,

and on 20 March 2026, a person testified at the enquiry (under sections 417 and 418 of the 1973 Act). The person's name is being kept confidential, and he is merely referred to as 'the witness'.

[83] During the enquiry, the witness provided the liquidators with unrestricted access to a Telegram public group chat containing messages sent by and between certain individuals, some of whom also appear to be members of the MTI Action Group. The witness also permitted screen shots to be taken. The liquidators say that the crucial evidence contained in the group chat (for purposes of their abuse defence) emerge from the messages sent by two particular protagonists (whose personal identities are not disclosed in the group chat). On 26 November 2025, the first of the two protagonists sent a message on the group chat stating the following:

> *'OK - we need to start preparing for the biggest move of all. We do not engage with the liquidators. We ambush only ... '*

[84] The next day the same protagonist ('the first protagonist') stated:

> *'OK- we intend to file an urgent High Court application interdicting liquidators from continuing with ANY litigation/collection & removing them for gross breach of fiduciary duty ... '*

[85] Then, on 30 November, the first protagonist said: *'3 of the 4 people behind this group are LAWYERS. Nobody can do what we can do with NO funding ....'* On the same day, the second protagonist posted: *'... the spirit is this is urgent as we want to file an application this week ... .'* The first protagonist replied, referenced 'section 381 and 379 applications', and stated: *'We want to act urgently and demolish the JLs before they have even had a chance to breath.'* The first protagonist then referenced the Google documents (which was an annexure to the first founding affidavit) in which creditors were called upon to indicate whether they supported the removal of the liquidators.

[86] A few days later, the first protagonist recorded, on 5 December 2025, that they had *'started working on the Section 379 (urgent interdict stopping them from doing ANYTHING until our investigation is complete)*'; on 7 December, that the section 379 application *'is being filed this week on an urgent basis';* and, on 10 December, that the application is being heard on 12 December.

[87] The liquidators say that Mr Lee is clearly the fourth non-lawyer behind the group chat. During argument, counsel for the liquidators pointed out that the inference could be drawn that Mr Thyne is the first protagonist. He relied on the submission made by counsel for Mr Lee that Mr Thyne had drafted the founding affidavit, the evidence placed before the court and the failure by both Mr Lee and Mr Thyne to address the issues raised in a replying affidavit. Of course, the inference could equally be drawn that Mr Lee is the first protagonist as he deposed to the affidavit.

[88] The liquidators say further that the ultimate intended purpose of this application is, first, and in the short term, to paralyse the liquidators and prevent them from pursuing the recovery claims; second, to procure the removal of the liquidators so that Mr Lee and the three lawyers behind the MTI Action Group may hijack the liquidation proceedings; and, third, to administer the MTI liquidation proceedings in accordance with their own prerogative - and not in accordance with what is prescribed by law - once they have hijacked the liquidation proceedings. They say this based on further posts in the group chat about the 'liquidation mafia' and a post indicating that once these four individuals have taken *'control of the liquidation'* they would give priority to creditors who supported their endeavours.

[89] The evidence sought to be introduced in the second supplementary answering affidavit is hearsay evidence. Hearsay evidence is, as defined in section 3(4) of the Law of Evidence Amendment Act 45 of 1988, 'evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence'. Courts must exercise caution when admitting and relying on hearsay evidence. Section 3(1)(c) of the Law of Evidence Amendment Act provides

the requirements for admission and reliance on hearsay evidence. Importantly, this court must consider the nature of these proceedings and the evidence itself, the purpose for which the evidence is tendered, the probative value of the evidence, the reason that it is not given first-hand by the person upon whose credibility it depends, and any prejudice that the admission of the evidence may entail.

[90] The persons on whom the credibility of the evidence depends have not been identified in the Telegram group chat. The first protagonist was, however, clearly involved with the drafting of the application now serving before me. When the second supplementary answering affidavit was filed by the liquidators it was incumbent on Mr Lee - faced with an express averment that he was one of the four administrators of the group chat - to deal with the averment. A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has, in their affidavit, seriously and unambiguously addressed the fact said to be disputed.[45] A bare denial only meets this requirement if there is no other way open to the disputing party and nothing more can be expected of them.[46] When the facts averred are such that the disputing party must necessarily possess knowledge thereof and be able to provide an answer (or countervailing evidence) if they are not true or accurate but, instead of doing so, rests their case on a bare or ambiguous denial, the court will generally have difficulty in finding that the test is satisfied.[47] Given the amount of detail known about Mr Lee's actions in respect of the applications to the Master and this court, the first protagonist must clearly either be Mr Lee or a person close to Mr Lee, such as his attorney of record.

[91] I would have expected Mr Thyne, as Mr Lee's attorney of record, to have answered to the averments made, particularly in light of Mr Lee's bare denial in the last replying affidavit. The inference drawn by counsel for the liquidators are justifiable in the face of the content of the messages posted in the chat group taken together with the averment by Mr Lee's counsel about the identity of the draftsman. Yet, Mr Thyne also

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[45] *Wightman* fn 14 para 13.
[46] Ibid.
[47] Ibid.

declined to answer to the averments made. I was of the view that the absence of an answer from him indicated that the inference being drawn may be correct.

[92] The evidence in question is a series of public statements purportedly made by either Mr Lee or the lawyer drafting the application (who was Mr Thyne). The liquidators rely on these statements as evidence of the abuse of process of which they complained. The probative value of these statements is merely that they exist in the public domain, and that they were publicised by, or on behalf of, Mr Lee (and possibly Mr Thyne). The reason that they constitute hearsay evidence in these proceedings is obvious: Mr Lee and Mr Thyne have not filed affidavits dealing with the averments made.

[93] Counsel who appeared on behalf of the liquidators submitted that a cost order *de bonis propriis* may be appropriate in the circumstances. As I was invited to consider such a cost order, I directed that Mr Thyne should deliver an affidavit to show cause why an order of costs should not be made against him *de bonis propriis*. Strangely, Mr Thyne, who did file the affidavit, recorded therein that he was constrained to record that the procedure is an unusual one as he is not a party in the application, no relief was sought against him in the notice of motion and that which he was called upon to address was contained in the second supplementary answering affidavit filed at a 'late' stage.

[94] This issue was pertinently addressed by the full court of this division in *Du Plessis NO and Others v Standard Bank of SA Ltd and Others (Appeal)*.[48] In that matter, the appellants contended that, as a matter of law, the court a quo had erred in granting a costs order against them as liquidators, and against their attorney, without joining them to the proceedings in their personal capacities. The full court held that there was no need for them to be joined in their personal capa9ities in the proceedings. All that was required in order to give effect to their right to a fair hearing was for them to be afforded an opportunity to be heard in regard to why such a costs order should not be made against them.[49]

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[48] *Du Plessis NO and Others v Standard Bank of SA Ltd and Others (Appeal)* [2026] ZAWCHC 10.
[49] Ibid para 49.

[95] The full court further reaffirmed that it has never been held to be necessary for any legal representative who has acted for a party in a matter to be joined to the proceedings before costs orders *de bonis propriis* can be made against them. All that is required is that the attorney be afforded the opportunity to tender affidavits and/or to make submissions, if they so wished, as to why they should not be held responsible for and mulcted personally in costs, in accordance with the procedure which was followed by the Constitutional Court.[50]

[96] As regards the issue of whether the hearsay evidence should be admitted, I am reminded of the words of Khampepe ADCJ in *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*[51] that:

> '[22] The main question, then, is whether Mr Zuma will suffer any prejudice if this Court admits and relies on these statements as evidence of the sinister and extreme nature of the contempt. The reason that hearsay evidence is generally inadmissible is that it presents litigants, and particularly accused persons, with the procedural challenge of having to refute evidence without the benefit of cross examination. It follows that this procedural prejudice "must be weighed against the reliability of the hearsay evidence in deciding whether, despite the inevitable prejudice, the interests of justice require its admission".
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> [23] In this truly unique matter, the veracity of the hearsay evidence depends on the respondent. The statements were attached to the founding affidavit, and it is inconceivable that Mr Zuma could be unaware of their relevance to the sanction sought by the applicant. If the publication of these statements had no relation to him, he could have provided an explanation - either publicly or in these proceedings. He did not. He even had an additional opportunity to dispute his

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[50] Ibid para 52. See generally the informative discussion from paragraphs 42 to 55 and the references to the leading authorities in the Supreme Court of Appeal and Constitutional Court.

[51] *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC); 2021 (9) BCLR 992 (CC) para 22-23.

connection to these statements after the hearing of the matter. However, to date, Mr Zuma has made no attempt to distance himself from these statements. Although the admission of these statements will undoubtedly prejudice Mr Zuma's case, the intention behind section 3(1)(c) of the LEAA is to create flexibility so that hearsay evidence may be admitted when the interests of justice, and indeed common sense, demand it. I am satisfied that these circumstances exist in this matter, and that there is nothing preventing this Court from admitting these statements as evidence. No more needs to be said on this.' (Footnotes omitted)

[97] In finding that the hearsay evidence in the second supplementary answering affidavit should be permitted, I thus merely follow where the apex court has led.

[98] The Supreme Court of Appeal in *Beinash v Wixley*[52] held that, in general terms, an abuse of process takes place where the procedures permitted by the rules of the court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.[53] An abuse of process can occur in a variety of ways: (a) the litigation may be frivolous or vexatious, (b) a litigant may seek to use the legal process for an ulterior purpose or by recourse to conduct that subverts fundamental values of the rule of law, or (c) the behaviour of the litigant may be so tainted with turpitude that the court will not come to such a litigant's aid.[54]

[99] When the court finds that an attempt has been made to use machinery devised for the better administration of justice for ulterior purposes, it is duty-bound to prevent such abuse.[55] What constitutes an abuse is a matter which needs to be determined by the circumstances of each case.[56]

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[52] *Beinash v Wixley* [1997] ZASCA 32; 1997 (3) SA 721 (SCA); [1997] 2 All SA 241 (A).
[53] Ibid at 734G.
[54] *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* [2022] ZACC 42; 2024 (1) SA 331 (CC); 2023 (4) BCLR 461 (CC) para 77.
[55] *Beinash* fn 52 at 734E-F.
[56] Ibid at 734F-G.

[100] The Constitutional Court[57] has held that it is permissible for a court, in regulating its own process, to deny a litigant access to court purely on the basis of abuse of process.

> 'It thus becomes important to recognise at a conceptual level why a court that is assigned jurisdiction is entitled to decline to exercise it in certain circumstances. Those reasons lie in a mixture of policy considerations that seek to protect the integrity of the administration of justice, such as abuse of process, and practical matters relating to the proper, efficient and economical use of judicial resources and the right of access to courts. If the mandatory jurisdiction principle was regarded as absolute, courts would be obliged to consider and adjudicate all matters, even those whose consideration would stand in conflict with the interests of justice. Abuse of process and vexatious litigation are some examples that come to mind. It cannot be argued that in such instances the right of access to court must prevail, and courts have no discretion to regulate their own processes. Such a proposition would offend section 173 of the Constitution which empowers superior courts to regulate their own process, and also stands as a threat to the integrity and the proper functioning of the administration of justice.'

[101] By instituting the claims to set aside impeachable dispositions, the liquidators are fulfilling their duty to recover MTI's assets. Mr Lee's application, in which he seeks not only their removal but also far-reaching relief against them, is, in essence, an attempt to prevent the liquidators from fulfilling a fiduciary obligation imposed on them by legislation. The inevitable result would be that there will be creditors in the estate (the 'net losers') who would not be able to recoup their losses and receive a liquidation dividend.

[102] I have also noted that Mr Lee's application followed an application by Mr Marks, who also sought the removal of the liquidators. In that matter[58] this court already held

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[57] In *Commissioner for the South African Revenue Service and Another v Richards Bay Coal Terminal (Pty) Ltd* [2025] ZACC 3; 2025 (5) SA 617 (CC); 2025 (6) BCLR 639 (CC); 88 SATC 162 para 85.

that the application for the removal of the liquidators must be dismissed as the allegations of impropriety, which were levelled against them, had been shown to be wholly without substance and the applicants had failed to show good and sufficient cause for the removal of the liquidators. The court similarly held that the application for a removal constituted an abuse of process, which appears to have been motivated by the first applicant's desire to avoid being subjected to an interrogation.[59]

[103] It is telling, in my view, that Mr Lee did not engage properly with the liquidators' complaint that this application is an abuse of process. He had the opportunity to do so when the first supplementary answering affidavit was filed and, again, when the second supplementary answering affidavit was filed. He did not do so on either occasion. The facts averred by the liquidators are such that Mr Lee, and likely his attorney, must necessarily possess knowledge of the facts and were able to provide an answer. No proper answer was provided and Mr Lee rested his case on a bare denial.

[104] Mr Lee targeted the UK proceedings, across the board, in respect of all the relief he sought. These 44 processes form part of 754 recovery processes instituted in foreign jurisdictions and 4 021 recovery processes in domestic courts. No explanation was offered as to why only the UK proceedings were targeted. No explanation was offered as to why he, who is not a party to any of those 44 processes, should seek relief that would impact those proceedings. The only grounds advanced for the relief sought were the adverse costs order(s), which are part and parcel of the litigation risk, and the prescription defence, based on what appears to be an incorrect date, as a general indication that the liquidators are not fulfilling their obligations. The absence of the necessary averments to substantiate the relief sought has already been pointed out.

[105] I agree with the liquidators that Mr Lee has not instituted these proceedings in the *bona fide* pursuit of the relief sought. This conclusion is inevitable when regard is had to the facts of this matter and Mr Lee's refusal to engage with those facts. He has

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[58] *Marks* fn 25.
[59] *Marks* fn 25 para 45.

clearly launched this application with an ulterior motive, which appears to have been the halting of the UK proceedings.

Costs

[106] The application was served on 10 December 2025 and set down for hearing in urgent court on 12 December 2025. I have already pointed out that a perusal of the founding affidavit demonstrated that the applicants did not comply with the provision of uniform rule 6(1), which requires that every application shall be brought on notice of motion supported by an affidavit *as to the facts upon which* the applicant relies for relief. The facts must be set out simply, clearly and in chronological order, without argumentative matter.[60] The applicants did not identify in the founding affidavits what portions of the annexures they are relying on and did not indicate what case is sought to be made out on the strength thereof.[61] It is not expected of the court or the respondents to trawl through lengthy annexures to the affidavit and to speculate on the relevance of its content.

[107] Furthermore, practitioners, when drafting applications, should ensure that only relevant information is placed before the court. Irrelevant facts that consist of background details, superfluous narrative, unsubstantiated secondary facts or factors that do not contribute to applying the legal principle at stake clutter affidavits, and increase the length of the papers and costs for litigants. The same is true of annexures.

[108] When an urgent application is launched, litigants must comply with uniform rule 6(12), which regulates the procedure for urgent applications. In these applications, applicants are, in effect, asking the court to prioritise their matter over others' matters.

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[60] *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) at 78I-J. As Stegmann J pointed out applicants must explicitly plead primary facts rather than secondary facts (conclusions), as the court and respondent are entitled to know exactly what case the respondents are required to meet.
[61] *Swissborough* fn 8 at 324F-G.

The rule permits applicants to do so and to set their own timeframes in accordance with the degree of urgency of the matter but strict adherence with the rule[62] is required:

> (a) An applicant must, in the founding affidavit, explicitly set forth the circumstances which it is averred render the matter urgent and, additionally, an applicant must demonstrate that they will not obtain substantial redress in the ordinary course. Mere lip service to the requirements of rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm.
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> (b) Once an applicant is of the view that a matter is sufficiently urgent to justify a departure from the rules and an abridgment of the times prescribed by the rules, the applicant must properly consider degrees of urgency. Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency the case demands. It must be commensurate therewith.

[109] Mr Lee has neither complied with rule 6(1) nor with rule 6(12). Guiding principles set out in leading cases have simply been ignored. His abuse of this court's process, not only in respect of his disregard for the rules of court but also in respect of his use of the application procedure to meet an ulterior purpose, warrants a punitive costs order against him. In addition, a punitive costs order is warranted because the allegations of serious misconduct, which Mr Lee levelled at the liquidators in the papers, unfairly impugned their integrity and maligned their professional reputations and were entirely spurious.

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[62] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W).

[110] That leaves the issue as to whether a costs order *de bonis propriis* is warranted against Mr Thyne. In his affidavit, Mr Thyne has categorically denied being the first protagonist or even being a member of the Telegram group chat. His first involvement with any aspect of the affairs of MTI arose on 3 September 2025. He points out that the group chat was established prior to this, in July 2025. He says that he acted only on the instructions of Mr Lee and drafted the founding affidavit on the instructions of his client who deposed to the affidavits under oath. He denies acting in any dishonest manner or disregarding his duties to the court or acting in a negligent fashion. I have to accept the denial from an officer of the court. I called upon Mr Thyne to produce the affidavit because the inference could be drawn that he is the first protagonist. An inference can only be sustained if it is consistent with all proved facts and the proved facts exclude every other reasonable inference except the one sought.

Order

[111] In the circumstances, I make the following order:

(a) The application is dismissed with costs.

(b) Costs shall be taxed on an attorney and client scale.

J S ANDERSSEN
Acting Judge of the High Court

Appearances:

For the applicant: Adv H P Van Staden
Instructed by: W H Thyne Attorneys

For the respondent: Adv P Lourens

Instructed by: Strydom Rabie Inc