IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION: JOHANNESBURG

CASE NO: 2025-113077
CASE NO: 2025-113159

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

29 October 2026
DATE

[redacted]
SIGNATURE

CASE NO: 2025-113077

In the application:

AFRICAN RAINBOW MINERALS LTD Applicant

and

TECHNOLOGY AND MINERAL HOLDINGS (PTY) LTD First respondent
[in business rescue]
(Reg. no. 2015/060033/07)

NDYAMARA; AVIWE NTANDAZO Second respondent

SINGO N.O.; NNDINGENI MOSES Third respondent

MANDLAHAZI N.O.; MATIMU MAHLANZO Fourth respondent

COMPANIES INTELLECTUAL PROPERTY COMMISSION Fifth respondent

AND

CASE NO: 2025-113159

In the application:

AFRICAN RAINBOW MINERALS LTD Applicant

and

TAM HOLDINGS (PTY) LTD First respondent
[in business rescue]
(Reg. no. 2018/213567/07)

NDYAMARA; AVIWE NTANDAZO Second respondent

SINGO N.O.; NNDINGENI MOSES	Third respondent
MANDLAHAZI N.O.; MATIMU MAHLANZO	Fourth respondent
COMPANIES INTELLECTUAL PROPERTY COMMISSION	Fifth respondent

JUDGMENT

AMM, AJ

Introduction

[1] This judgment concerns essentially last-minute intervention and postponement applications (INS-10 and INS-11) in the above two (main) applications.

[2] The applicant ('ARM') is the same in both (main) applications. ARM is the major or largest independent creditor of both first respondents. Its creditor status arises from an arbitration award made an order of court. In the first of ARM's applications, Technology and Mineral Holdings (Pty) Ltd ('Mintech') is the first respondent. In ARM's second application, TAM Holdings (Pty) Ltd ('TAM') is the first respondent.

[3] In its applications, ARM seeks orders to set aside Mintech's and TAM's respective voluntary business rescues and to convert their business rescue proceedings into liquidation proceedings. If ARM succeeds in its application against TAM, that success will almost certainly determine the fate of the Mintech application in ARM's favour.

[4] ARM's applications were enrolled for hearing for the week of 26 October 2026, in this Division's Dedicated Insolvency Motion Court. They were set down together, albeit not on a consolidated basis, during September 2026.

[5] The notices of set-down were served on the (current) business rescue practitioner of both first respondents, Mr Holtzhauzen. He is a senior business rescue practitioner. He is by all accounts the fourth successive business rescue practitioner in the business rescue proceedings. He was appointed in April 2026.

[6] When I first considered ARMS's applications, the opposition to them had effectively evaporated (together with the then business rescue practitioners' counterclaims and the personal cost order sought against them). I was *prima facie* minded to conclude that there was no reasonable prospect of rescuing either Mintech or TAM and that, moreover, it was

just and equitable to set aside the relevant resolutions that commenced their respective business rescues. I had begun drafting preliminary judgments to that effect.

[7] I thereafter allocated the two applications for a joint hearing commencing at 10:00 on 28 October 2026.

[8] However, on Thursday, 22 October 2026, PGVM Investments (Pty) Ltd ('PGVM') sought leave to intervene in the applications. PGVM claims it is a creditor of Mintech and TAM. For his part, Mr Holtzhauzen also sought leave to intervene in both applications. He, however, filed his applications only on the afternoon of 27 October 2026 (i.e. on the eve' of the allocated hearings).

[9] In their respective intervention applications, both Mr Holtzhauzen and PGVM also seek (directly and indirectly) a postponement of the hearing of the two applications and leave to file further or supplementary affidavits in opposition to ARM applications.

[10] The founding affidavits in both Mr Holtzhauzen's and PGVM's intervention and postponement applications leave much to be desired. Despite the obvious rights and interests Mr Holtzhauzen and PGVM have in the business rescues and ARM's applications, their applications are nevertheless fact- and particularity-sparse.

[11] At its high watermark, PGVM endeavours to justify its late bringing and the timing of its intervention and postponement application by arguing (i) that the uniform rules permitted its intervention at any time, and (ii) that Mr Holtzhauzen recognised it as a creditor in the relevant business rescues only on 2 October 2026. PGVM, however, does not explain what it did between 2 October 2026 and the filing of PGVM's intervention application on 22 October 2026, and how it acquired certain business rescue claims.

[12] For his part, Mr Holtzhauzen's explanation for the late filing of his intervention and postponement application centres on his claims that, during his tenure as TAM's business rescue practitioner, he actively pursued the sale of TAM's sole asset (i.e. a 1,5 million-ton stockpile of manganite) and that he only received, as he communicated on 22 October 2026, what he describes as 'an irrevocable Offer to Purchase' the stockpile. Similarly, Mr Holtzhauzen does not meaningfully, if at all, explain what transpired between his April 2026 appointment and 22 October 2026. He does, however, state that an addendum to a business rescue plan prepared by his predecessor, which provides for the recent offer to purchase ('the amended business rescue plan'), was circulated to creditors on 26 October 2026 and that he proposes to base the rescues inter alia on this and other sales.

[13] Importantly, however, Mr *Roeloffze*, appearing for Mr Holtzhauzen and in the best traditions of the Bar, conceded at the outset that, absent his client's intervention and postponement applications, ARM should succeed in its applications.

[14] Mr *Gilbert SC*, who appeared for ARM in both its applications, correctly advised that his client did not oppose the intervention applications. He did, however, state that ARM opposed their respective requests to postpone the hearing of ARM's two applications. Mr *Gilbert SC* argued that ARM did so because the postponement applications had no merit and, ultimately, inter alia, because Mr Holtzhauzen and PGVM did not make out a proper case for the postponements. Mr *Gilbert SC* also took issue with the timing and *bona fides* of the postponement applications. He further argued that the amended business rescue plans did not provide a reasonable basis for rescuing Mintech or TAM. ARM, however, did not wish to file answering affidavits in the postponement applications. Instead, Mr *Gilbert SC* advised that he would argue the postponement applications on the papers filed by Mr Holtzhauzen and PGVM.

[15] In doing so, Mr *Gilbert SC* raised various, on the face of it, genuine and justifiable concerns regarding (i) the contents of the respective proposed amended business rescue plans, (ii) TAM's ability to meet its contractual obligations under the proposed amended business rescue plan, and (iii) Mr Holtzhauzen's ability to successfully rescue Mintech and TAM. Mr Gilbert SC further relied upon (i) Mr Holtzhauzen's conduct leading up to 22 October 2026, (ii) the lack of faith he had generated in the mind of at least ARM, and (iii) the gaps in, and the veracity and implementability of, the proposed amended business rescue plans. For example, Mr *Gilbert SC* argued that the plans failed to set out meaningfully how the contractually agreed additional stockpiles would be sourced, paid for and delivered. He also pointed out that Mintech's proposed amended business rescue plan fails to recognise ARM as a concurrent creditor, despite a previous business rescue practitioner conceding and confirming ARM's concurrent creditor status and the amount of the debt owed to it in response to urgent proceedings brought by ARM. Given the then-belated concession and confirmation, ARM did not seek a determination of its urgent application.

[16] Mr Holtzhauzen obviously has a right to participate in ARM's applications. Mr *Gilbert SC* did not argue otherwise. At this juncture, PGVM for its part need only satisfy me – which

it does do – that it has *prima facie* a direct and substantial interest in ARM's applications (i.e. that it is *prima facie* a creditor) for purposes of it being permitted to intervene.[1]

[17] The aforesaid is the position despite the indubitable merit in ARM's and Mr *Gilbert SC*'s various criticisms and concerns vis-à-vis the timing of the bringing of the intervention and postponement applications as well as in respect of the amended business rescue plan, Mr Holtzhauzen and PGVM have statutory rights to participate in ARM's applications. That said, I make no definitive, final or binding determination regarding PGVM status as a creditor of Mintech and TAM. That determination may be required to be made another day, and possibly in another forum.

[18] Turning now to the postponement applications, *Myburgh Transport v Botha t/a S A Truck Bodies*[2] sets out the following trite considerations in an application for postponement:

> '5. A Court should be slow to refuse a postponement where the true reason for a party's non-preparedness has been fully explained, where his unreadiness to proceed is not due to delaying tactics and where justice demands that he should have further time for the purpose of presenting his case. *Madnitsky v Rosenberg (supra* at C 398 9).
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> 6. An application for a postponement must be made timeously, as soon as the circumstances which might justify such an application become known to the applicant. *Greyvenstein v Neethling* 1952 (1) SA 463 (C). Where, however, fundamental fairness and justice justifies a postponement, the Court may in an appropriate case allow such an application for postponement, even if the application was not so timeously made. *Greyvenstein v Neethling (supra* at 467F).
>
> 7. An application for postponement must always be *bona fide* and not used simply as a tactical manoeuvre for the purposes of obtaining an advantage to which the applicant is not legitimately entitled.
>
> 8. Considerations of prejudice will ordinarily constitute the dominant component of the total structure in terms of which the discretion of a Court will be exercised. What the Court has primarily to consider is whether any prejudice caused by a postponement to the adversary of the applicant for a postponement can fairly be compensated by an appropriate order of costs or any other ancillary mechanisms. (Herbstein and Van Winsen, *The Civil Practice of the Superior Courts in South Africa*, 3rd ed, at 453.)
>
> 9. The Court should weigh the prejudice which will be caused to the respondent in such an application if the postponement is granted against the prejudice which will be caused to the applicant if it is not.'

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1 See *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC) and *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom and Others* [2020] 4 All SA 226 (KZP)

2 *Myburgh Transport v* Botha *t/a S A Truck Bodies* 1991 (3) SA 310 (NmS) at 315 B-G.

[19] In *Lekolwane and Another v Minister of Justice,*[3] the Constitutional Court added the following in respect of applications for postponement as follows:

> 'The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted, unless this Court is satisfied that it is in the interests of justice to do so. .... Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, … .'

[20] For inter alia the reasons already mentioned, neither Mr Holtzhauzen nor PGVM fully explains why they brought their respective applications late, and I cannot meaningfully determine whether the applications were brought timeously. I also cannot determine whether the postponement applications are *bona fide* or *mala fide*; accordingly, my finding is neutral in this specific regard. That said, these issues alone or collectively do not determine the fate of the postponement applications.

[21] ARM's and Mr *Gilbert's SC's* well-articulated and well-argued concerns and criticisms of the proposed amended business rescue plans are understandable. It is, however, not within this court's bailiwick to anticipate or pre-empt what may or may not happen in due course within the context of, inter alia, the relevant attitude to, and fate of, the business rescue proceedings *vis-à-vis* sections 145(2), 145(3), 145(4), 150, 151, 152, etc. of the Companies Act, 2008 when determining the fate of the postponement applications.

[22] Mr *Gilbert SC* also referred to Aucamp AJ's well-reasoned judgment in *Valsa Engineering (Pty) Ltd and Others v Forgetech Fabrication (Pty) Ltd*[4] in support of ARM's opposition to the postponement applications in the context of institutional prejudice. However, the circumstances that motivate Aucamp AJ's judgment are distinguishable. It concerns the late filing of an answering affidavit in ordinary civil litigation, albeit on void post-liquidation dispositions. It thus does not address business rescue proceedings, the broader interests of affected persons, or considerations under sections 7 and 158 of the Companies Act, 2008.

[23] Moreover, on the question of prejudice, one of Mr Gilbert SC's primary concerns was that determining the recently arisen 'dispute' over ARM's creditor status in Mintech's business rescue would delay the business rescue proceedings, with accompanying institutional prejudice. These concerns have merit. Mr Holtzhauzen, however, addressed this by Mr *Roeloffze* confirming that he (Mr Holtzhauzen) accepted and would abide by his predecessor's previous acceptance of Mintech's status as a concurrent creditor in its business rescue in the original capital amount of R55,336,369.00 plus interest and costs

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3 *Lekolwane and Another v Minister of Justice* 2007 (3) BCLR 280 (CC) para 17.
4 (2026/112593) [2026] ZAGPJHC 1146 (31 August 2026).

(albeit the specifically confirmed amount included subsequently accrued interest up to the date of Mr Holtzhauzen's predecessor's confirmation).

[24] Mr Holtzhauzen also tendered to be personally liable (*de bonis propriis*, i.e. from his own pocket) for the wasted costs arising from his intervention and the postponement application, which would remedy ARM's immediate prejudice if its applications were postponed. I pause to note that, had Mr Holtzhauzen not personally tendered these costs, I would have been inclined to grant such an order in any event. Mr Niedinger, appearing for PGVM, advised that while his client did not tender the wasted costs arising from its intervention and postponement application, he accepted that the court could order such costs in its discretion. Given that PGVM's poorly articulated reasons for its postponement request rest on Mr Holtzhauzen's recent endeavours to sell the stockpile, PGVM should not be exempt from joint and several liability for costs, together with Mr Holtzhauzen personally.

[25] In conclusion, having considered the papers and the parties' submissions, and in the exercise of my discretion and in the interests of justice, I am persuaded, by the smallest margin, to grant the requested postponements and the orders that follow. Fundamental fairness and justice justify the postponements, particularly because, in the context of business rescue proceedings, the interests of ARM, Mr Holtzhauzen, and PGVM must be considered, but so too the interests and possible prejudices to affected parties must also be taken into account.

[26] Given my determinations on the postponement applications, I do not need to consider section 145(1) and 146(1) of the Companies Act, 2008, which the parties also did not raise or argue before me.

[27] Consequently, I grant the following orders

(a) In the application under case no. 2025-113077:

1. Mr Holtzhauzen is joined as the sixth respondent in his *nomine officio* / representative capacity as the business rescue practitioner of the first respondent.

2. PGVM Investments (Pty) Ltd is joined as the seventh respondent.

3. The proceedings under the above case number are postponed *sine die*.

4. Mr Holtzhauzen and PGVM Investments (Pty) Ltd are granted leave to file their answering affidavits or supplementary answering affidavits in opposition

to the application, which affidavits, if any, must be filed within 15 court days of the date of this order.

5. PGVM Investments (Pty) Ltd and Mr Holtzhauzen (personally) are to pay - jointly and severally, the one paying the other to be absolved - African Rainbow Minerals Ltd's party and party costs of the intervention and postponement applications (which costs are to include but are not limited to the accompanying wasted costs and costs of hearing on 28 October 2026) on scale C (which costs are to include the costs of senior counsel on brief).

(b) In the application under case no. 2025-113159:

1. Gerhardus Theodoris Daniel Holtzhauzen is joined in his *nomine officio* / representative capacity as the business rescue practitioner of the first respondent.

2. PGVM Investments (Pty) Ltd is joined as the seventh respondent.

3. The proceedings under the above case number are postponed *sine die*.

4. Mr Holtzhauzen and PGVM Investments (Pty) Ltd are granted leave to file answering affidavits or supplementary answering affidavits in opposition to the application, which affidavits, if any, must be filed within 15 court days of the date of this order.

5. PGVM Investments (Pty) Ltd and Mr Holtzhauzen (personally) are to pay - jointly and severally, the one paying the other to be absolved - African Rainbow Minerals Ltd's party and party costs of the intervention and postponement applications (which costs are to include but are not limited to the accompanying wasted costs and costs of hearing on 28 October 2026) on scale C (which costs are to include the costs of senior counsel on brief).



AMM AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted:

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected above. This judgment is handed down electronically by circulation to the parties / their legal representatives by email and/or by uploading it to the electronic file of this matter on CaseLines.

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ENROLLED AS MATTER:	INS-10 & INS-11
DATE OF ARGUMENT:	28 October 2026
DATE OF JUDGMENT:	29 October 2026