

SOUTH AFRICA / JUDGMENT

Lafrica Mining (Pty) Ltd and Another v Sightful Coal (1750/2022) [2025] ZAMPMHC 26 (15 May 2025) [2025] ZAMPMHC 26

COURT

Middelburg High Court, Mpumalanga

BEFORE

KF Phahlamohlaka

CASE / FILE NUMBER

1750/2022

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
MPUMALANGA DIVISION,
MIDDELBURG

CASE NO: 1750/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO
OTHER JUDGES: NO

(3) REVISED: YES

2025/05/15

In the matter between:

LAFRICA MINING (PTY)

LTD

FIRST APPLICANT

LINOS

MASIMURA

SECOND APPLICANT

and

SIGHTFUL

COAL

RESPONDENT

Delivered: This

judgment was handed down electronically by circulation to the
parties' legal representatives by email. The
date and time of

hand-down is deemed to be at 10:00 on 15 May 2025.

JUDGMENT

Phahlamohlaka AJ

Introduction

- [1] The first and second applicants launched an application in terms of Section 346(1)(a) and (c) read with Section 344(h) of the Companies Act, 61 of 1973 (“the Act”), for the winding up of the Respondent. An order was granted on 12 October 2023 placing the respondent under provisional liquidation with a rule nisi calling upon any interested person to show cause why the provisional order should not be made final.
- [2] The respondent filed an affidavit to oppose the application and show cause why the provisional order should not be confirmed.

Factual background

- [3] The application was issued on 29 April 2022, and it was initially opposed by the respondent represented by one Mokholo Vincent Mokhele (“Mokhkolo”). After the order was granted for the provisional winding up of the respondent, the respondent, represented by Mr Mlangeni, caused an affidavit to show cause why a final liquidation should not be granted to be delivered. The respondent also delivered a Notice in terms of Rule 7 of the Uniform Rules of Court, disputing the authority of Mokholo and Seokane Lesomo Incorporated to represent the respondent.
- [4] The applicants aver that the first applicant has a liquidated claim of R 8000 000.00 against the respondent arising out of two separate payments that were made to the respondent.
- [5] In the founding affidavit the applicants allege that in or around the final months of 2018 a director of the respondent, Vincent Mokholo, approached Linos Masimbura in his capacity as director of the first applicant with a business opportunity. The respondent was seeking investors which would enable them to start mining operations at a mine reserve known as Ogiesfontein. The investment they were seeking was a capital injection of R 10 000 000.00 (ten million Rand) and Masimbura was approached to consider investing 50% of the total sum required on behalf of the first applicant.
- [6] Consequently on 30 November 2018 the first applicant paid an amount of R 5000 000.00 (five million Rand) to the respondent. Again, on or about 31 January 2019 the first applicant, represented by Masimbura, paid an additional amount of R 3000 000.00 (three million Rand).
- [7] It is the applicant's case that the set amount of R 8000 000.00 (eight million Rand) was paid as an investment in order to enable mining operations at a mining reserve known as Ogiesfontein.

- [8] It is the applicant's pleaded case that after payment was made and on or about 4 December 2018, Masimbura entered into a telephonic discussion with Mokholo and requested a meeting for them to discuss the registration of his (Masimbura's) shares, the adding of Masimbura as a director and the way forward pertaining to the timeous start of the operations at Ogiesfontein.
- [9] The answering affidavit on behalf of the respondent was deposed to by (Mokholo), who admitted that the applicant is a shareholder of the respondent and the party that contracted with the respondent in respect of the shareholding and directorship in respect of the respondent. Mokholo made many other admissions which later became the subject of contestation. These admissions made by Mokholo will become relevant later in this judgment.
- [10] As alluded to earlier, a provisional order was granted for the provisional winding up of the respondent, with a rule nisi calling upon interested parties to show cause why the provisional order should not be made final. Pampoen Josiah Mlangeni (Mlangeni) deposed to an affidavit on behalf of the respondent resisting the final order. He alleged that he is the sole director and shareholder of the respondent. I must pause here and indicate that these facts are not disputed by the applicant.
- [11] Mlangeni further alleged that on or about 27 November 2018, the respondent (Sightfull Coal) truly represented by him, and Inzuzu Trading and Investment Coal ("Inzuzu"), duly represented by Mokholo concluded a written Joint Venture Agreement, a copy of which was annexed to the affidavit and marked "AA3"
- [12] Among others, as the terms of the joint venture agreement, it was agreed that Sightfull Coal and Inzuzu, as parties, agreed to enter into an agreement to establish the joint venture partnership, to develop and mine the Inzuzu site mining project and the parties agreed that a joint venture partnership shall be governed by the terms and conditions of the joint venture agreement. It was further agreed that Inzuzu sight mining project will be done on a 50/ 50 basis and Sightfull Coal will hold 50% interest in the joint venture partnership and Inzuzu will hold the 50% interest in the joint venture partnership. It was further agreed that Mokholo and Masimbura will be appointed as directors of Sightfull Coal.
- [13] I have not understood the applicant to deny that on 9 May 2022 and again on 12 April 2024 when Mokholo deposed to the affidavits opposing the provisional winding up of the respondent, and later the final order, he was not the director of the respondent. In both the affidavits Mokholo does not specify what authorizes him to depose to an affidavit on behalf of the respondent. A deed search annexed to Mlangeni's Affidavit and marked "AA1" shows that Mokholo was appointed as a director of the respondent on 25 March 2019 and resigned on 19 May 2023.

The legal position

[14] The applicant is seeking an order for the winding up the respondent on the basis that it is unable to pay its debts as described in section 345 of the Companies Act, 61 of 1973 and that it is just an equitable that the respondent be wound up.

[15] section 344(f) and (h) provide that:

“A company may be wound up by the Court if:

- (f) the company is unable to pay its debts as described in section 345;
- (h) it appears to the court that it is just an equitable that the company should be wound up.”

[16] Section 345 provides that:

“(1) a company or body corporate shall be deemed to be unable to pay its debts if-

- (c) it is proved to the satisfaction of the court that the company is unable to pay its debts.
- (2) In determining for the purposes of subsection (1) whether a company is unable to pay its debts, the court shall also take into account the contingent and prospective liabilities of the company.”

[17] It is now settled that where the respondent's indebtedness has been prima facie established, the onus is on the respondent to show that this indebtedness is indeed disputed on bona fide and reasonable grounds. This is in accordance with the Badenhorst rule¹.

The argument that the respondent changed its version

[18] Two deponents deposed to answering affidavits on behalf of the respondent, the one not disputing certain material allegations in the Founding Affidavit, the other disputing those allegations. The latter affidavit of the respondent created a dispute of facts.

[19] In *Wightman t/a JW Construction v Headfour (Pty) Ltd*^[1] the Court said the following:

“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 requirements 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 unambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say generally because factual averments seldom stand apart from a broader metrics of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognize or understand the nuisance of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But

when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.” (my emphasis)

[20] Counsel for the applicant referred to the judgment of Prochem (Pty) Ltd v Swart[2] where the Court dealt with the withdrawal of an allegation. Counsel for the applicant correctly admitted that she could not find any guiding case law dealing with the same issues facing this Court. In the current proceedings, it is not disputed that Mokholo was not a director of the respondent when he deposed to the answering affidavits. Mlangeni who is the director of the respondent deposed to an affidavit contradicting that of Mokholo, and therefore, in my view, the withdrawal of the admissions made by Mokholo is justified.

Dispute of fact

[21] The averment that the respondent and Inzuzu entered into a joint venture agreement is not a bare denial of the applicant's

averments in the Founding Affidavit, nor is it farfetched. In fact, it is based on the Joint Venture Agreement that was annexed to the Answering Affidavit. This, therefore, creates a dispute of facts and the Plascon-Evans Rule[3] finds application.

[22] In fact, the parties are ad idem that there exists a dispute of facts. The applicant on the one hand submitted that the matter be referred for the hearing of oral evidence or for trial, while the respondent submitted that the respondent's undisputed facts be accepted and the application be dismissed.

[23] In Lombaard v Droprop CC and Others[4] the Supreme Court of Appeal said the following:

“It has long been recognized that a discretion resides in a High Court, derived from the rules of court, to refer a disputed issue of fact which cannot be decided on affidavit for the hearing of an oral evidence regardless of whether the parties requested. The present Uniform rule is 6(5)(g). The overriding consideration in the exercise of the discretion is ensuring a just and expeditious decision. In short in the case of a dispute of fact, the court must be persuaded that the hearing of evidence will be fair to the parties and will conduce to an effective and speedy resolution of the dispute and the overall application.”

Conclusion

[24] It has already been established as a fact that the applicant never entered into any agreement with the respondent. The agreement was entered into between the respondent and Inzuzu. I agree with Counsel for the Respondent that both parties were dupped by Mokholo.

[25] I am unable to find, on the facts presented, that the respondent is indebted to the applicant. Even if I may be wrong on that, it is my considered view that the existence of the debt is disputed on bona fide and reasonable grounds. At best, there might be a claim of undue enrichment. However, that is not the subject of the current proceedings. Further, it will not be just and equitable to grant the order for the final winding up of the respondent.

[26] In my view, the applicant is seeking a final order and therefore, the Plascon-Evans rule finds application. Consequently, the application for the final winding up of the respondent must fail.

[27] I cannot find any reason why costs should not follow the result.

Order

[28] In the result, I make the following order:

- (a) The application for the final winding up of the respondent is dismissed.
- (b) The rule nisi is discharged.
- (c) The applicant is ordered to pay costs on party and party scale.

KF PHAHLAMOHLAKA

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant: Adv M Bresler

Instructed by:

JET LAW Inc.

Email: jetlawinc@outlook.com

For the first Respondent: Adv JHF Le Roux

Instructed by:

CBJ Attorneys Inc.

Email: pistorius@cbjlaw.co.za

Date of

judgment:

15 May 2025

Date judgment reserved: 23 January 2025

[1] 2008(3) SA 371 (SCA) at 375F-376B

- [2] 2009 JDR 0352
- [3] Plascon-Evans Paints Ltd v Van Riebeck Paints (Pty) Ltd 1984(3) SA 623 (A)
- [4] [2010] ZASCA 4 ALL SA 229 (SCA) at para [29]
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAMPMHC/2025/26.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/lafrica-mining-pty-ltd-and-another-v-sightful-unknown-topic-ampmhc-2025--6a3ea5123b1caa912980a39d>

Prepared on 13 October 2026 · Esheria