

SOUTH AFRICA / JUDGMENT

Taljaard and Another v Land and Agricultural Development Bank of South Africa and Others (1094/2022; 963/2021; 964/2021; N557/2021; 2436/2021;) [2025] ZANCHC 5 (24 January 2025)

[2025] ZANCHC 5

COURT

Northern Cape High Court, Kimberley

BEFORE

Williams

CASE / FILE NUMBER

1094/2022

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IN THE HIGH COURT OF
SOUTH AFRICA
(NORTHERN
CAPE DIVISION, KIMBERLEY)
CASE
NO.: 1094/2022
Date heard: 22-05-2024

Date delivered: 24-01-2025

Reportable: Yes/No
Circulate

to Judges: Yes/No
Circulate

to Magistrates: Yes/No
In

the matter between:

SHANIE
TALJAARD
1st
Applicant
CURRO
CONSULTANCY (PTY)
LIMITED
2nd
Applicant
And
THE
LAND AND AGRICULTURAL DEVELOPMENT BANK
OF
SOUTH
AFRICA
1st Respondent
MINISTER
OF TRADE AND
INDUSTRY
2nd Respondent
MINISTER
OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT
3rd Respondent
COMPANIES
AND INTELLECTUAL PROPERTY
COMMISSION
(CIPC)
4th Respondent
JOCHEN
ECKHOFF
N.O.
5th Respondent
DEON
MARIUS BOTHA
N.O
6th Respondent
JOHANNES
ZACHARIAS HUMAN MULLER N.O.
7th Respondent
REFILWE
TLHABANYANE
N.O
8th Respondent
VIMBI
ANGELA TSOPOTSA N.O.
9th Respondent
ANGELINE
POOLE N.O.
10th Respondent
PHILEMON

MAWIRE N.O.
11th Respondent
AGRI
SOUTH AFRICA
NPC
12th Respondent
MASTER
OF THE HIGH COURT, KIMBERLEY
13th Respondent
MASTER
OF THE HIGH COURT, CAPE TOWN
14th Respondent
AFFECTED
PARTIES OF PROJECT MULTIPLY (PTY) LTD 15th
Respondent
AFFECTED
PARTIES OF VELVETCREAM 15 (PTY) LTD
16th Respondent
AFFECTED
PARTIES OF THE MERWEDE TRUST AS PER 17th
Respondent
AFFECTED
PARTIES OF CAREL ARON VAN DER MERWE
18th Respondent
NATIONAL
REAL
ESTATE
19TH Respondent
PIETER
BURGER
20th Respondent
PIET
STEENKAMP
21st Respondent
NARDUS
SCHEEPERS
22ND Respondent
IN

RE: CASE
NO: 963/2021
OF
SOUTH
AFRICA
Applicant
JACQUES
DU TOIT N.O.
1st
Respondent
PROJECT
MULTIPLY (PTY) LIMITED
2nd Respondent
COMMISSION
(CIPC)
3rd Respondent
ALL
AFFECTED PARTIES
4th Respondent
AND
CASE
NO: 964/2021
THE
LAND AND AGRICULTURAL DEVELOPMENT BANK
Applicant
OF
SOUTH AFRICA
JACQUES
DU TOIT N.O.
1st Respondent
VELVET
CREAM 15 (PTY) LTD (In Liquidation)
2nd Respondent
THE
COMPANIES AND INTELLECTUAL PROPERTY
MAHIKENG
CASE NUMBER: N557/2021
KIMBERLEY
CASE NUMBER: 2436/2021
THE
LAND AND AGRICULTURAL DEVELOPMENT
Applicant
BANK
OF SOUTH AFRICA
CAREL
ARON VAN DER MERWE (SNR) N.O
1st Respondent
CATHARINA
SUSANNA VAN DER MERWE N.O
2nd
Respondent

CAREL
ARON VAN DER MERWE (JNR)
3rd
Respondent

CORAM:

WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. This is an application for leave to appeal against the judgment and order of 1 December 2023 in which I dismissed the applicants' application to interdict the liquidation and sequestration proceedings against Project Multiply 9Pty) Ltd (in liquidation), Velvet Cream 15 (Pty) Ltd (in liquidation) and the Merwede Trust, pending an application for the rescission of the liquidation and sequestration

orders.

2. Various grounds of appeal have been raised which in the main can be summarized as follows:
 - 2.1 That I erred in finding that the applicants lacked locus standi to bring the application; and
 - 2.2 That my finding as to the validity of the cession of rights by Unigro to Land Bank is in conflict with two other judgments.

Locus standi of the applicants

3. I have found that the applicants have failed to prove claims as creditors and by inference failed to establish locus standi as creditors. The liquidators in their answering affidavit have however not specifically denied that the applicants are creditors of the insolvent companies and as such a court of appeal could reasonably find that the applicants have established locus standi as creditors.
4. As far as the 1st applicant's locus standi as a result of alleged directorship of the insolvent companies is concerned, Mr Maritz SC who appeared with Mr Janse Van Rensburg for the applicants, argued that if directors of a company can appeal on behalf of the company against a winding-up order (see O' Connell Manthe & Partners v Vryheid Minerale 1979

- (1) SA 553 (TPD)), there could be no bar against directors bringing an application for the rescission of a winding-up order. The difficulty with this argument, besides the fact that the allegation of directorship was not made in the founding affidavit, is that such an application should be mounted by the company at the instance of its board, not as single director (O'Connell Manthe supra at 557 H). There is no merit in the argument that the 1st applicant's directorship of the insolvent companies clothes her with the necessary locus standi.

Validity of the cession of rights

5. I have found in paragraph 14 and 15 of the main judgment that the suite of agreements entered into between Unigro and Land Bank and the confirmation by the officials of Land Bank and Unigro of the transfer of rights, title and interest of Unigro to Land Bank of the loan agreements entered into between Unigro and the insolvent entities were admissible and sufficient to establish a valid cession of such rights to Land Bank.
6. In Trakman N.O and Others v The Master of the High Court of South Africa and Others 2020/12432 [2012] ZAGP JHC 168, where Land Bank relied for its locus standi on a similar suite of agreements and confirmation or recordal thereof, the Court rejected this argument and held at paragraph 43

thereof that:

“For reasons already provided, the mere ipse dixit of Land Bank and Grocap is insufficient to establish Land Bank’s locus standi as creditor or the sale of the Trademark debt to Land Bank. A proper consideration of all the underpinning agreements is required to clarify what the agreements achieved, rather than simply accepting what the parties thought they achieved.”

7. It is clear that my judgment in this regard is in direct contradiction to the judgment in Trakman. In Waldeck NO and Others v Land and Agricultural Development Bank of South Africa, Mpumalanga Division, Middelburg, 4013/18, Land Bank failed to discover in terms of Rule 35(12) certain documents underpinning an alleged cession of rights on the basis of confidentiality and sought to rely solely on a recordal or confirmation between inter alia Unigro and Land Bank as proof of the existence of a cession and the validity thereof. The Court held inter alia that “The recordal is no proof of the fact that valid cessions were entered into between Unigro (the applicant’s initial creditor) and the respondent” (at paragraph 26).
8. It is in the public interest that legal certainty be obtained in circumstances where conflicting judgments exist. Leave to appeal should be granted on this basis as well.

In the circumstances the following orders are made:

- a) Leave to appeal to the Supreme Court of Appeal is granted.
- b) The costs of this application are to be costs in the appeal.

C C WILLIAMS

JUDGE

For Applicants: Adv. NGD Maritz SC with Adv FG Janse Van Rensburg Schutte Attorneys c/o Haarhoffs Inc For 1st Respondent: Adv. J G Cilliers SC Strydom & Bredendamp Inc c/o Van de Wall Inc For 5th to 11th Respondents: Adv HR Fourie SC J L Van Niekerk Inc c/o Majiedt Swart Attorneys Inc

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Prepared on 10 October 2026 · Esheria