



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Reportable/Not Reportable

Case No: 2025-099818

In the matter between:

SKEMA HOLDINGS (PTY) LIMITED
(IN PROVISIONAL LIQUIDATION)
PIERRE DE VILLIERS BERRANGE N.O.
AYOB AYESHA MAHOMED N.O.
MACK MOSES BALOYI N.O.

[In their capacity as joint provisional liquidators
of Skema Holdings (Pty) Limited (in provisional liquidation)]

First Applicant
Second Applicant
Third Applicant
Fourth Applicant

and

FRIEDRICH WILHELM GERHARD WORNER
NEIL RODNEY ARTHUR

First Respondent
Second Respondent

And

Case no. 2025-082240

In the matter between:

THE TRUSTEES OF THE INKWAZI TRUST
(IT33921/1994(N)) ACTING NOMINE OFFICIO
WARTBURG INC.

First Applicant
Second Applicant

SKEMA HOLDINGS PROPRIETARY LIMITED
(REG NO. 1990/006817/07)

Third Applicant

and

ROBERT FELLNER-FELDEGG
THE MASTER OF THE HIGH COURT
THE SHERIFF (PMB)
COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION
AFFECTED PARTIES

First Respondent
Second Respondent
Third Respondent

Fourth Respondent
Fifth Respondents

ORDER

The following order is granted:

In respect of case number 2025-099818

1. The second, third and fourth applicants are authorised to institute this application and to prosecute it to finality and to appoint attorneys and counsel for the purpose of bringing the aforesaid proceedings and to pay the costs and disbursements so incurred on an attorney and client scale, as a cost in the administration of the winding-up of the first applicant in terms of s 386(4) of the Companies Act 61 of 1973, as read with Item 9 of Schedule 5 of the Companies Act 71 of 2008 and the actions of the second, third and fourth applicants in acting as aforesaid prior to the grant of this order are hereby ratified.
2. The respondents be and are hereby interdicted and restrained from obstructing, interfering with or preventing the second, third and fourth applicants from discharging their general statutory duties as provisional liquidators to forthwith recover and reduce into possession all the assets and property of the first applicant, including books and records, movable and immovable property.
3. The respondents, jointly and severally, are to pay the costs of this application on scale C.

In respect of case number 2025-082240

The application is dismissed with costs, including the costs of the first respondent and the interested party, Macsteel Service Centres SA (Pty) Ltd's two counsel, on scale C.

JUDGMENT

Marion AJ**Introduction**

[1] There were two related applications heard together before this court. The first is the application under case number 2025-099818, where Skema Holdings (Pty) Limited (in provisional liquidation) (Skema) is the first applicant (the Skema application). The respondents brought a counter-application under this case number which was conditional upon the court finding that the matter is urgent. The matter was set down as a special opposed motion and the issue of urgency fell away. The second is the application under case number 2025-082240, where the first applicant consists of the Trustees of the Inkwazi Trust (the directors' and shareholders' application). This matter was struck off the roll for lack of urgency, when initially set down. In terms of an earlier order granted by me on 9 July 2025, the parties approached the Judge President for both matters to be accorded preference and to be heard together. Accordingly, the issue of urgency falls away. The parties agreed for me to hear, and for them to argue, the two applications together.

Relief sought by the Skema application (case number 2025-099818)

[2] Skema, the first applicant, was placed under provisional winding-up, pursuant to an order granted by Gwagwa AJ on 30 May 2025. The second to fourth applicants were appointed as the joint provisional liquidators of the first applicant (the provisional liquidators). The respondents are the directors of Skema (the directors). The provisional liquidators seek an order as follows:

2. The second, third and fourth applicants are authorised to institute this application and to prosecute it to finality and to appoint attorneys and counsel for the purpose of bringing the aforesaid proceedings and to pay the costs and disbursements so incurred on an attorney and client scale, as a cost in the administration of the winding-up of the first applicant in terms of s 386(4) of the Companies Act 61 of 1973, as read with Item 9 of Schedule 5 of the Companies Act 71 of 2008 and the actions of the second, third and fourth applicants in acting as aforesaid prior to the grant of this order are hereby ratified.

3. The respondents be and are hereby interdicted and restrained from obstructing, interfering with or preventing the second, third and fourth applicants from discharging their general statutory duties as provisional liquidators to forthwith recover and reduce into possession all the assets and property of the first applicant, including books and records, movable and immovable property.

4. The respondents, jointly and severally, are to pay the costs of this application on the scale as between attorney and client.'

Relief sought in the directors' and shareholders' application (case number 2025-082240)

[3] The applicants in the Skema application are not parties to the directors' and shareholders' application. The first applicant consists of the trustees of the Inkwazi Trust (IT 33921/1994(N)) who act in their official capacity. The second applicant is Wartburg Inc, a company registered with the laws of the British Virgin Islands, which is a 49% shareholder and major creditor of Skema. The third applicant, Skema, is a company duly registered and incorporated with limited liability in accordance with the laws of the Republic of South Africa. The first respondent is a major businessman resident in South Africa and Germany (Mr Fellner-Feldegg). The second respondent is the Master of the High Court, Pietermaritzburg (the Master). The third respondent is the Sheriff of the High Court, Pietermaritzburg. The fourth respondent is the Companies and Intellectual Property Commission, established in terms of the Companies Act 71 of 2008 (the 2008 Companies Act) against whom no order is sought. The fifth respondent consists of the affected parties, as contemplated by s 131(1) of the 2008 Companies Act. A list of the affected persons, as defined in s 128(1)(a) of the 2008 Companies Act, was attached to this application as annexure 'A'. This includes the interested party, Macsteel Service Centres SA (Pty) Ltd (Macsteel).

[4] The applicants pursue interim relief contained in prayers 2 and 3 of Part A and declaratory relief in Part B. The application was initially brought on an urgent basis and struck from the roll on 20 June 2025. The applicants in Part A seek an order to interdict and restrain the respondents from taking any steps to give effect to the provisional liquidation order granted by this court on 30 May 2025 by Gwagwa AJ, pending the final determination of Part B. The applicants sought an order in Part B declaring the provisional liquidation order a nullity by virtue of s 131(6) of the 2008 Companies Act. The applicants sought a further order that any steps taken in furtherance of the said liquidation proceedings, after the business rescue application was made under case number D3822/25, are of no force and effect. In the alternative, the applicants sought for the liquidation proceedings to be stayed. The applicants submitted that the provisional liquidators' appointments, based on a nullity, are equally invalid and that they lacked locus standi to act for and on behalf of Skema.

Chronology

[5] The following chronology of events is relevant:

- (a) An application to place Skema under provisional liquidation was argued before Gwagwa AJ on 14 March 2025 in the KwaZulu-Natal Division of the High Court, Pietermaritzburg and judgment was reserved.
- (b) On 31 March 2025, the shareholders of Skema delivered an application for business rescue in the KwaZulu-Natal Division of the High Court, Durban.
- (c) On 30 May 2025, Gwagwa AJ delivered a judgment placing Skema under provisional liquidation.
- (d) On 5 June 2025, the Master issued a certificate of appointment appointing the provisional liquidators.

[6] The legal crux of both applications turns on a point of law, namely whether the liquidation order issued on 30 May 2025 is valid or whether it is a nullity. An interpretation of s 131(6) of the 2008 Companies Act is common to both applications. This section provides as follows:

(6) If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until—

- (a) the court has adjudicated upon the application; or
- (b) the business rescue proceedings end, if the court makes the order applied for.

[7] Both applications will be dealt with simultaneously. The submissions made by all parties will be dealt with together. The parties will be referred to as they are cited in the Skema application, with the exception of the additional parties referred to in the directors' and shareholders' application.

Issues that require determination

[8] The following issues need to be determined:

- (a) Whether, on a proper interpretation of s 131(6) of the 2008 Companies Act, the provisional liquidation order granted on 30 May 2025 is a nullity. The court's finding on this issue will then assist in the determination of (b) to (e).
- (b) Whether the judgment is a nullity because of a lack of jurisdiction or whether jurisdiction was present, and the provisional liquidation order stands until it is either rescinded or set aside on appeal.
- (c) Whether the provisional liquidators have the authority to bring the Skema application.
- (d) Whether, even if the provisional liquidation order is a nullity, the appointment by the Master of the provisional liquidators stands until it is set aside.
- (e) Do the applicants in both cases satisfy the test for an interim interdict to be granted?
- (f) The costs of the applications.

Skema's and the provisional liquidators' submissions

Appointment of provisional liquidators

[9] It was submitted that s 391 of the Companies Act 61 of 1973 (the 1973 Companies Act) requires provisional liquidators to recover and preserve all the assets of Skema. The provisional liquidators were formally appointed by the Master on 5 June 2025, which

appointment remains valid unless set aside by a court. This statutory obligation gives them a clear right to seek interdictory relief, if obstructed. The first respondent, Mr Worner, refused the second applicant, Mr Berrange, access to Skema's premises. It was thus contended that the directors were accordingly preventing the provisional liquidators from complying with those statutory obligations, as the directors viewed the liquidation order that resulted in the provisional liquidators' appointment as a nullity because a business rescue application was made after the liquidation application was argued but before the judgment by Gwagwa A.J was handed down.

[10] It was further submitted that the provisional liquidators run the risk of being held liable by the creditors should losses occur which would influence the creditors' ability to recover the debts owed to them by Skema. The directors' undertaking that they will not dispose of Skema's assets 'other than in the normal course of business' enhanced a belief that the directors are entitled to make, and apparently intend to make, such dispositions without the scrutiny of the appointed provisional liquidators. The provisional liquidators submitted that they had no alternative remedy but to approach the court for interim interdictory relief. The provisional liquidators submitted that the effect of the provisional liquidation order, which is essentially a holding position securing Skema's assets, cannot prejudice the business rescue application. They argued that neither the provisional liquidators nor the directors can simply ignore the appointment.

Nullity of the provisional order

[11] The provisional liquidators submitted that the directors argued that the provisional liquidation order is a nullity due to lack of jurisdiction, on the basis that the business rescue application was lodged before the judgment placing Skema into provisional liquidation was handed down. The provisional liquidators stated that court orders must be obeyed until they are set aside. Section 165(5) of the Constitution states that 'an order or decision issued by a court binds all persons to whom and organs of state to which it applies'. Jurisdiction is determined at the commencement of proceedings, based on the pleadings, and once established, it continues until the matter concludes. On this basis, the court where the liquidation application was instituted had jurisdiction when the application

began and when it was argued - jurisdiction persisted through to judgment. The directors' objection is not truly about jurisdiction. At most, it concerns whether the court erred in law or discretion by not considering the business rescue application. Accordingly, the provisional liquidators submitted that the provisional liquidation order was validly granted, and jurisdiction was present. The provisional liquidation order may be susceptible to rescission or appeal, but it is not void for lack of jurisdiction. Any error would make the order susceptible to rescission or appeal, but not void for want of jurisdiction.

[12] The provisional liquidators drew a distinction between the current matter and *City Capital SA Property Holdings Ltd v Chavonnes Badenhorst St Clair Cooper and Others*,¹ where jurisdiction was absent from the outset. In *casu*, jurisdiction existed when proceedings commenced and continued through to judgment. The provisional liquidators argued that the consequence of this is that the provisional order stands.

[13] The provisional liquidators referred the court to *Department of Transport and Others v Tasima (Pty) Ltd*,² where the Constitutional Court pointed out:

[182] ... judicial orders wrongly issued are not nullities. They exist in fact and may have legal consequences.

[183] ... This finding vindicates the constitutionally prescribed authority of the courts. The obligation to obey court orders "has at its heart the very effectiveness and legitimacy of the judicial system". Allowing parties to ignore court orders would shake the foundations of the law, and compromise the status and constitutional mandate of the courts. The duty to obey court orders is the stanchion around which a state founded on the supremacy of the Constitution and the rule of law is built." (Footnotes omitted.)

[14] Provisional liquidation orders, like interim interdicts, can be appealable in certain circumstances.³ The provisional liquidators argued that the business rescue application may make the order appealable, but not void *ab initio*.

¹ *City Capital SA Property Holdings Ltd v Chavonnes Badenhorst St Clair Cooper and Others* [2017] ZASCA 177; 2018 (4) SA 71 (SCA) (*City Capital*).

² *Department of Transport and Others v Tasima (Pty) Ltd* [2016] ZACC 39; 2017 (2) SA 622 (CC) (*Tasima*).

³ *MEC for Economic Development and Another v Vilakazi and Others* [2024] ZASCA 126; [2024] 4 All SA 344 (SCA).

[15] The provisional liquidators submitted that *PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others*,⁴ shows that abusive business rescue applications may not trigger the statutory moratorium under s 131(6). Whether the directors' application is abusive remains undecided, but jurisdiction for the liquidation proceeding was present.

[16] The provisional liquidators argued that the directors' conduct of sending letters to the court to notify the acting judge of the business rescue application was insufficient. They should have brought a formal application to stay the judgment or launched an urgent business rescue application in the same court. Accordingly, the provisional liquidators submitted that the court hearing the liquidation application had jurisdiction and the provisional winding-up order stands. All court orders, whether correctly or incorrectly granted, must be obeyed until properly set aside. The directors' claim of a nullity is unfounded.

[17] The provisional liquidators stated that the judgments relied upon by the directors, namely *Framatome v Eskom Holdings SOC Ltd*,⁵ *Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd and Others, and Another Appeal*,⁶ and *Vidavsky v Body Corporate of Sunhill Villas*,⁷ are distinguishable, as they involved situations where jurisdiction was absent from the outset (adjudicator exceeding contractual authority, judge being *functus officio*, and arbitrator proceeding without notice, respectively). In those cases, the orders or awards were true nullities. In *casu*, the court hearing the liquidation application had jurisdiction when proceedings commenced and when handing down judgment.

The interpretation of 'legal proceedings' in s 136(1)

⁴ *PFC Properties (Pty) Ltd v Commissioner, South African Revenue Service and Others* [2023] ZASCA 111; 2024 (1) SA 400 (SCA).

⁵ *Framatome v Eskom Holdings SOC Ltd* 2021 (2) SA 494 (GJ).

⁶ *Minister of Rural Development and Land Reform v Normandien Farms (Pty) Ltd and Others, and Another Appeal* [2017] ZASCA 163; 2019 (1) SA 154 (SCA) (*Normandien Farms*).

⁷ *Vidavsky v Body Corporate of Sunhill Villas* 2005 (5) SA 200 (SCA) (*Vidavsky*).

[18] Section 131(6) of the 2008 Companies Act provides that liquidation proceedings are suspended when a business rescue application is made. It was submitted that the debate is whether the 'liquidation proceedings' referred to in s 131(6) include the application leading up to the granting of a liquidation order or refer to the proceedings after the grant of the order, which involve the realisation of the assets of the company in liquidation, with the aim of ultimately distributing them to the various creditors. The question that remains is whether this suspension applies to the liquidation application itself or only to the winding-up process after an order is granted.

[19] The provisional liquidators criticised the directors' interpretation of 'liquidation proceedings', calling it 'impractical and unbusinesslike'. The provisional liquidators stated that their interpretation was based on Supreme Court of Appeal (SCA) authority and the sound principle set out in *Richter v Absa Bank Ltd*.⁸ The SCA in *Richter*, *GCC Engineering(Pty) Ltd and Others v Maroos and Others*,⁹ and *Southern Sky Hotel and Leisure (Pty) Ltd v/a Hans Merensky Hotel and Spa (In Liq) and Others v Southern Sky Food Enterprises (Pty) Ltd*,¹⁰ held that 'liquidation proceedings' refer to the winding-up process (the realisation of assets and dissolution), not the application stage. The provisional liquidators submitted that their appointment, office, and powers are not suspended; only the process of asset realisation is paused. The term 'liquidation proceedings' refers only to those actions performed by a liquidator in dealing with the affairs of a company in liquidation in order to bring about its dissolution. What is suspended is the process of winding-up and not the legal consequences of a winding-up order.¹¹

[20] In *STS Tyres (Pty) Ltd v Bamboo Rock Plant (Pty) Ltd*,¹² an application was made to reconsider the provisional liquidation order granted at a time when a business rescue

⁸ *Richter v Absa Bank Ltd* [2015] ZASCA 100; 2015 (5) SA 57 (SCA) para 9.

⁹ *GCC Engineering (Pty) Ltd and Others v Maroos and Others* [2018] ZASCA 178; 2019 (2) SA 379 (SCA) (*GCC Engineering*).

¹⁰ *Southern Sky Hotel and Leisure (Pty) Ltd v/a Hans Merensky Hotel and Spa (In Liq) and Others v Southern Sky Food Enterprises (Pty) Ltd* [2022] ZASCA 134; 2023 (4) SA 99 (SCA) (*Southern Sky*).

¹¹ *GCC Engineering* paras 15-19.

¹² *STS Tyres (Pty) Ltd v Bamboo Rock Plant (Pty) Ltd* [2024] ZAGPPHC 490 (*STS Tyres*).

application had been made. The court held that the making of a business rescue application whilst a winding-up application is pending does not prevent a court from issuing a provisional or final winding-up order.¹³ The court relied squarely on *GCC Engineering* and held that 'the suspension is aimed at the realisation process as opposed to the winding up order'.¹⁴

[21] The provisional liquidators submitted that their interpretation avoided uncertainty, preserved creditors' rights, and prevented directors from dissipating assets while a business rescue application is pending. They argued that the directors' interpretation would create uncertainty and prejudice to creditors, and undermine the *concursum creditorum* (the collective rights of creditors) established at the date of lodging the liquidation application. In other words, the provisional liquidators submitted that provisional liquidation preserves assets and allows investigations but does not dissolve the company. It does not threaten business rescue, instead, it ensures that assets are safeguarded pending the outcome of the business rescue application. 'Liquidation proceedings' in s 131(6) mean the winding-up process after an order, not the application stage. The provisional liquidators submitted that they have the authority to seek relief, and the directors are obliged to comply with their statutory duties until a court sets aside the order.

[22] The provisional liquidators argued that only companies that are already 'financially distressed' apply for business rescue. Such companies are unable to pay debts as they fall due or are likely to become insolvent within six months.¹⁵ If the directors' interpretation were to be accepted (that liquidation proceedings are suspended from the moment a business rescue application is filed), directors could continue trading and disposing of assets unchecked until the rescue application is resolved. The consequence of this could lead to the dissipation of assets, leaving creditors with little or nothing to recover. The *concursum creditorum* would not come into effect, thereby undermining creditor protection.

¹³ *Ibid* para 27.

¹⁴ *Ibid* para 29.

¹⁵ Section 128(1)(f) of the 2008 Companies Act.

The provisional liquidators' interpretation avoids this prejudice, because provisional liquidators preserve assets until the business rescue application is decided, ensuring creditors' interests are safeguarded. The provisional liquidators stated that, in short, the directors' reading of s 131(6) is dangerous for creditors and the courts have consistently preferred the provisional liquidators' interpretation, namely, liquidation proceedings mean the winding-up process, not the application stage.

The directors' submissions

[23] The directors submitted that the main application must be dismissed for several independent reasons, namely:

- (a) No locus standi, as the provisional liquidators lack authority as their appointment is void.
- (b) Abuse of process, as the provisional liquidators seek to maintain control over a company without legal status.
- (c) Key affected parties, including those in Part B, and the Master, were not joined in the application.
- (d) The relief sought by the provisional liquidators is incompetent and would legitimise a nullity and sanction unlawful conduct.
- (e) The provisional liquidators improperly seek a final order under urgent procedure, amounting to abuse and warranting punitive costs against them personally.

Appointment of provisional liquidators

[24] The directors opposed the application brought by the provisional liquidators. They argued that the provisional liquidation order and the subsequent appointment of the provisional liquidators are void because a business rescue application had already been filed, which legally suspended the liquidation proceedings. As a result, the provisional liquidators have no locus standi, and the application should be dismissed. The directors averred that s 131(6) of the 2008 Companies Act automatically suspends liquidation proceedings once a business rescue application is filed, meaning the court had no jurisdiction to grant the liquidation order.

Abuse of process

[25] The directors alleged an abuse of process in that the provisional liquidators are acting as surrogates for Macsteel and/or Mr Fellner-Feldegg, who are funding the litigation. These allegations in the directors' opposing papers remain unanswered by the provisional liquidators on the merits, who dismiss them as 'defamatory and irrelevant'. The provisional liquidators do not deny that the litigation is funded and driven by Macsteel and/or Mr Fellner-Feldegg. This supports the inference that the application is a strategic attempt by those opposing business rescue to advance liquidation under the guise of the provisional liquidators. This undermines the integrity of the litigation and strengthens the case for the court to stay the application by the provisional liquidators, pending the resolution of the declaratory proceedings on the lawfulness of the provisional liquidation order and the appointment of the provisional liquidators.

[26] The directors submitted that although the founding affidavit refers to interim interdict requirements, the notice of motion reveals that the provisional liquidators are, in fact, seeking final relief. The relief is not framed as temporary or conditional but as immediate and enduring. The wording in the notice of motion confirms that the relief is not sought pending the outcome of other proceedings (for example business rescue, or the declaratory/interdict application). It demands the unqualified enforcement of powers reserved for properly appointed liquidators, despite the disputed basis of the provisional liquidators' appointment.

[27] The directors stated that the applicable test is that for a final interdict, not an interim one.¹⁶ This requires proof of a clear right, an injury committed or reasonably apprehended, and the absence of an alternative remedy. The directors stated that the provisional liquidators have no clear right. The provisional liquidators' authority is disputed and subject to pending declaratory proceedings. There are material disputes of facts (for example relating to the lawfulness of their appointment, funding, and purpose), which trigger the *Plascon-Evans* rule,¹⁷ meaning the directors' version has to prevail.

¹⁶ *Setlogelo v Setlogelo* 1914 AD 221 (*Setlogelo*).

¹⁷ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

[28] The provisional liquidators' attempt to secure final relief urgently, bypassing the stringent requirements and unresolved disputes, is a further abuse of powers. This undermines proper adjudication and invites the court to pre-empt the declaratory proceedings on the lawfulness of the provisional liquidation order and appointments.

[29] If the relief sought by the provisional liquidators is granted pending the determination of the competing interdict/declaratory application, Skema will suffer irreparable and unjustified harm and prejudice. Their appointment is legally contested and void *ab initio*, yet the relief would hand them control of Skema. Any interference by the provisional liquidators would undermine trading, threaten commercial viability, and prejudice the prospects of business rescue. The directors argued that the status quo must be preserved until the legality of their appointment is resolved.

[30] The provisional liquidators have failed to show actual or apprehended harm to creditors, except Macsteel and Mr Fellner-Feldegg. The only unpaid creditor is Mr Fellner-Feldegg, who has deliberately chosen not to pursue his available remedy of execution. All other creditors are being paid in the ordinary course and are content with the current arrangement. The directors argued that the provisional liquidators' actions therefore harm, rather than benefit, creditors, serving no legitimate creditor interest. The directors reiterated that there is no prejudice to creditors under the status quo, and that the provisional liquidators' intervention is unnecessary and detrimental.

[31] The directors went on to add that the provisional liquidators relied on s 386(4) of the 1973 Companies Act to justify their authority to sue, but this reliance is flawed. Section 386(3)(a) makes it clear that a liquidator may only exercise the powers in subsection (4), including instituting proceedings, if authorised by creditors, members, contributories, or directed by the Master under s 387. The provisional liquidators failed to obtain any authority from creditors, members, or contributories, or failed to seek directions from the Master under s 387 or cite the Master as a party.

The central legal point

[32] *Richter* provides decisive authority on the scope of 'liquidation proceedings' in s 131(6) of the 2008 Companies Act. The directors argued that the SCA held that liquidation proceedings extend from the filing of a liquidation application until final deregistration, not just until the granting of a winding-up order. The SCA rejected the idea of separating pre- and post-order stages, noting that such a restrictive view would undermine the 2008 Companies Act's business rescue objectives. Under s 348 of the 1973 Companies Act, liquidation begins upon presentation of the application to court, not only after an order is granted. Accordingly, the directors stated that filing a business rescue application under s 131(1) automatically suspends all liquidation proceedings, whether before or after a provisional order.

[33] It was submitted that a practical consequence of this is that any steps taken in liquidation after the business rescue application was lodged are invalid. This includes the appointment and functioning of provisional liquidators, which become a nullity once suspension occurs. *Richter* confirms that the provisional liquidators' contention — that only liquidation 'orders' are suspended — is incorrect. The entire liquidation process is suspended by operation of law once a business rescue application is lodged, supporting the directors' position that the subsequent liquidation steps are unlawful.

[34] The provisional liquidators' contention is that a business rescue application does not suspend liquidation proceedings. The directors dispute this and state that s 131(6) of the 2008 Companies Act is peremptory and that liquidation proceedings are automatically suspended once a business rescue application is filed. The directors argued that the binding authority is *Richter*, which confirms that liquidation proceedings include the entire process from application to deregistration, not just post-order stages. They stated that other SCA cases, namely, *Campbell v Botha and Others*,¹⁸ *Vidavsky* and *Framatome v Eskom Holdings SOC Ltd*,¹⁹ establish that orders made without jurisdiction are nullities.

¹⁸ *Campbell v Botha and Others* [2008] ZASCA 126; 2009 (1) SA 238 (SCA) paras 14-16.

¹⁹ *Framatome v Eskom Holdings SOC Ltd* [2021] ZASCA 132; 2022 (2) SA 395 (SCA).

[35] The directors criticised *STS Tyres*, as it wrongly held that a provisional liquidation order may still be granted despite a pending business rescue application. This contradicts binding SCA precedent, namely, *Richter* and *GCC Engineering*, and high court authority in *Standard Bank of South Africa v A-Team Trading CC*,²⁰ and *Tjeka Training Matters (Pty) Ltd v KPPM Construction (Pty) Ltd and Others*.²¹ The judgment is internally inconsistent: it concedes that liquidation proceedings commence with the application and are suspended by a business rescue application filing, yet still permits the granting of an order within those suspended proceedings. The directors argued that the correct position in terms of their arguments is that once a business rescue application is lodged, all liquidation proceedings, including the granting of provisional or final orders, are stayed. Any order made thereafter is a nullity. It was submitted that the provisional liquidators' reliance on *STS Tyres* is misplaced. The court should follow the consistent and binding jurisprudence of the SCA to halt liquidation in favour of possible rescue. On the other hand, the directors contended that *STS Tyres*, in fact, correctly concedes that liquidation proceedings include the application process, not only that part of the liquidation process that follows the grant of a winding-up order.²² The court was therefore urged not to follow *STS Tyres*.

Rebuttals

[36] It was submitted that it is illogical to claim that provisional liquidators can validly act where no valid liquidation order exists. One cannot liquidate a company that is not under liquidation. The Master's power under s 367 of the 1973 Companies Act depends on a valid winding-up order. If the order is a nullity (due to a suspension under s 131(6) of the 2008 Companies Act), the appointment has no jurisdictional foundation. The appointment is not merely voidable under the Promotion of Administrative Justice Act 3 of 2000 (PAJA), it is void *ab initio*.

[37] The directors cited the following cases:

²⁰ *Standard Bank of South Africa v A-Team Trading CC* 2016 (1) SA 503 (KZP).

²¹ *Tjeka Training Matters (Pty) Ltd v KPPM Construction (Pty) Ltd and Others* 2019 (6) SA 185 (GJ).

²² *STS Tyres* para 15.

- (a) *Vidavsky*, where the SCA held that decisions without jurisdiction are invalid and need not be set aside.
- (b) *Normandien Farms*,²³ where the SCA stated that orders issued without jurisdiction fall into the narrow class that may be disregarded without requiring formal setting aside. Even if setting aside were required, the directors may raise a collateral challenge.
- (c) *Merafong City v AngloGold Ashanti Ltd*,²⁴ where the Constitutional Court stated that collateral challenges are permissible where justice requires, including against coercive assertions of unlawful power. The directors argued that in *casu*, the provisional liquidators are litigating in the company's name and exercising corporate control, making a collateral challenge necessary.

[38] The directors argued that s 375(4) of the 1973 Companies Act is inapplicable, as that provision validates acts despite defects in appointment, but not where there is a total absence of jurisdiction. The provisional liquidators' reliance on PAJA and s 375(4) is misplaced. The provisional winding-up order and subsequent appointments are nullities, subject to a collateral challenge, and cannot confer lawful authority.

[39] It was submitted that the provisional liquidators' invocation of *City Capital* is distinguishable. That case dealt with a defective court appointment of liquidators, later regularised by the Master's independent appointment. In *casu*, there is no valid liquidation order. The respondents argued that the provisional liquidation order itself is a nullity *ab initio* for want of jurisdiction (due to suspension under s 131(6) of the 2008 Companies Act). Without a valid order, the Master had no power to appoint the provisional liquidators. *City Capital* supports the directors' version, as the SCA held that the high court's appointment was a nullity, which need not be set aside. The directors argued that *City Capital* does not assist the provisional liquidators. The provisional liquidation order is void *ab initio*, the Master's appointment collapses with it, and a collateral challenge is competent. The provisional liquidators' reliance on *City Capital* misconstrues its rationale and should be rejected.

²³ *Normandien Farms* para 53.

²⁴ *Merafong City v AngloGold Ashanti Ltd* [2016] ZACC 35; 2017 (2) SA 211 (CC).

[40] The provisional liquidators' claim of undue delay is based on a flawed reading of the 2008 Companies Act, so it was contended. Section 7(k) establishes a statutory preference for business rescue over liquidation. Section 131(1) permits an affected person to apply for business rescue at any time before the final liquidation of a company and there is no requirement to file such an application simultaneously with any opposition to the liquidation proceedings. The directors contended that they invoked business rescue proceedings after arguments in the liquidation proceedings were heard but before judgment was delivered, consistent with s 131(6), which suspends liquidation proceedings to allow a consideration of a business rescue alternative. The directors acted transparently and in good faith, exercising commercial judgment with access to financial data. The allegation of undue delay is meritless; the company acted within its statutory rights to pursue business rescue, as the least disruptive, and most constructive option for stakeholders.

[41] Section 23(3) of the 2008 Companies Act fixes a company's registered office as its principal place of business for legal purposes. Skema's registered office falls within the High Court, Durban's jurisdiction. While Pietermaritzburg has concurrent jurisdiction, litigants may choose any competent forum. Durban was a lawful and appropriate choice. This objection by the provisional liquidators is purely technical, causes no prejudice, and all parties were properly served.

[42] The directors submitted that they have met the *Setlogelo* test in their application:

[a] A prima facie right exists due to the nullity of the liquidation order

[b] There is a real risk of prejudice and harm if the applicants continue purporting to act without legal standing;

[c] There is no adequate alternative remedy;

The balance of convenience favours maintaining the status quo until the primary issue of jurisdiction is resolved.

[43] The relief sought in Part A in case number 2025-082240 was struck off the roll on procedural grounds for lack of urgency but remains pending and undetermined on the

merits. The relief sought in Part B is a final declaration of the invalidity of the provisional liquidation order and is still before the court. The directors submitted that the court should prioritise the pending declaratory/interdict application by the directors, or alternatively, stay both interim applications and urgently determine the Part B relief in case number 2025-082240.

Relief sought

[44] The directors sought the dismissal of the main application, including the costs of senior counsel, with costs on the attorney and client scale, alternatively on scale C to be paid by the provisional liquidators in their personal capacity.

Mr Fellner-Feldegg's and Macsteel's submissions in respect of the directors' and shareholders' application

[45] Macsteel is an affected party that has a direct and material interest in this application. Both Mr Fellner-Feldegg's and Macsteel's heads of argument addressed the issues as to whether the provisional liquidation order granted on 30 May 2025 in respect of Skema is valid or a nullity, and whether the appointment of the provisional liquidators stands. It was submitted that the central issue is the proper interpretation of s 131(6) of the 2008 Companies Act, and its effect on liquidation proceedings where a business rescue application is filed before judgment. Mr Fellner-Feldegg's and Macsteels submissions are in line with the provisional liquidators', in case number 2025-099818. I do not intend to repeat the common submissions for the sake of brevity.

[46] The gist of Mr Fellner-Feldegg's arguments is that the making of the business rescue application did not suspend the civil process of the winding-up application, did not prevent the delivery of judgment in the winding-up application and does not undo the appointment of the provisional liquidators. In essence, it does not nullify the judgment.

[47] It was submitted that the directors' reliance on the jurisprudence dealing with nullities of orders is misplaced. In *Tasima*, the Constitutional Court emphasised that judicial orders, even if wrongly issued, are binding until set aside. Jurisdiction existed

when the liquidation application was filed and argued. The subsequent filing of a business rescue application does not retroactively strip jurisdiction. Macsteel drew a distinction from *City Capital*, as jurisdiction was present here, unlike cases where it was absent from the outset. The provisional liquidators' interpretation of 'liquidation proceedings' is consistent with creditor protection and avoids asset dissipation.

[48] Macsteel argued that the relief should be as follows:

- (a) Confirmation that the provisional liquidation order of 30 May 2025 is valid.
- (b) Confirmation that the appointment of the provisional liquidators stands.
- (c) An interdict restraining the directors from interfering with the provisional liquidators' statutory duties.

Analysis: central issue on nullity and jurisdiction

[49] Both parties referenced *Richter* in their arguments. The SCA in *Richter* gave a comprehensive judgment in interpreting the meaning of 'legal proceedings' in s 131(6). In *Richter*, the definition of 'liquidation proceedings' was the core issue before the court.²⁵ The SCA applied the following definition:

'Generally, in law and in business, liquidation is the exhaustive process by which a company is brought to an end and the assets thereof, if any, are redistributed. The authors of *Cilliers & Benade Corporate Law* describe liquidation as follows:

"The process of dealing with or administering a company's affairs prior to its dissolution by ascertaining and realising its assets and applying them firstly in the payment of creditors of the company according to their order of preference and then by distributing the residue (if any) among the shareholders of the company in accordance with their rights, is known as the *winding-up or liquidation of the company*." (Footnote omitted.)

The SCA continued and held that:²⁶

'For these reasons a proper interpretation of "liquidation proceedings" in relation to s 131(6) of the Act must include proceedings that occur after a winding-up order to liquidate the assets and account to creditors, up to deregistration of a company.'

²⁵ *Richter* para 9.

²⁶ *Ibid* para 18.

This thus clarified that 'liquidation proceedings' are not confined to the granting of a winding-up order but extend to the entire process of winding-up, from the order itself through to the administration of assets, payment of creditors, and distribution to shareholders, and finally up to the deregistration of the company.

[50] In *GCC Engineering*, the SCA stated:

[15] Section 131(6) of the Act does not change the status of the company in liquidation nor does it suspend the court order that placed the company under liquidation in the hands of the Master in terms of s 141(2)(a)(ii) of the Act. The appointed provisional joint liquidators must proceed with their duties and functions to protect the assets of the company for the benefit of all the creditors of the company.

[16] Successful liquidation proceedings constitute a complete process by which a company is brought to an end and the liquidation process culminates in the dissolution of the company up to its deregistration (see *Richter v Absa Bank* at 60D).

[17] In terms of s 131(6) of the Act, it is liquidation proceedings, not the winding-up order, that is suspended. What is suspended is the process of continuing with the realisation of the assets of the company in liquidation with the aim of ultimately distributing them to the various creditors. The winding-up order is still in place; and prior to the granting or refusal of the business rescue application, the provisional liquidators secure the assets of the company in liquidation for the benefit of the body of creditors.'

[51] *GCC* is clear that s 131(6) does not suspend or nullify the winding-up order itself. The company remains in liquidation, and the order placing it under liquidation stands. The SCA stated that even during suspension, the provisional liquidators must continue to safeguard and protect the company's assets. Their duty is custodial, ensuring that the estate is preserved for the benefit of creditors until the business rescue application is decided. The *ratio* is that s 131(6) suspends only the continuation of liquidation proceedings, not the liquidation order itself. The company remains in liquidation, and the provisional liquidators must protect its assets. The suspension prevents further steps in realisation and distribution until the business rescue application is resolved.

[52] This was reaffirmed in *Southern Sky*, where the court stated that the suspension under s 131(6) is procedural, not substantive.²⁷ The company remains in liquidation, but the process of winding-up is paused pending the outcome of the business rescue application. Liquidators may protect and preserve assets but cannot dispose of them during the suspension. Any disposal of assets in this period is invalid.

[53] The directors accepted the jurisdiction of the court when they opposed the liquidation proceedings and argued the matter before Gwagwa AJ. No issue of jurisdiction was raised at that time of the proceedings. Jurisdiction is determined when the matter is instituted and continues to the end of the case.²⁸

'In my view the answer to that suggestion is that the crucial time for determining the jurisdiction of a court to entertain an action is the time of the commencement of the action. Jurisdiction having once been established at such time, it continues to exist to the end of the action even though the ground upon which the jurisdiction was established ceases to exist.'

Business rescue proceedings occurred after arguments were heard and before judgment was handed down. Aside from a letter to the acting judge, the directors took no steps to either confirm that the letter was given to the acting judge, or to bring any application to stay the judgment.

[54] The directors' arguments in respect of jurisdiction and the interpretation of legal proceedings are rejected. The case law does not support the directors' version that the suspension envisaged in s131(6) includes procedural steps and the judicial power to issue a provisional order, as *in casu*. The provisional liquidators are correct in averring that the directors' arguments are clothed as a jurisdictional issue, when, in fact, they are saying that the court erred by handing down judgment, despite being notified via a letter sent by the directors about the pending business rescue application. The provisional liquidators submitted that if this is the case, then the directors should have elected to appeal or rescind the order. I agree that the directors should have elected to follow this route, since they were of the view that the court had erred. I disagree with the directors

²⁷ *Southern Sky* para 22.

²⁸ *Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd* 1969 (2) SA 295 (A) at 310D-E.

that the court was *functus officio* as regards any steps taken in the liquidation matter or that the court's jurisdiction was removed, which rendered the provisional order void *ab initio*. This interpretation would not have been contemplated by the Legislature and would likely create an 'impractical and unbusinesslike' situation.

[55] I agree with the provisional liquidators that the facts in this matter can be distinguished from *City Capital*, where jurisdiction was absent from the outset. This case does not support the directors' arguments regarding jurisdiction.

[56] In *Macneil Plastics (Pty) Ltd v Van den Heever NO and Others*,²⁹ the following was held:

'... the interpretation contended for by counsel for Macneil Plastics would require that a provision be read into s 131(6) which would provide that placing a company in business rescue would automatically set aside a prior existing liquidation order *ex tunc*. Statutory interpretation is a unitary exercise which requires a court to ascertain the meaning of a provision, having regard to the language used, the context and the purpose of the provision. The inevitable point of departure is the language of the provision itself. The section uses the word "suspend" – not "set aside" or "terminate". "Suspend" is defined in the Concise Oxford English Dictionary as "to halt temporarily".'

In *casu*, the court's powers to hand down the provisional order were not halted. On a proper interpretation of s 131(6), 'legal proceedings' refer to the process of winding-up, rather than the application which precedes that process.

[57] *Tasima* is clear authority that 'judicial orders wrongly issued are not nullities. They exist in fact and may have legal consequences'³⁰ and there is an 'obligation to obey court orders.'³¹ The directors' collateral challenge argument is weakened by *Tasima*.

²⁹ *Macneil Plastics (Pty) Ltd v Van den Heever NO and Others* [2024] ZASCA 181 para 16.

³⁰ *Tasima* para 182.

³¹ *Ibid* para 183.

[58] I find on a conspectus of the relevant case law and careful consideration of the interpretation of s 131(6), that the provisional order granted on 30 May 2025 is not a nullity because of the lack of jurisdiction.

[59] Flowing from this, the Master's appointment of the provisional liquidators will stand until set aside. The provisional liquidators, accordingly, have locus standi to bring this application. The appointment of the provisional liquidators by the Master constitutes administrative action. Administrative decisions remain valid and must be treated as such until properly reviewed and set aside. A fundamental principle of our law is that court orders are binding and must be obeyed unless and until they are set aside by a competent court. The directors have an obligation to obey the court order and not obstruct the provisional liquidators from performing their statutory functions. The provisional liquidators' duties arise from s 391 of the 1973 Companies Act and exist to protect creditors and preserve Skema's assets pending the final determination of the liquidation. If the provisional liquidators are prevented from discharging those duties, the very purpose of provisional liquidation would be undermined. Section 165(5) of the Constitution makes it clear that an order issued by a court binds all persons to whom it applies.

Analysis: the directors' points in limine

No authority

[60] The directors raised this point in response to the provisional liquidators' supplementary heads of argument. They argued that the provisional liquidators' reliance on *Fourie NO v Le Roux and Others*³² is misplaced. The case dealt with the court's power under s 386(5) of the 1973 Companies Act. The court, in certain circumstances, is empowered to authorise a liquidator to perform acts without prior authorisation from the Master or creditors. The court held that it could grant such authority under this subsection. The directors submitted that in casu, the authority sought is to institute legal proceedings in terms of s 386(3)(a) read with s 387(3).

³² *Fourie NO v Le Roux and Others* 2006 (1) SA 279 (T) (*Fourie*).

[61] Section 386 of the 1973 Companies Act, which deals with the general powers of liquidators, provides as follows in subsection (3):

(3) The liquidator of a company-

(a) in a winding-up by the Court, with the authority granted by meetings of creditors and members or contributories or on the directions of the Master given under section 387;

Sections 387, which deals with the exercise of the liquidator's powers in winding-up by a court, provides as follows in subsection (3):

'(3) Where the Master has refused to give directions as aforesaid or in regard to any other particular matter arising under the winding-up, the liquidator may apply to the Court for directions.'

The directors contended that the provisional liquidators did not obtain any authorisation from the creditors or the Master, that they did not allege that the Master has refused such authority and that they have approached the court without satisfying the statutory requirements of the above sections. *Fourie* dealt with the provisional liquidators acting without the Master's consent at all. In *casu*, the provisional liquidators failed to request the Master's authority and there is no suggestion that the Master refused such authority. The provisional liquidators ignored the 'mandatory sequencing' of the 1973 Companies Act. Accordingly, the directors contended that the present application is premature and unauthorised.

[62] The provisional liquidators argued that the directors' arguments were untenable:³³

'First, the Master cannot grant leave until after the first meeting of creditors has been held. Any attempt by the provisional liquidators to hold such a meeting would be met with an application for an interdict by the directors and/or shareholders (as would any approach for direction in terms of section 387(3)) on the basis that the provisional liquidators' appointment is a nullity and they have no power to seek authority from anyone.'

This would prevent them from fulfilling their primary duty of protecting and preserving company assets, pending the appointment of a final liquidator.³⁴ The provisional liquidators stated that s 386(5) exists to prevent such absurdities. It provides as follows:

'In a winding-up by the Court, the Court may, if it deems fit, grant leave to a liquidator to... do any other thing which the Court may consider necessary for winding up the affairs of the company...'

³³ Applicants' supplementary heads of arguments at page 11 para 38.

³⁴ *Fourie* para 10.

[63] The provisional liquidators referred to *Ex Parte Contemporary Refrigerator (Pty) Ltd*,³⁵ where Caney J, dealing with the Companies Act 46 of 1926, stated:

'...sec. 142 does not confer powers; it regulates the exercise of powers derived from sec. 130 and, in the process of doing so, confers on the liquidator the right to apply to Court when in need... There is, consequently, always a right of resort to the Court, which has an overriding power... (T)he power conferred by sec. 130(4) upon the Master to restrict the powers of a provisional liquidator relates to the powers available to be conferred by him under sec. 130; sec. 142 does not purport to confer powers but governs the exercise of powers conferred elsewhere in the statute. That view denies the Master authority to restrict the liquidator's right by sec. 142(3) to apply to Court for directions. Further, to me it appears incongruous that the Master should be in a position to deny access to the Court ... I consider that both sec. 130(3), in its general provision, and sec. 142(3) confer the right to approach the Court...'

The provisional liquidators submitted that this dictum was applied in *Fourie*, and that a provisional liquidator has locus standi and is entitled to approach a court for leave to institute proceedings. The Master's refusal to give directions is not required. Nor is the authority of the creditors required.

[64] The provisional liquidators stated that the dictum of *Contemporary Refrigeration* was further endorsed by this division in *Berrange NO and Others v Master of the High Court Pietermaritzburg and Others*.³⁶ The court rejected similar contentions to the ones made by the directors in this case. It held that s 386(5) is 'the catch-all provision covering anything which the court may consider necessary'³⁷ and that the applicants 'always had a right of resort to the court for the relief they are seeking' and 'the court has an unrestricted discretion to grant such relief if it considers it necessary'.³⁸

[65] In light of the jurisprudence, I am of the view that the directors' arguments that the provisional liquidators lack authority to bring this application are without merit. Section

³⁵ *Ex Parte Contemporary Refrigerator (Pty) Ltd* 1966 (2) SA 227 (D) (*Contemporary Refrigeration*) at 229C-230J.

³⁶ *Berrange NO and Others v Master of the High Court Pietermaritzburg and Others* [2023] ZAKZDHC 61.

³⁷ *Ibid* para 13.

³⁸ *Ibid*.

386(5) of the 1973 Companies Act expressly empowers the court to grant leave to a liquidator to do whatever it considers necessary for the winding-up of a company. The provisional liquidators retain locus standi to approach the court for directions or leave, irrespective of the creditors or Master's approval. Accordingly, the *point in limine* is dismissed.

Abuse of process

[66] I have considered the abuse of process allegations by the directors, who allege that the provisional liquidators act as surrogates for Macsteel and/or Mr Fellner-Feldegg. While this raises concerns, it does not displace their statutory authority once an appointment is valid. Allegations of funding do not, without more, establish abuse sufficient to invalidate proceedings.

[67] Post this hearing, the directors brought the court's attention to *Globustarr Trading Co LLC v Mayana Properties (Pty) Ltd*,³⁹ which was heard in the Gauteng Division of the High Court. The provisional liquidators addressed correspondence to the court that this case is distinguishable from the current applications, as it deals with an application for an adjournment of a liquidation application and an abusive business rescue application. I agree with the provisional liquidators that it bears no relevance to the applications in *casu*. However, the court did highlight that 'the Companies Act has a clear preference for business rescue over liquidation.⁴⁰ Section 131(6) is perhaps the most important mechanism by which the preference is made effective'.⁴¹ At the same time, the bringing of a business rescue application does not render the provisional liquidation order invalid.⁴² It merely suspends certain consequences of the liquidation proceedings, pending the outcome of the business rescue application.

Analysis: the test in *Setlogelo* and the relief sought under case no 2025-099818

³⁹ *Globustarr Trading Co LLC v Mayana Properties (Pty) Ltd* 2025 (4) SA 594 (GJ) (*Globustarr*).

⁴⁰ *Diener NO v Minister of Justice and Correctional Services and Others* [2018] ZACC 48; 2019 (4) SA 374 (CC) para 54.

⁴¹ *Globustarr* para 9.

⁴² *Nedbank Limited v Sana Developers (Pty) Ltd and Another* [2024] ZAGPJHC 1087 para 46.

[68] The provisional liquidators rely on their relevant statutory duties. Those duties establish at least a prima facie right to take control of Skema's assets and records. If the provisional liquidators are denied access to Skema's assets, the estate may be prejudiced and may suffer irreparable harm. Any dissipation of assets during this period could cause irreparable harm to creditors. The balance of convenience favours the preservation of assets. Granting the interim relief does not determine the business rescue application. It merely preserves the status quo. There is therefore no satisfactory alternative remedy. The provisional liquidators cannot perform their statutory functions without the assistance of this court. The directors argued that the relief sought by the provisional liquidators is final and does not meet the requirements for an interim interdict. A provisional liquidation is, however, a holding position pending the outcome of the determination of final relief. The relief which the provisional liquidators are seeking is interim and declaratory, pending the final outcome of the business rescue application or final liquidation order. It stands to reason that, once they are no longer provisional liquidators or business rescue practitioners are appointed, then their office comes to an end and the order cannot logically be enforced.

[69] In all the circumstances, I am satisfied that the provisional liquidators have satisfied the requirements for the relief prayed.

Costs

[70] It is trite that the determination of costs is in the discretion of the judge. This discretion must always be exercised judicially.⁴³ The general rule is that the costs should follow the result and I find no reason to deviate from this rule. Wilson J, in *Mashavha v Enaex Africa (Pty) Ltd and Others*⁴⁴ stated:

'It seems to me, therefore, that the approach to setting a scale of costs under rule 67A(3) should be, first, to identify the appropriate scale ("A", "B" or "C") in light of the importance, value and complexity of the case, and then consider whether, because of inartful or unethical conduct of the nature identified in rule 67A(2), that scale should be reduced, such that the successful party

⁴³ *Kruger Bros & Wasserman v Ruskin* 1918 AD 63.

⁴⁴ *Mashavha v Enaex Africa (Pty) Ltd and Others* 2025 (1) SA 466 (GJ) para 11.

should not be able to recover counsel's costs to the extent that they would otherwise have been entitled.'

The court went on to say:⁴⁵

'[The] mere fact that punitive costs were sought by the successful party does not mean that a higher scale of counsel's costs ought to be awarded on the party and party scale. The focus of Rule 67A is not on the conduct of the losing party. It is primarily on the nature of the case, and, secondarily, on the way that the successful party presented it. The misconduct of the unsuccessful party, if any, is irrelevant once a court has declined to award a punitive costs order against them.' In applying rule 67A, and assessing the importance and complexity of the case, I am of the view that scale C is applicable.

The outcome in case number 2025-082240

[71] The arguments in both cases ran parallel. The central and other issues have been decided as per my reasons above. In light thereof, I will make an order, having considered all submissions, including those of Mr Fellner-Feldegg and Macsteel, in this matter. Considering the court's finding, that the judgment handed down by Gwagwa AJ is not a nullity and that the court has jurisdiction, I am of the view that Part A of this application falls away. This court's finding has a direct impact on Part B of the application and disposes of the issues. Part B is accordingly, dismissed.

Costs

[72] I can find no reason to deviate from the principle that the successful party should have their costs. Mr Fellner-Feldegg and Macsteel have successfully opposed this application. Rule 67A(4) allows me to grant costs of two counsel and in the case of Macsteel, I find it just to do so.

Orders

[73] Accordingly, I make the following orders:

In respect of case number 2025-099818

⁴⁵ Ibid para 19.

1. The second, third and fourth applicants are authorised to institute this application and to prosecute it to finality and to appoint attorneys and counsel for the purpose of bringing the aforesaid proceedings and to pay the costs and disbursements so incurred on an attorney and client scale, as a cost in the administration of the winding-up of the first applicant in terms of s 386(4) of the Companies Act 61 of 1973, as read with Item 9 of Schedule 5 of the Companies Act 71 of 2008 and the actions of the second, third and fourth applicants in acting as aforesaid prior to the grant of this order are hereby ratified.
2. The respondents be and are hereby interdicted and restrained from obstructing, interfering with or preventing the second, third and fourth applicants from discharging their general statutory duties as provisional liquidators to forthwith recover and reduce into possession all the assets and property of the first applicant, including books and records, movable and immovable property.
3. The respondents, jointly and severally, are to pay the costs of this application on scale C.

In respect of case number 2025-082240

The application is dismissed with costs, including the costs of the first respondent and the interested party, Macsteel Service Centres SA (Pty) Ltd's two counsel, on scale C.



MARION AJ

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by being uploaded to case lines. The date for hand down is deemed to be 5 March 2026.

Date of hearing: 22 August 2025

Date of judgment: 5 March 2026

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