

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: B39215/2022¹
065994/2023
047985/2023
058925/2023

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

Date: 21 September 2023 E van der
Schvff

Case number B39215/2022

In the matter between:

KAGISO BANA PILANE

FIRST APPLICANT

THE TRADITIONAL COUNCIL OF THE
BAKGATLA-BA-KGAFELA

SECOND APPLICANT

and

PHINEAS TJIE N.O.

THIRD INTERVENING APPLICANT

In re the *ex parte* application of:

ADRIAAN WILLEM VAN ROOYEN N.O.

FIRST APPLICANT

¹ The case number reflected on the papers filed of record is 39215/2022, but the matter is accessed on CaseLines by using the case number B39215/2022.

MPONYANA LAZARUS LEDWABA N.O. SECOND APPLICANT

JOHANA NINI MAHANYELE N.O. THIRD APPLICANT
(Cited herein in their capacities of joint
Liquidators of Lexshell 703 Investments (Pty) Ltd)

and

SIYAYA FREE TO AIR TV (PTY) LTD FIRST RESPONDENT

BAKGATLA-BA-KGAFELA STRATEGIC
INVESTMENT COMPANY (PTY) LTD SECOND RESPONDENT

Case number 065994/2023

In the matter between:

KAGISO BANA PILANE FIRST INTERVENING APPLICANT

THE TRADITIONAL COUNCIL OF THE
BAKGATLA-BA-KGAFELA SECOND INTERVENING APPLICANT

and

PHINEAS TJIE N.O. THIRD INTERVENING APPLICANT

In re the *ex parte* application of:

CHRISTOPHER JAMES ROOS N.O. FIRST APPLICANT

BEATRICE ELIZE GROENEWALD N.O. SECOND APPLICANT

and

THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION RESPONDENT

Case number 047985/2023

In the matter between:

KAGISO BANA PILANE FIRST INTERVENING APPLICANT

THE TRADITIONAL COUNCIL OF THE
BAKGATLA-BA-KGAFELA SECOND INTERVENING APPLICANT

and

PHINEAS TJIE N.O. THIRD INTERVENING APPLICANT

In re the *ex parte* application of:

CHRISTOPHER JAMES ROOS N.O. FIRST APPLICANT

BEATRICE ELIZE GROENEWALD N.O. SECOND APPLICANT

Case number 058925/2023

In the matter between:

KAGISO BANA PILANE FIRST INTERVENING APPLICANT

THE TRADITIONAL COUNCIL OF THE
BAKGATLA-BA-KGAFELA SECOND INTERVENING APPLICANT

and

PHINEAS TJIE N.O. THIRD INTERVENING APPLICANT

In re the *ex parte* application of:

CHRISTOPHER JAMES ROOS N.O. FIRST APPLICANT

BEATRICE ELIZE GROENEWALD N.O. SECOND APPLICANT

and

THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

[1] The first and second applicants in this application are, for clarity's sake, referred to as the first and second intervening applicants. This application is an urgent application by the first and second intervening applicants, for the suspension of the execution of orders granted in the urgent court without notice to the first and second intervening applicants. The parties agreed that I case manage the matter.

A date for the hearing of the intervention and rescission applications have been determined in the near future.² This application is thus for *interim* relief.

- [2] The first and second intervening applicants ultimately seek the rescission of the orders granted under case numbers B39215/2022, 065994/2022, 047985/2023, and 058925/2023.
- [3] The rescission applications are based on the fact that all the orders in question were obtained without notice to the first and second intervening applicants. The first and second intervening applicants claim that they have a material and direct interest in the subject matter of the litigation and that the orders were erroneously sought and granted in their absence.
- [4] The third intervening party (the Administrator) and the provisional liquidators of Bakgatla-Ba-Kgafela Strategic Investment Company (Pty) Ltd (BBKSIC) and of Lexshell 703 Investments (Pty) Ltd (Lexshell) (collectively referred to as the opposing parties), oppose the applications for the suspension of the execution of the orders in question. Their primary arguments are: (i) that the first intervening applicant (Kagiso Bana Pilane, hereafter Mr. Pilane) does not have the necessary *locus standi* to approach the court for any of the orders sought, (ii) that the second intervening applicant (the Traditional Council of the Bakgatla-Ba-Kgafela (the TC) does not exist (is a non-entity), and does not have the necessary *locus standi* to approach the court for any of the orders sought, (iii) that the intervening parties' attorneys of record, Cliff Decker Hofmeyer Inc., does not have the necessary authority to act on behalf of the first and second intervening applicants, (iv) that the intervening applicants' attorney of record does not have sufficient personal knowledge of the issues to attest to the founding affidavit, and (v) that the first and second intervening applicants have not yet been granted leave to intervene. They also dispute the urgency of the application. The provisional liquidators of BBKSIC,

² Whilst a date was agreed on at the hearing, one of the counsel belatedly indicated his unavailability and a new date is to be determined.

in addition, raise the point that the application to suspend the orders had to be brought in terms of section 354 of the Companies Act 61 of 1973.

- [5] The question of the first and second intervening applicants' *locus standi* is a recurring issue that is raised in the intervention and rescission applications as well. In fact, this aspect could be determinative of the outcomes of the intervention and rescission applications. The first intervening applicant either is or is not a director of BBKSIC. If he is not a director, he does not have standing in any of the applications. The second intervening applicant either is or is not the Traditional Authority representing the Traditional Council. As I indicate below, the issue of the first and second intervening applicants' *locus standi* is interlinked with the question of whether the Administrator's appointment is valid.
- [6] An applicant seeking *interim* relief must establish that it has a *prima facie* right, that there is a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted, that the balance of convenience favours the grant of an interim interdict, and that the applicant has no satisfactory remedy.³ *In casu*, the first and second intervening applicants' *locus standi* and the question as to whether they succeeded in establishing a *prima facie* right, are interconnected. The main purpose for granting interim relief, is to preserve the *status quo* pending the finalisation of the main relief sought.
- [7] In order to adjudicate fairly in these matters, it is necessary to understand the context and factual background that underpin the litigation. For the greatest part, the factual background to all the applications is the same.
- [8] For purposes of this judgment, it suffices to state that the Administrator is joined to the proceedings.

³ *Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son (SA) (Pty) Ltd* 1995 (1) SA 725 (T) 729I-730G.

Background and contexts

First and second intervening applicants

- [9] The first intervening applicant, Mr. Pilane, claims to be a director of BBKSIC. It is averred that he was elected on 1 June 2020. His election was confirmed and ratified in a document purporting to be a resolution by the 'sole shareholder' on 7 August 2023. It assists in understanding the context, to mention already at this juncture, that the opposing parties deny that Mr. Pilane has the necessary *locus standi in judicio* to institute this application. They contend that, even though the CIPC records reflect that Mr. Pilane is a director of BBKSIC, his appointment is invalid as the third intervening party, Mr. Tjie, in his capacity as representative of the sole shareholder of BBKSIC, did not agree to Mr. Pilane's appointment as director of BBKSIC. Mr. Tjie's involvement is described below.
- [10] The second intervening applicant purports to be the Traditional Administration of the Bakgatla-Ba-Kgafela (TA) as representative of the Traditional Council of the Bakgatla-Ba-Kgafela (TC). The opposing parties claim that the TC is a non-entity in that the term of office of the members comprising the TC lapsed in 2016/2017. In addition, the Premier of the North West Province appointed Mr. Tjie (the third intervening party) as the Administrator for the Bakgatla-Ba-Kgafela Traditional Community in the stead of the TC. As a result of his appointment as Administrator, the opposing parties contend that Mr. Tjie replaced the TC as the representative of the sole shareholder of BBKSIC.

Bakgatla-Ba-Kgafela

- [11] The Bakgatla-Ba-Kgafela Traditional Community (Bakgatla-Ba-Kgafela) is a traditional community recognised as such in terms of s 3 of the *North-West Traditional Leadership and Governance Act 2 of 2005* (NWTLGA). The Bakgatla-Ba-Kgafela had a functioning Traditional Council established in terms of the NWTLGA. The Bakgatla-Ba-Kgafela, through its TC, had various structures in

place to effectively manage and grow its assets. The Bakgatla- Ba-Kgafela Traditional Administration (TA) attended to the administration of the affairs of the Bakgatla- Ba-Kgafela on behalf of, and under control of the TC.

[12] The term of office of the TC lapsed in 2017. On 7 July 2020, the Premier of the North West Province (the Premier) withdrew the letter of designation of Mr. Nyalala John Molefe Pilane as the Kgosi of the Traditional Community, issuing a certificate of recognition of an interim Kgosi for six months. Reddy AJ explained that no interim or permanent Kgosi has since been appointed for the Traditional Community.⁴ The Premier intended to disband the TC by the appointment of an administrator as per the findings of the Baloyi Commission. Reddy AJ held on 25 May 2023 that there is currently no TC as per the NWTLGA.⁵

Administrator

[13] On 26 February 2020, the Premier of the North West Province (the Premier), appointed Mr. Tjie as the Administrator of the Bakgatla-Ba-Kgafela Traditional Community. This appointment was extended several times and is still extant. In terms of the Terms of Reference of his appointment, Mr. Tjie is authorised, amongst others, to:

- i. Perform any Power, Authority, and function conferred or imposed by law on the Traditional Council;
- ii. Manage all litigation cases and processes against the Community;
- iii. To engage and recover any information, money, assets [and] accounts in possession of third parties;
- iv. To engage and call tribal meetings for the purposes of report[ing] back to obtain new mandate[s] and tribal resolutions;

⁴ See *Bakgatla-Ba-Kgafela Property Association v Pilane and Others* (M450/2021) ZANWHC 62 (25 May 2023) at para [17].

⁵ See *Bakgatla-Ba-Kgafela Property Association v Pilane and Others* (M450/2021) ZANWHC 62 (25 May 2023) at para [16].

- v. Manage and or oversee all the commercial activities, including the mining interests of the Community, by ensuring that the interests of the community are protected;
- vi. Manage financial administration of the community affairs in line with the Act;
- vii. Cause investigation in respect of any matters which is stated in [the] [Baloyi] Report but not covered by [the] Forensic Investigation;
- viii. Implement the Community and Traditional Council Resolutions upon review;
- ix. Initiate a process that will capacitate the incoming traditional council and develop [a] policies [policy] manual and system for [the] traditional council.

[14] Mr. Tjie's appointment followed on recommendations made in the 2019 Baloyi Commission Report. It was, amongst others, recommended that members of the TC be removed for failing to discharge their functions, including non-compliance with the provisions of the Code of Conduct. The Baloyi Commission proposed that the Premier should act in terms of s 9(3) and s 10(2) of the *North West Traditional Leadership and Governance Act 2 of 2005*, to urgently appoint an Administrator to take control of the affairs of the TC. The Baloyi Commission specifically proposed that the Administrator must have the power to exercise and perform any power, authority, and function conferred or imposed by law upon the TC and shall be deemed to have been exercised or performed by the TC. The administrator should be competent and have the power to exercise any power, authority, or perform functions that would ordinarily be conferred on the TC in respect of the subsidiary companies and shall be deemed to have been exercised or performed by the TC.

[15] I pause to note that the Administrator is referred to as the third intervening applicant because the first and second intervening applicants failed to join him as a party to either the rescission applications or the applications to suspend the execution of the orders granted. Counsel for the Administrator appeared at the hearing. The Administrator's interest in these applications is undisputable, and it is inconceivable that he was not joined as a respondent from the start.

[16] An application to review and set aside, amongst others, the Premier's decision to appoint Mr. Tjie as the Administrator to manage and control the affairs of the Bakgatla-Ba-Kgafela Traditional Community, has been dismissed in the High Court, North West Division, Mahikeng, on 4 July 2023. I have been informed that an application for leave to appeal will be heard on 6 October 2023. This development is of crucial concern to, amongst others, the application to stay or suspend the operation and execution of the orders in question.

Bakgatla-Ba-Kgafela Strategic Investment Company (Pty) Ltd

[17] BBKSIC was established in 2010 with a view to corporatise the affairs of the Bakgatla-Ba-Kgafela and to grow the local economy. Lexshell was ostensibly created to receive and make payments on behalf of the TC to third parties.

[18] The first and second intervening applicants state that the TA is the sole shareholder of Lexshell and BBKSIC. The Share Certificates reflect that the Bakgatla-Ba-Kgafela Traditional Authority is the sole shareholder of BBKSIC. The Bakgatla-Ba-Kgafela Tribe is indicated to be the sole shareholder of Lexshell.

Voluntary winding up

[19] Mr. Tjie, in his capacity as Administrator, empowered to manage and oversee all the Traditional Communities' commercial activities, took a resolution on 24 February 2023 to place BBKSIC in voluntary liquidation. The third intervening applicant's (the Administrator) submission that his appointment has not been set aside, is a fact that cannot be ignored. Neither is the fact that his resolution to place BBKSIC in voluntary liquidation has not been challenged on review.

[20] Mr. Roos and Ms. Groenewald were appointed as joint provisional liquidators of BBKS (in liquidation). The first and second intervening applicants were only

informed of BBKSIC's voluntary winding up during a case management meeting they attended on 18 April 2023.

- [21] On 9 May 2023, CDH lodged a query with the CIPC, regarding what they describe as Mr. Tjie's unauthorised and fraudulent attempt to place BBKSIC in voluntary liquidation. Despite initially being informed by CIPC that BBKSIC's status had been updated to '*In Business*', CDH saw again on 10 July 2023 that BBKSIC was again placed in voluntary liquidation. This was the result, as indicated below, of an order obtained in the absence of the first and second intervening applicants under case number 058925/2023.

Case number 058925/2023

- [22] The provisional liquidators of BBKSIC approached the urgent court on 29 June 2023 for an order declaring that the voluntary liquidation of BBKSIC, dated 24 February 2023, was duly registered by the CIPC on 24 February 2023. The CIPC was cited as the only respondent. The order was granted as sought.

Case number 065994/2023

- [23] The provisional liquidators again approached the urgent court on 12 July 2023. They sought a *mandamus* ordering the CIPC to amend and update its records in accordance with the order granted under case number 047985/2023 [reference should have been made to the order obtained under case number 058925/2023] on 29 June 2023 to reflect that the voluntary liquidation of BBKSIC dated 24 February 2023 was duly registered on 24 February 2023. The order was granted. CIPC subsequently amended its records.

Case number 047985/2023

- [24] The joint provisional liquidators of BBKSIC (in liquidation) approached the urgent court on an *ex parte* basis on 23 May 2023. As a result, BBKSIC (in liquidation) was declared a company unable to pay its debts in terms of s 388 of the Companies Act 61 of 1973 (1973-Companies Act). The voluntary winding-up of BBKSIC was converted to a winding-up by the court, and the provisional liquidators were authorised to exercise all the powers described in s 386(4) and (5) of the 1973-Companies Act.
- [25] The first and second intervening applicants seek the suspension of the operation and execution of this order pending the rescission application wherein they seek that this order be rescinded.

Case number B39215/2022

- [26] Lexshell 703 instituted litigation against Siyaya Free to Air TV (Pty) Ltd (Siyaya) and BBKSIC. On 18 October 2022, Lexshell launched an urgent application seeking an interim order that Siyaya be interdicted and prohibited from paying any monies to BBKSIC, and that such money be paid into a trust account pending the institution and finalisation of any legal process for the recovery thereof.
- [27] A consent order was granted by Baloyi-Mere AJ in terms whereof the parties agreed to, and was ordered that Siyaya shall pay all amounts earmarked or due to BBKSIC into an interest-bearing trust account of CDH, to be held pending the outcome and finalisation of the litigation. CDH was BBKSIC's attorneys of record when this order was granted.
- [28] Neither the first nor second intervening applicants were parties to the proceedings before Baloyi-Mere AJ, although BBKSIC was represented by CDH and ostensibly instructed by the second intervening applicant.

- [29] I already indicated that BBKSIC's voluntary winding up was converted to a winding-up by the court, with its ensuing consequences, on 23 May 2023. The liquidators of Lexshell then approached the court on 11 July 2023, on an *ex parte* basis seeking the amendment of the order handed down on 25 October 2022 by Baloyi-Mere AJ. The order sought was granted.
- [30] In terms of this order, the payments that were to be made by Siyaya to CDH's trust account, to be held pending the outcome and finalisation of the litigation between Lexshell, BBKSIC and Siyaya, were to be paid into the trust account of the liquidators' attorneys' trust account '*for the benefit and credit of Lexshell 703.*' The liquidators were also empowered to prove a claim in an amount of at least R130 840 270.02 against BBSIC's insolvent estate.
- [31] It is noteworthy that the liquidators' attorneys of record are also the attorneys of record of BBKSIC's provisional liquidators. It can thus be accepted that the liquidators of Lexshell, and the provisional liquidators of BBKSIC agreed to this order be sought and granted. Since the Administrator does not take issue with him not being joined to the proceedings despite not receiving notice of the variation application, and his subsequent opposition to the rescission application brought by the first and second intervening applicants, it can only be inferred that he, too, approved this mode of operation and agreed with the amended order.
- [32] The first and second intervening applicants claim that this *modus operandi* was devised to obtain a court order without their knowledge, whilst they have a direct and material interest in the matter. They take offense at the fact that their attorney of record, CDH, was not informed of the application to amend the order granted by Baloyi-Mere AJ, and that their attorney was removed from the Caselines' profile. This, they suggest, was done in order to prevent CDH of being aware of the amendment application being filed.

[33] Counsel for the liquidators submitted that CDH was informed that their mandate was terminated by BBKSIC's liquidators. It turns out that the letter to which the liquidators' counsel referred was directed at Fluxmans, and not at CDH. CDH only became aware of their mandate being terminated when they received an email to which the order granted by Makhoba J was annexed on 12 July 2023. This, the first and second intervening applicants contend, is sufficient reason to have the order granted by Makhoba J rescinded.

Chronology of events

[34] To make sense of the events preceding the applications to stay the execution of the orders granted in the absence of, and without notice to the first and second intervening applicants, it is necessary to provide a chronology of events:

i.	26 /02/2020	An Administrator is appointed for the Bakgatla-Ba-Kgafela Traditional Community
ii.	01/06/2020	Mr. Pilane is allegedly appointed as the Director of BBKSIC
iii.	25/10/2022	B39215/22 – Consent order granted in the litigation of Lexshell v BBKSIC and Siyaya – monies payable by Siyaya is to be paid into CDH's trust account pending the finalisation of the litigation
iv.	24/02/2023	The Administrator takes the resolution to place BBKSIC in voluntary liquidation
v.	18/04/2023	CDH (1 st and 2 nd intervening applicants) hear that BBKSIC is in voluntary liquidation
vi.	09/05/2023	CDH contacted the CIPC to rectify the records to indicate that BBKSIC is 'In Business'

vii.	23/05/2023	04985/2023: BBKSIC's Voluntary winding-up is converted to court ordered winding-up
viii.	29/06/2023	058925/2023: Declarator <i>re</i> BBKSIC's voluntary winding-up for CIPC to rectify the record
viv.	11/7/2023	B39215/2022: Consent order (iii supra) is amended. Siyaya is to pay money paid in the trust account of DLBM for the benefit of Lexshell's creditors.
x.	12/7/2023	Letter to CDH informing CDH that BBKSIC terminated its mandate
xi.	12/7/2023	065994/2023: Mandamus- CIPC to amend its records to reflect the order granted on 29/6/23 in case number 04985/2023 [must be a reference to the order granted in 058925/23 on 29 June 2023, alternatively the order granted on 23 May 2023 under case number 04985/23. Either the wrong case number or the wrong date is referred to in the order].
xii.	04/07/2023	A review application to set aside Mr. Tjie's appointment as Administrator of the Bakgatla-Ba-Kgafela Traditional Community is dismissed.
xiii.	27/7/2023	The first and second intervening applicants launch intervention and rescission applications in case numbers B39215/22, 04985/23, 065994/23, and 058925/23.
xiv.	11/8/2023	The urgent court judge referred the matters to the Deputy Judge President for a special allocation.
xv.	23/08/2023	The first and second intervening applicants launch applications to stay the execution of orders granted

		in B39215/22, 04985/23, 065994/23, 058925/23.
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Urgency *re*: Application to suspend the operation and execution of the orders

- [35] Pursuant to the intervention and rescission applications being referred for a special allocation, CDH addressed correspondence to DLBM (the attorneys of record of both Lexshell and BBKSIC's provisional liquidators) requesting an undertaking that the liquidators will not persist with the administration of the BBKSIC's alleged insolvent estate pending the resolution of the rescission application. This application was launched because DLBM refused to provide such an undertaking.
- [36] The first and second intervening applicants raise the following as the grounds of urgency:
- i. The liquidators can at any moment take steps to execute the orders which are subject to the intervention and rescission applications;
 - ii. If execution steps are taken, the first and second intervening applicants will not be able to obtain substantial redress at a hearing in due course;
 - iii. The liquidators will charge fees to the detriment of BBKSIC;
 - iv. The liquidators may seek to sell BBKSIC's assets.
- [37] The opposing parties contend that the first and second intervening applicants had to include the application to suspend the operation and execution of the orders as part of the rescission applications, that the first and second intervening applicants had to foresee that the intervening- and rescission applications would exceed 500 pages and be referred for a special allocation. The liquidators correctly point out that the intervening applicants' sole ground for relying on urgency is based on the fact that the liquidators may proceed with the administration of the estate and the

collection and utilisation of money. The opposing parties submit that it is common cause that the liquidators of both Lexshell and BBKSIC have the statutory duty to safekeep and administer the insolvent companies' assets to the benefit of creditors, for which due and proper performance, they have furnished the required security to the Master of the High Court prior to their appointment as liquidators.

[38] During discussions in chambers with all the parties' counsel, and in court, the liquidators' counsel indicated that no assets would be sold pending the finalisation of the intervention- and rescission applications and that the liquidators would increase the security to R100 million.

[39] It is trite that an applicant in an urgent application must show that it will not be afforded substantial redress in due course if the application is not heard in the urgent court.

[40] Having considered the purpose of these urgent applications, the facts that led to this application being instituted, and that it is directed at preserving the *status quo*, particularly regarding the orders granted in case number B39215/22, 047985/2023, and 058925/23, I am of the view that the applications can justifiably be considered in the urgent court.

Discussion

[41] Since the Deputy Judge President determined that the application to suspend the operation and execution of the orders be determined prior to the intervening and rescission applications, the submission that the first and second intervening applicants should not be heard because they have not yet been granted leave to intervene, is neither here nor there.

[42] The issue of CDH's authority to represent the first and second intervening applicants should not be conflated with the attack launched on the first and second

intervening parties' *locus standi*. CDH clearly obtained instructions from clients to institute the applications. The questions as to whether Mr. Pilane is a director of BBKSIC and whether the TA and the TC are existing entities, are different questions. In the Rule 7 notice, it is not disputed that Mr. Kagiso Bana Pilane authorised and instructed CDH to act on his behalf. His appointment as director of BBKSIC is questioned, and this is an issue that is relevant to the question of his *locus standi*. It is likewise not contended that the entity purporting to be the second intervening applicant did not provide CDH with a power of attorney. The question of whether the second intervening applicant is an existing entity, is an entirely different question. I am thus of the view that CDH is properly mandated to represent both Mr. Kagiso Bana Pilane and the group of persons claiming to be the TA and to put their case forward.

- [43] It is the duty of the first and second intervening applicants to allege and prove their *locus standi*.⁶ The first and second intervening applicants dispute the Administrator's appointment, and his authority to have placed BBKSIC in voluntary liquidation. The validity of the Premier's decision to appoint the Administrator is the subject-matter of the review application and the pending application for leave to appeal. The Administrator's power to have taken the decision to place BBKSIC in voluntary liquidation is partially dependent on the question as to whether his appointment was valid. I am of the view that until it is finally determined whether the Administrator's appointment is valid, the question as to the first and second intervening applicants' *locus standi* cannot finally be determined. For the moment, they hold what I will refer to as a residual interest, that, at the very least, entitle them to seek that the execution and operation of the orders granted in their absence be stayed to the extent that the orders have not been executed. This is also the factor that differentiates the application from ordinary applications to stay liquidation proceedings. The validity or not of the Administrators' appointment has a domino effect on the litigation that followed his decision to place BBKSIC in

⁶ *Four Wheel Drive Accessory Distributors v Rattan* NO 2019 (3) SA 451, *Mars Incorporated v Candy World (Pty) Ltd* 1991 (1) SA 567 (A) at 575H–I; *Kommissaris van Binnelandse Inkomste v Van der Heever* 1999 (3) SA 1051 (SCA) at 1057G–H.

voluntary liquidation, even if that particular decision is not currently under review. This, in itself, justifies the stay of the execution and operation of the orders.

[44] I am alive to the findings of the Baloyi Commission and the Premier's intention. This court is not tasked with reviewing the Premier's decision to appoint the Administrator. This court is, likewise, not tasked with determining the extent of the Administrator's powers and whether he could legally assume the role of the TA as the sole shareholder of BBKSIC and decide to place BBKSIC in voluntary winding-up. In the absence of an indication that any of the parties will be seriously prejudiced by preserving the *status quo*, subject thereto that BBKSIC's assets in the interim remain preserved in the hands of the liquidators, it is in the interest of justice to stay the execution and operation of the orders which execution can have serious *status quo* changing consequences.

[45] Since the CIPC already amended its records to reflect that BBKSIC is in liquidation, it will have no practical effect to stay the execution or operation of the order granted under case number 065994/2023. The order is already fully executed, and its execution cannot be stayed. As for the order granted under case number 058925/2023, the first and second intervening applicants did not indicate how the continued operation of this order would unduly prejudice them, or might have any *status quo-changing* effect, particularly in light of the fact that the voluntary winding-up was subsequently converted to a court-ordered-liquidation.

[46] As for the stay of the execution and operation of the order granted under case number 047985/2023, such an order will have a practical effect. In staying the operation and execution of the order, BBKSIC will remain in court-ordered-liquidation pending the finalisation of the intervention and rescission application under case number 047985/2023. The effect of this order is that the liquidators, in *the interim*, continue to preserve the assets belonging to BBKSIC that vested in them in their official capacity as a consequence of the order granted, that they carry on with any business of BBKSIC as far as it may be necessary for the beneficial winding-up of the BBKSIC, that the liquidators are empowered to

represent BBKSIC (in liquidation) in legal proceedings,⁷ and keep in their possession and under their control all files and documents related to the business of BBKSIC, but that the operation and execution of the remainder of the powers afforded to them in terms of the order granted by Van der Westhuizen J are suspended.

[47] The stay of execution of the order granted under case number B39215/2022 will have a practical effect. DLBM Inc. must receive and keep the money paid over to it in terms of the order granted by Makhoba J on 11 July 2023 in an interest-bearing trust account pending the finalisation of the intervention and rescission application under case number B39215/22.

ORDER

In the result, the following order is granted:

In case number B39215/2022

1. Pending the finalisation of the first and second intervening applicants' application for leave to intervene and rescission of the order granted on 11 July 2023 by Makhoba J, the operation and execution of the said order are stayed, subject thereto that:
 - 1.1. DLBM Inc must receive and keep the money paid over to it in terms of the order in an interest-bearing trust account pending the finalisation of the intervention and rescission application under case number B39215/22.
2. Costs are costs in the intervening and rescission applications.

In case number 047985/2023

3. Pending the finalisation of the first and second intervening applicants' application for leave to intervene and rescission of the order granted on 23 May 2023 by Van der

⁷ I note that reference is made in paragraph 4.1 of the order to Mxoxo Logistics (Pty) Ltd in liquidation.

Westhuizen J, the operation and execution of the said order are stayed, subject thereto that:

- 3.1. The liquidators, in *the interim*, preserve the assets belonging to BBKSIC that vest in them in their official capacity as a consequence of the order granted;
 - 3.2. The liquidators carry on with any business of BBKSIC as far as it may be necessary for the beneficial winding-up of the BBKSIC;
 - 3.3. The liquidators are empowered to represent BBKSIC (in liquidation) in legal proceedings;
 - 3.4. The liquidators keep in their possession and under their control all files and documents relating to the business of BBKSIC.
4. Costs are costs in the intervening and rescission applications.

Under case numbers 065994/2023 and 058925/2023:

5. The application to stay the execution of the order granted under case number 065994/2023 by Mogotsi AJ on 12 July 2023 is dismissed with costs;
6. The application to stay the execution of the order granted under case number 058925/2023 by Holland-Muter J on 29 June 2023 is dismissed with costs.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the first and second intervening applicants:

Adv. JW Steyn

Instructed by:	CDH Inc.
For the third intervening applicant:	Adv KD Ramolefe
Instructed by:	State Attorney
For the liquidators:	Adv. SJ van Rensburg SC
With:	Adv. R de Leeuw
Instructed by:	DLBM Inc.
Date of the hearing:	15 September 2023
Date of judgment:	21 September 2023