

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: 1094/2022
Heard: 02/09/2022
Date available: 06/09/2022

In the matter between:

SHANIE TALJAARD

(Previously Fourie, ID No: [...])

CURO CONSULTANCY (PTY) LTD

1st Applicant

2nd Applicant

and

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA**

MINISTER OF TRADE AND INDUSTRY

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)**

JOCHEN ECKHOFF N.O.

(in his capacity as provisional co-liquidator of Project Multiply
(Pty) Ltd (in provisional liquidation) (Reg No: 1993/005325/07)

and Velvetcream 15 (Pty) Ltd (in provisional

liquidation) Reg No: 2005/033276/07); and in his capacity as

provisional co-trustee of the Merwede Trust (IT1534/98) in his
capacity as co-trustee of the insolvent estate of Carel Aaron

van der Merwe)

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

DEON MARIUS BOTHA N.O.

(in his capacity as provisional co-liquidator of Project Multiply
(Pty) Ltd (in provisional liquidation) (Reg No: 1993/005325/07)

and in his capacity as co-trustee of the insolvent estate of Carel
Aaron van der Merwe)

6th Respondent

JOHANNES ZACHARIAS HUMAN MULLER N.O.

(in his capacity as provisional co-liquidator of Velvetcream 15
(Pty) Ltd (in provisional liquidation) (Reg No: 2005/033276/07);

and in his capacity as provisional co-trustee of the Merwede
Trust (IT1534/98)

7th Respondent

FUSI PATRICK RAMPOPORO N.O.

(in his capacity as provisional co-liquidator of Project Multiply (Pty) Ltd (in provisional liquidation) (Reg No: 1993/005325/07)	8 th Respondent
SIMON MALEBO RAMPOPORO N.O. (in his capacity as provisional co-liquidator of Velvetcream 15 (Pty) Ltd (in provisional liquidation) (Reg No: 2005/033276/07)	9 th Respondent
ANGELINE POOLE N.O. (in her capacity as provisional co-trustee of the Merwede Trust (IT1534/98)	10 th Respondent
CATHARINA SUSANNE VAN DER MERWE N.O. (in her capacity as sole remaining trustee of the Merwede Trust (IT1534/98)	11 th Respondent
PHILEMON TATENDA MAWIRE N.O. (in his capacity as co-trustee of the insolvent estate of Carel Aron van der Merwe)	12 th Respondent
AGRI SOUTH AFRICA NPC	13 th Respondent
MASTER OF THE HIGH COURT, KIMBERLEY	14 th Respondent
MASTER OF THE HIGH COURT, CAPE TOWN	15 th Respondent
AFFECTED PARTIES OF PROJECT MULTIPLY (PTY) LTD AS PER LIST ANNEXED HERETO, MARKED "A"	16 th Respondent
AFFECTED PARTIES OF VELVETCREAM 15 (PTY) LTD AS PER LIST ANNEXED HERETO, MARKED "B"	17 th Respondent
AFFECTED PARTIES OF THE MERWEDE TRUST AS PER THE LIST ANNEXED HERETO, MARKED "C"	18 th Respondent
AFFECTED PARTIES OF CAREL ARON VAN DER MERWE AS PER LIST ANNEXED HERETO MARKED "D"	19 th Respondent

In re:

Case No: 963/2021

**THE LAND AND AGRICULTURAL DEVELOPMENT
BANK OF SOUTH AFRICA**

Applicant

and

JACQUES DU TOIT N.O. (in his erstwhile capacity as Business Rescue Practitioner of Project Multiply (Pty) Ltd (in provisional liquidation)	1 st Respondent
PROJECT MULTIPLY (PTY) LTD (in provisional Liquidation) (Reg No: 1993/005325/07)	2 nd Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)	3 rd Respondent
ALL AFFECTED PARTIES	4 th Respondent

AND in re:

Case No: 964/2021

In the matter between:

**THE LAND AND AGRICULTURAL DEVELOPMENT
BANK OF SOUTH AFRICA**

Applicant

and

JACQUES DU TOIT N.O. (in his erstwhile capacity as
Business Rescue Practitioner of Velvetcream 15 (Pty)
Ltd (in provisional liquidation)
(Reg No: 2005/033276/07)

1st Respondent

VELVETCREAM 15 (PTY) LTD
(in provisional liquidation)
(Reg No: 2005/033276/07)

2nd Respondent

**THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)**
ALL AFFECTED PARTIES

3rd Respondent

4th Respondent

AND in re:

Mahikeng Case No: M557/2021/27
Kimberley Case No: 2436/2021

**THE LAND AND AGRICULTURAL DEVELOPMENT
BANK OF SOUTH AFRICA**

Applicant

and

CAREL ARON VAN DER MERWE (SNR) N.O.
CATHARINE SUSANNA VAN DER MERWE N.O.
CAREL ARON VAN DER MERWE (JNR) N.O.
(in their capacities as co-trustees of the Merwede
Trust (IT 1534/98))

1st Respondent

2nd Respondent

3rd Respondent

JUDGMENT: REASONS

Mamosebo J

- [1] The first respondent, The Land and Agricultural Development Bank of South Africa, (the Land Bank) set down the applicants' main application and its counter application for hearing on 05 August 2022. The applicants filed a Rule 30 notice against both the Land Bank and the liquidators and trustees (the Fifth to Tenth and Twelfth Respondents) in which it contended that:

- 1.1 There was no basis in setting the matter down on an urgent basis;
 - 1.2 It was a premature set-down and adjudication;
 - 1.3 It was legally incompetent to vary the orders of court granted by Mamosebo J on 10 May 2022 under case numbers 758/2021; 963/2021; 964/2021 and 2436/2021; and
 - 1.4 The *mala fides* of Land Bank.
- [2] I did not determine the applicants' main application but I heard and dismissed the Rule 30 applications. Prior to handing down my judgment on 15 August 2022, I invited the parties' local attorneys to approach the office of the Registrar for an available date when these matters would be heard and to agree on a schedule for the filing the outstanding affidavits and heads of argument. I had determined that the matters were semi-urgent and gave instructions that they be expedited for hearing before the return date of 11 October 2022 already allocated for the hearing of the liquidation application.
- [3] The parties agreed to the truncated time periods for the filing of further papers and for the applications to be heard on 08 September 2022.
- [4] In the notice of motion dated 22 August 2022, the applicants sought the following relief:
- “1. That the Applicants' main application, issued under case number 1094/2022, be postponed and heard on 14, 15, and 16 September 2022 or such later date as this honourable court might deem appropriate;
 2. That the First Respondent's counter application and the Fifth to Tenth and Twelfth Respondents' conditional counter

application, issued under the aforementioned case number, be postponed for hearing with the main application on 14, 15 and 16 September 2022 or such later date as this honourable court might deem appropriate;

3. *That any party opposing this application pay the costs thereof, on attorney client scale, inclusive of the costs of two counsel where employed."*

[5] Mr Van Niekerk SC, counsel for the applicants, sought the postponement on the following basis. The lead counsel, Mr Van Niekerk, and his junior, Mr De Vries are not available on 08 September 2022 to argue the application. The applicants will be unable to brief other counsel to appear as Mr van Niekerk had already spent 39.5 hours perusing the papers in preparation of the hearing on 11 to 13 October 2022 and his fees amounted to R132,800.00 which would amount to wasteful expenditure. The papers already span in excess of 3000 pages. Should the application be dismissed it would mean that the applicants would be without proper legal representation. It is a constitutionally entrenched right of each litigant to have access to courts.

[6] The dates of 14, 15 and 16 September 2022 were not allocated by the office of the Registrar and, as Mr van Niekerk put it, were a mere suggestion by the applicants. Prior to confirmation of the date of 08 September 2022, the attorneys were also made aware that I was allocated other matters on 14 and 15 September but my diary was open on 16 of September 2022 and I was willing to hear the matter on that day. As already alluded to, the date of 08 September 2022 was agreed to between the parties without any demur.

[7] On 02 September 2022 I refused to grant the application for the postponement to the dates suggested by the applicants. What follows are my reasons. A postponement is an indulgence granted by the court. The Constitutional Court in *Lekolwane v Minister of*

Justice and Constitutional Development 2007 (3) BCLR 280 (CC) at para 17 made the following insightful remarks:

“[17] *The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted, unless this Court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this Court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest. All these factors, to the extent appropriate, together with the prospects of success on the merits of the matter, will be weighed by the court to determine whether it is in the interests of justice to grant the application.*”

[8] The applicants are seeking an indulgence but they did not even tender costs. I am of the view that the respondents stand to suffer greater prejudice if the matter is postponed to a later date which cannot be fairly compensated by a cost order. The alleged lack of cooperation by Mr Van der Merwe, who is already sequestered and the business rescue practitioner, Mr du Toit; the request for the extension of powers by the liquidators/ trustees; the alleged dissipation of assets, and more importantly that there is livestock that requires care are amongst the factors which necessitate the urgent hearing of the application. I have taken into consideration all the relevant legal principles applicable to applications for postponement as outlined by Mahomed AJA in *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (Nm).

[9] In addition, with regard to the availability of counsel, in *Duncan v Roets* 1949 (1) SA 226 (T) counsel who was briefed by the respondent was unable to appear on the date allocated for

argument and applied for a postponement. The Court held that counsel must make themselves available for the dates assigned or else surrender their briefs. This, in my view, is a sensible approach considering the urgency of this matter.

[10] In refusing to grant the applicants postponement, I was of the view that they had not made out a case for that indulgence. It is for the above reasons that that application was refused.

**M.C. MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

For the 1st and 2nd applicants:
Instructed by:

Adv. JG van Niekerk SC
Johan Victor Attorneys
c/o Engelsman, Magabane Inc.

For the 1st respondent:
Instructed by:

Adv. S. Tsangarakis
Strydom & Bredenkamp Inc
c/o Van de Wall Inc.

For the 2nd respondent:
Instructed by:

Adv. W Coetzee SC
Office of the State Attorney

For the 3rd respondent:

Abiding

For the 5th-10th & 12th respondents:
Instructed by:

Adv. R van Schalkwyk
JI Van Niekerk Attorneys
c/o Majiedt Swart Inc