



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
**JUDGMENT**

**Not reportable**

**Case No: 1007/2020**

In the matter between:

**IMOBRITE (PTY) LTD**

**APPELLANT**

and

**DTL BOERDERY CC**

**RESPONDENT**

**Neutral Citation:** *Imobrite (Pty) Ltd v DTL Boerdery CC (1007/20) [2022] ZASCA 67 (May 2022)*

**Coram:** VAN DER MERWE, MOLEMELA, MAKGOKA and CARELSE JJA and MUSI AJA

**Heard:** 04 March 2022

**Delivered:** 13 May 2022.

**Summary:** Close corporation - winding-up – proper interpretation of s 69 of Close Corporation Act 69 of 1984 - whether application for winding-up brought by secured creditor constituted abuse of court's processes – unpaid creditor generally entitled to

winding-up *ex debito justitiae* against corporation unable to pay its debts – discretion to nevertheless refuse winding-up order – whether discretion not to grant the winding-up order was properly exercised – appeal upheld.

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## ORDER

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**On appeal from:** The North West Division of the High Court, Mahikeng (Nobanda AJ sitting as court of first instance):

The following order is therefore granted:

1. The appeal is upheld.
2. The order of the high court is set aside and replaced with the following:
  - ‘(a) The respondent close corporation, DTL Boerdery CC, is placed under a provisional order of winding-up in the hands of the Master of the North West Division of the High Court, Mahikeng (high court).
  - (b) A rule nisi is issued calling upon the respondent and all interested parties to show cause, if any, to the high court within six weeks of the date of issuance of this order, as to why:
    - (i) the respondent should not be placed under a final order of winding-up; and
    - (ii) the costs of this application should not be costs in the winding-up of the respondent.
  - (c) Service of this order shall be effected:
    - (i) by the sheriff of the high court or his lawful deputy on the registered office of the respondent;
    - (ii) on the South African Revenue Services;
    - (iii) by publication in one edition each of the Sunday Times and a newspaper circulating in the area where the respondent carries on business and in the Government Gazette;
    - (iv) by registered post on all known creditors of the respondent with claims in excess of R25 000;
    - (v) on the employees of the respondent in terms of s 346A(1)(b) of the Companies Act 61 of 1973; and
    - (vi) on any registered trade union that the employees of the respondent may belong to.
  - (c) Costs to be costs in the winding-up.’

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## JUDGMENT

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**Molemela JA (Van der Merwe, Makgoka, Carelse JJA and Musi AJA concurring):**

**Introduction**

[1] Central in this appeal is the question of whether the North West Division of the High Court, Mahikeng, correctly refused the appellant's application for the winding-up of the respondent close corporation.

**Background**

[2] The appellant, a private company, agreed to lend an amount of R2 750 000 to the respondent, a close corporation, and the respondent's sole member, Mr Tielman Kotze (Mr Kotze). This agreement was recorded in an acknowledgement of debt (AOD) signed on 15 May 2018. The AOD inter alia acknowledged that the respondent and Mr Kotze had procured a loan from the appellant for the capital amount of R2 750 000 and that they would repay the capital plus interest thereon in ten yearly instalments of R791 495.95. In addition to interest, the respondent and Mr Kotze also agreed to pay a 'facilitation fee' to the appellant. It was agreed that the first instalment would be payable on or before 7 May 2019 and thereafter on or before 7 May of each consecutive year. The AOD also stipulated that in the event that the debtor remained in default 10 days after receiving notice to repair the breach, then the appellant, as the creditor, would be entitled to exercise any remedy at its disposal in terms of the law, including to cancel the agreement and retain all payments already made.

[3] It is common cause that the appellant was a secured creditor of the respondent and held a special and general notarial bond over the respondent's movable assets for an amount of R2 750 000, together with an additional amount of R540 000 in respect of costs. In addition, a first ranking covering mortgage bond had been registered in favour of the appellant over the respondent's farm.

[4] It is also common cause that the respondent failed to pay the first instalment by the due date, namely 7 May 2019. As a result, the appellant delivered a letter of demand to the respondent. On 20 May 2019, the appellant sent a letter to the respondent, drawing its attention to its failure to pay the first instalment in

accordance with the AOD. In its response dated 3 June 2019, the respondent called for a statement of account and intimated that upon receipt thereof, the respondent and Mr Kotze would proceed to apply for alternative funding from a third party in order to liquidate their indebtedness. In the same response, the respondent disputed the date from which interest was payable and queried the facility fee computation.

[5] On 21 June 2019, the appellant issued a statutory demand as contemplated in s 69 of the Close Corporations Act, 69 of 1984. The Sheriff properly served the demand. On 5 August 2019, the attorneys for the respondent sent a letter to the appellant's attorney, referring to previous correspondence and recording that it was disputing any indebtedness to the appellant. It was also contended that the provisions of the National Credit Act 34 of 2005 (the NCA) were applicable, but that the appellant had failed to comply with its requirements. Lastly, the letter stated that any application seeking the winding-up of the respondent would be opposed.

[6] It is against the aforesaid background facts that the appellant, on 13 September 2019, launched an application for the winding-up of the respondent in the North West Division of the High Court, Mahikeng (the high court) on the basis that DTL was unable to pay its debts. In the answering affidavit, the respondent raised a number of defences. However, not all of the defences raised persisted when the application came before the high court. Two points *in limine* were raised. The first point *in limine* was that the respondent disputed that it alone was a debtor of the appellant and, on that basis, contended that the appellant had no *locus standi* to bring the winding-up proceedings against it individually. The argument was raised that the debtor, as described in the acknowledgement of debt, referred not only to the respondent but to both the respondent and Mr Kotze. On this basis, it was contended that the acknowledgement of debt had created a special *sui generis* kind of debtor which can only be held jointly liable and as the appellant had not joined Mr Kotze, the appellant was not entitled to pursue the proceedings against the respondent. The second point *in limine* was to the effect that the acknowledgement of debt was a written record of a loan agreement where the appellant had granted credit recklessly and in violation of the relevant provisions of the NCA).

[7] Substantively, the respondent persisted with the defence that the appellant was abusing the winding-up proceedings in order to enforce a debt for which the appellant enjoyed adequate security. The high court rejected the points *in limine*. Relying on its interpretation of the provisions of s 69(1)(a) of the Close Corporations Act, it found that the appellant's application for the respondent's winding-up constituted an abuse of the court's processes. Therefore, the high court dismissed the application with costs, notwithstanding that all the requirements for a winding-up order had been complied with.

[8] Aggrieved by that decision, the appellant sought the high court's leave to appeal its order and was granted leave to appeal to this Court. Before this Court, the respondent applied for the late filing of its heads of argument to be condoned. The appellant did not oppose that application. At the commencement of the appeal hearing, the application for condonation was granted on the basis that the respondent had made out a proper case, warranting that the delay in filing the heads of argument be condoned. The issues raised as points in limine which the high court dismissed need not detain us, as they were no longer pursued before us. I turn now to the legal principles applicable to the merits of this appeal.

### **Applicable Legal Position**

[9] The winding-up of a Close Corporation is regulated by s 66 of the Close Corporations Act 69 of 1984 (Close Corporations Act) as amended. The applicability of the Companies Act 61 of 1973 to the winding up of close corporations is set out as follows in s 66 of the Close Corporations Act:

'(1) The laws mentioned or contemplated in item 9 of Schedule 5 of the Companies Act, read with the changes required by the context, apply to the liquidation of a corporation in respect of any matter not specifically provided for in this Part or in any other provision of this Act.'<sup>1</sup>

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<sup>1</sup> The Companies Act referred to in this part is the Companies Act 71 of 2008 (the 2008 Companies Act). Schedule 5 of the 2008 Companies Act deals with 'transitional arrangements'. The relevant subitems of item 9 of schedule 5 provide that:

'(1) Despite the repeal of the previous Act, until the date determined in terms of subitem (4), Chapter 14 of that Act continues to apply with respect to the winding-up and liquidation of companies under this Act, as if that Act had not been repealed subject to subitems (2) and (3).

(2) Despite subitem (1), sections 343, 344, 346 and 348 to 353 do not apply to the winding-up of a solvent company, except to the extent necessary to give full effect to the provisions of Part G of

Notably, s 66 (2) of the Close Corporations Act provides that for the purposes of subsection (1), any reference in a relevant provision of the Companies Act, and in any provision of the Insolvency Act 24 of 1936, made applicable by any such provision to a company, shall be construed as a reference to a corporation.

[10] Section 69(1) of the Close Corporations Act provides that for the purposes of s 68(c), a corporation shall be deemed to be unable to pay its debts, if-

‘(a) a creditor, by cession or otherwise, to whom the corporation is indebted in a sum of not less than two hundred rand then due has served on the corporation, by delivering it at its registered office, a demand requiring the corporation to pay the sum so due, and the corporation has for 21 days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) any process issued on a judgment, decree or order of any court in favour of a creditor of the corporation is returned by a sheriff, or a messenger of a magistrate's court, with an endorsement that he or she has not found sufficient disposable property to satisfy the judgment, decree or order, or that any disposable property found did not upon sale satisfy such process; or

(c) it is proved to the satisfaction of the Court that the corporation is unable to pay its debts.

(2) In determining for the purposes of subsection (1) whether a corporation is unable to pay its debts, the Court shall also take into account the contingent and prospective liabilities of the corporation.’

[11] The requirements set out in s 69 need not be met cumulatively, as the conjunction ‘or’ is used after paragraphs (a), (b), and (c) of subsection (1). In this matter, it is common cause that in order to establish the requirement that the respondent is unable to pay its debts, the appellant relied upon the respondent’s inability to pay an undisputed debt within the statutorily allowed period of 21 days after receiving the statutory demand. For this, the appellant relied upon the deeming

Chapter 2.

(3) If there is a conflict between a provision of the previous Act that continues to apply in terms of subitem (1), and a provision of Part G of Chapter 2 of this Act with respect to a solvent company, the provision of this Act prevails.’ (Emphasis added.) No date has been determined to affect the interim or transitional operation of item 9 of schedule 5. Chapter 14 of the old Act therefore continues to apply. Section 345 of the old Act falls within chapter 14 of the old Act and, accordingly, in terms of subitem 9(1) of schedule 5 in new Act. Section 345 continues to apply with respect to the winding-up and liquidation of companies as if the old Act had not been repealed. Subitem 9(1) is nevertheless subject to subitems 9(2) and (3). Subitem 9(2) excludes, however, s 344 of the old Act from the winding-up of solvent companies.’

provision contained in s 69(1)(a) of the Close Corporations Act. The appellant's application was also premised on s 69(1)(c) of the Close Corporation.

[12] Section 344 of the Companies Act 61 of 1973 (the 1973 Companies Act) is the source of authority that vests a court with the power to liquidate a company.<sup>2</sup> The relevant part of s 344 provides as follows:

'The court may grant or dismiss any application under section 346, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other order it may deem just . . . '.

### **Interpretation of s 69 of Close Corporation Act**

[13] The language in s 69(1)(a) of the Close Corporations Act is clear and unequivocal. On a plain reading of that provision and noting the usage of the word 'thereafter', it is evident that a creditor will be entitled to rely upon the deeming provision if, the close corporation has for 21 days after the demand has been made as contemplated in the section, neglected to either pay the sum due to the creditor, or to secure or compound for it to the reasonable satisfaction of the creditor. 'Secure' within the context of that section means that the close corporation must provide security or additional security which is to the creditor's satisfaction within 21 days after the statutory demand. To interpret the section as meaning that the deeming provision will not apply if, prior to the demand, the creditor already had sufficient security to cover the debt would be to strain the clear language of the section. It would mean that many creditors, such as financial institutions that regularly procure security to secure debts, would hardly be able to rely upon the deeming provision, and thus, the winding-up process would never be available to them. That meaning would simply lead to insensible or unbusinesslike results.<sup>3</sup> The high court's interpretation of s 69 (1) was plainly wrong, and the concession by the respondent's counsel on that aspect was therefore rightly made. It is now convenient to consider whether the appellant's application for winding-up constituted an abuse of the court process.

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<sup>2</sup> See *Ex Parte Muller NO: In Re P L Myburgh (EDMS) Bpk* [1979] 3 All SA 721 (N); 1979 (2) SA 339(N) at 340.

<sup>3</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA); [2012] ZASCA 13 (SCA); 2012 (4) SA 593 (SCA) para 18-23.



### **Was there an abuse of court processes?**

[14] It is trite that, by their very nature, winding-up proceedings are not designed to resolve disputes pertaining to the existence or non-existence of a debts. Thus, winding-up proceedings ought not to be resorted to enforce a debt that is bona fide (genuinely) disputed on reasonable grounds. That approach is part of the broader principle that the court's processes should not be abused.

[15] A winding-up order will not be granted where the sole or predominant motive or purpose of seeking the winding-up order is something other than the bona fide bringing about of the company's liquidation.<sup>4</sup> It would also constitute an abuse of process if there is an attempt to enforce payment of a debt which is bona fide disputed, or where the motive is to oppress or defraud the company or frustrate its rights.<sup>5</sup>

[16] In this matter, it can hardly be disputed that the respondent had no valid defence against the appellant's claim. First, not a single instalment had been paid in repayment of the debt. Second, the indebtedness in respect of the capital amount was not disputed at any stage; instead, the respondent's claim that the debt was incorrectly calculated was based on the alleged miscalculation of interest and the facility fee. Notably, despite remaining in default beyond the 21-day period stipulated in the statutory demand, the respondent failed to tender to pay what is considered to be the correct amount, nor did it make any suggestions regarding how to discharge its indebtedness, save to mention that it and Mr Kotze would obtain alternative financing once the amount of the debt had been corrected. Under these circumstances, there can be no merit in the suggestion that the appellant was attempting to enforce payment of a debt which was bona fide disputed. That being the case, it cannot be accepted that the appellant's application was predicated on any reason other than the bona fide bringing of winding-up proceedings. Therefore, the respondent has not shown that the winding-up proceedings constituted an abuse of the court's process. Counsel for the respondent's concession on this aspect was therefore correctly made.

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<sup>4</sup> See *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T). That principle has been so entrenched in our law that it has become known as 'the Badenhorst rule'.

<sup>5</sup> *Henocheberg on the Companies Act* Issue 23 at 694.

[17] In the written heads of argument, it was contended on behalf of the respondent contended that a creditor cannot utilise the liquidation process to claim a debt due by the debtor to one single creditor. Before us, counsel for the respondent seemed to suggest that the reason why a winding-up order cannot be granted where there was a single creditor was because a *concursum creditorum* could not be established. However, he conceded, correctly in my view, that the authorities to which we were referred in the written heads of argument do not support that proposition.<sup>6</sup> Therefore, there is no need for this aspect to detain us. It suffices merely to reaffirm that the concept of *concursum creditorum* (which refers to the establishment of a 'body of creditors' for purposes of distributing the estate among creditors) is not a prerequisite for the granting of a winding-up order but rather a consequence of the winding-up order by operation of law.<sup>7</sup>

#### **The exercise of the discretion to grant a winding-up order**

[18] Having conceded before us that the high court's interpretation of s 69 was wrong and that the appellant's application did not constitute an abuse of the court's processes, counsel for the respondent had another string to the respondent's bow; he urged this Court to accept that the discretion to refuse the winding-up order (notwithstanding the appellant's compliance with all the formalities prescribed in s 69(1) of the Close Corporations Act) was properly exercised. This was because the appellant had a mortgage over the respondent's fixed property, and the special notarial bond secured over movable property. It was therefore contended that the properties in question may, upon execution, yield more than the value of the claim.

[19] It is well-established that the two types of discretion exercised by courts are often referred to as a discretion in the strict/narrow/true sense and a discretion in the

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<sup>6</sup> In the written heads of argument, we were referred to two judgments of this Court, namely, *Collett v Priest* 1931 AD 290 at 299 and *Body Corporate of Empire Gardens v Sithole and Another* [2017] ZASCA 28; 2017 (4) SA 161 (SCA), as authorities for the proposition that 'the liquidation process cannot be fittingly described as a mechanism to be utilised by a creditor to claim a debt due by the debtor to one single creditor'.

<sup>7</sup> *Walker v Syfret NO* 1911 AD 141 at 160. See also s 347 (14) of the Companies Act 61 of 1973.

broad/wide/loose sense.<sup>8</sup> In the context of an application for business rescue, this Court in *Oakdene Square Properties v Farm Bothasfontein (Oakdene)*,<sup>9</sup> observed that the term 'discretion' is sometimes used in the loose sense to indicate no more than the application of a value judgment. Furthermore, this Court in *Oakdene* explained that where the 'discretion' exercised by the lower court was one in the loose sense of a value judgment, the limitation imposed on the authority of the court of appeal to interfere does not apply. Moreover, it pointed out that 'in that event the court of appeal is both entitled, and in fact duty-bound, to interfere if it would have come to a different conclusion.'

[20] In *Afgri Operations Limited v Hamba Fleet (Pty) Ltd*,<sup>10</sup> this Court reaffirmed that an unpaid creditor has a right, *ex debito justitiae*, to a winding-up order against a company that has not discharged its debt.<sup>11</sup> Notably, it also reaffirmed the trite principle that the refusal of a winding-up order under such circumstances entails the exercise of a narrow discretion.<sup>12</sup> The following observations in *Boschpoort Ondernemings (Pty) Ltd v Absa Bank Limited*<sup>13</sup> appositely illustrate that the mere fact that there may be more value than the claim is not, without more, sufficient to sway a court towards exercising the discretion in favour of a debtor:

'[17] That a company's commercial insolvency is a ground that will justify an order for its liquidation has been a reality of law which has served us well through the passage of time. The reasons are not hard to find: the valuation of assets, other than cash, is a notoriously elastic and often highly subjective one; the liquidity of assets is often more viscous than recalcitrant debtors would have a court believe; more often than not, creditors do not have knowledge of the assets of a company that owes them money - and cannot be expected to have; and courts are more comfortable with readily determinable and objective tests such as

<sup>8</sup> *Trencon Construction Pty Ltd v Independent Development Corporation and Others* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 82 footnote 65.

<sup>9</sup> *Oakdene Square Properties v Farm Bothasfontein (Kyalami)* [2013] ZASCA 68; 2013 (4) SA 539; [2013] 3 All SA 303 (SCA) para 18.

<sup>10</sup> *Afgri Operations Limited v Hamba Fleet (Pty) Ltd* [2017] ZASCA 24; 2022 (1) SA 91 (SCA) para 12. See also *De Waard v Andrew and Thienhaus Ltd* 1907 TS 727 at 733 and *Service Trade Supplies Ltd v Dasco and Sons Ltd* 1962 (3) SA 424 (T) at 428B-D to which reference was made, with approval, by this court in *Sammel and others v President Brand Gold Mining Company Ltd* 1969 (3) SA 629 (A) at 662F.

<sup>11</sup> See *Dippenaar NO and Others v Business Venture Investments NO 134 (Pty) Ltd and Another* [2014] ZAWCHC 7; [2014] 2 All SA 162 (WCC), where it was held that the *ex debito justitiae* maxim conveys no more than that, once a creditor has satisfied the requirements for a liquidation order, the court may not on a whim decline the order.

<sup>12</sup> *Afgri Operations Limited v Hamba Fleet (Pty) Ltd* [2017] ZASCA 24; 2022 (1) SA 91 (SCA) para 12-13.

<sup>13</sup> *Boschpoort Ondernemings (Pty) Ltd v Absa Bank Limited* [2013] ZASCA 173; [2014] 1 All SA 507 (SCA); 2014 (2) SA 518 (SCA).

whether a company is able to meet its current liabilities than with abstruse economic exercises as to the valuation of a company's assets.<sup>14</sup> (Footnote omitted).

[21] In summing up, it bears emphasising that the exercise of discretion in favour of not granting a liquidation order must be based on a solid factual foundation. As mentioned in the foregoing paragraphs, that factual foundation is missing from the facts presented by the respondent in the answering affidavit. In the face of a compelling case made by the appellant for granting a winding-up order, the respondent did not raise a *bona fide* defence to the claim. Instead, it relied on untenable technical defences. These were rightly rejected by the high court.

[22] It is well-established that an appellate court may interfere with the exercise of a discretion in the true sense by a court of the first instance only if it can be demonstrated that the latter court exercised its discretion capriciously or on a wrong principle, or has not brought an unbiased judgment to bear on the question under consideration, 'or has not acted for substantial reasons'.<sup>15</sup>

[23] The impression that I get from the whole tenor of the high court's judgment is that it accepted that there was no dispute regarding the respondent's indebtedness but made much of the fact that the appellant held securities in the full amount of the principal debt, which prompted it to exercise the residual discretion not to grant the winding up order.<sup>16</sup> I am also of the view that the high court's wrong interpretation of the concept 'secured debt' in s 69(1)(a) fettered its exercise of the residual discretion whether or not to grant a winding-up order; the result is that it exercised its discretion on the basis of wrong principles. In the absence of facts supporting the exercise of a discretion in favour of the respondent, there was no justification for the high court refusing to grant the winding-up order. Therefore, this Court is, at large to interfere with the discretion exercised by the high court. For the reasons canvassed in paragraphs 20 and 21 above, the proper exercise of discretion ought to be in favour

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<sup>14</sup> Ibid para 17-18.

<sup>15</sup> *Trencon Construction Pty (Ltd) v Industrial Development Corporation of South Africa Limited and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 88-89; *Hotz and Others v University of Cape Town* [2017] ZACC 10; 2017 (7) BCLR 815 (CC); 2018 (1) SA 369 (CC) para 28.

<sup>16</sup> This is evident from paras 20-24 of the high court's judgment.

of granting the winding-up order sought by the appellant. It follows that the appeal ought to succeed.

[24] The affidavits show that the appellant has established an incontestable prima facie case for granting a winding-up order,<sup>17</sup> and therefore a right to a provisional order. Given the trite principle that it is well within the powers of the court to grant a final order of liquidation instead of a provisional order,<sup>18</sup> the next question for consideration is whether the winding-up order substituting the order of the high court should be provisional or final. Generally, it is a well-established practice that a provisional order of liquidation should issue. The purpose of the practice is to afford interested parties, especially creditors, an opportunity to support or oppose a final liquidation. There is no reason to depart from the general practice in this case. The respondent's business is a farming enterprise. It may very well have other creditors than the appellant. Some new developments might have occurred since the refusal of the winding-up application. New employees oblivious of this litigation may have been employed in the intervening time between the handing down of the judgment of the high court and the finalisation of this appeal. It is therefore not inconceivable that further relevant facts might be forthcoming if a rule *nisi* is issued. Thus, a provisional order will best serve the interests of justice in this matter.

[25] The following order is therefore granted:

1. The appeal is upheld.
2. The order of the high court is set aside and replaced with the following:
  - (a) The respondent close corporation, DTL Boerdery CC, is placed under a provisional order of winding-up in the hands of the Master of the North West Division of the High Court, Mahikeng (high court).
  - (b) A rule nisi is issued calling upon the respondent and all interested parties to show cause, if any, to the high court within six weeks of the date of issuance of this order, as to why:
    - (i) the respondent should not be placed under a final order of winding-up; and
    - (ii) the costs of this application should not be costs in the winding-up of the respondent.

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<sup>17</sup> *Afgri Operations Limited v Hamba Fleet (Pty) Ltd* [2017] ZASCA 24 para 9.

<sup>18</sup> *Johnson v Hirotec (Pty) Ltd* 2000 (4) SA 930 (SCA) para 9; *Afgri Operations Limited v Hamba Fleet (Pty) Ltd* [2017] ZASCA 24; 2022 (1) SA 91 (SCA) para 19.

- (c) Service of this order shall be effected:
- (i) by the sheriff of the high court or his lawful deputy on the registered office of the respondent;
  - (ii) on the South African Revenue Services;
  - (iii) by publication in one edition each of the Sunday Times and a newspaper circulating in the area where the respondent carries on business and in the Government Gazette;
  - (iv) by registered post on all known creditors of the respondent with claims in excess of R25 000;
  - (v) on the employees of the respondent in terms of s 346A(1)(b) of the Companies Act 61 of 1973; and
  - (vi) on any registered trade union that the employees of the respondent may belong to.
- (c) Costs to be costs in the winding-up.'

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M B Molemela  
Judge of Appeal

## Appearances:

For appellant: Adv MP van der Merwe SC

Instructed by: Leahy Attorneys, Pretoria  
McIntyre van der Post, Bloemfontein

For respondent: Adv S Grobler SC

Instructed by: Kotze Low & Swanepoel, Vryburgh  
Dippenaar & Crous Attorneys, Bloemfontein