




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case no:56025/20

(1)	REPORTABLE: NO/ YES
(2)	OF INTEREST TO OTHER JUDGES: NO/ YES
(3)	REVISED. NO/ YES
<u>16</u> FEBRUARY 2022	
DATE	SIGNATURE

In the matter between:

THE LAND AND AGRICULTURAL DEVELOPMENT

BANK OF SOUTH AFRICA

Applicant

And

WINSBESLIS VYF (PTY) LTD

Respondent

Registration number:1999/001982/07

JUDGMENT

MAKHOBA J

1. The applicant is the Land and Agricultural Development Bank of South Africa. The respondent is a company (Winsbeslis Vyf (Pty) Ltd) which is involved in farming and or farming products. The applicant concluded various loan agreements with the respondent.
2. The applicant seeks an order for the final winding-up of the respondent on the basis that the respondent is unable to pay its debts in terms of section 344 (f) read with the provisions of section 345 (1) (a) and 345 (1) (c), of the Companies Act 61 of 1973. The applicant further seeks that it be just and equitable that an order for the final winding up of the respondent be granted as intended in section 344 (h) of the Companies Act of 1973.
3. The respondent previously applied for a postponement of this liquidation application pending the outcome of a related application and three other related liquidation applications in the Northern Cape Division, for the purpose of consolidating all of the aforesaid liquidation application in the Northern Cape Division.
4. This transfer application to the Northern Cape Division is still pending for the reason that the applicant filed a notice of intention to oppose and has not withdrawn its opposition or filed an answering affidavit.
5. The following is common cause:
 - 5.1 That there are various agreements concluded between the applicant and the respondent. Financial assistance was rendered by the applicant to the respondent for agricultural purposes.

5.2 That the respondent failed to make payment in terms of the section 345 demand.

6. Issues in dispute:

6.1 Annexure “LAN 1” which according to the respondent gives authority to the applicants attorney. One of the two signatories must be landbank’s executive manager of legal services and the other must be a legal advisor. Annexure “LAN 1” is a copy of an unsigned version of a delegation, of which the printing demonstrates that it required signature in July 2020. The respondent therefore disputes the authority of the applicant’s attorney, including the status of and compliance with the written authority relied upon in annexure “LAN 1”.

6.2 That the founding affidavit is not properly commissioned, rendering the application defective.

6.3 That the winding-up order would not be just and equitable in the circumstances.

7. In my view it is clear from the founding affidavit¹ that the respondent owes money to the applicant as it also approached the applicant’s attorneys to restructure its payment obligations as a result of its inability to make payment. Therefore, there is no doubt that the applicant is entitled to launch the present application.

¹ Vide Caselines 1-30 to 1-38

8. There is no plausible explanation why the respondent failed to pay its debts especially towards the applicant². Again in my view the respondent is unable to pay its debts and it has no liquid assets or readily realisable assets to meet its liabilities.³
9. The attorneys for the applicant entered into negotiations with the respondent and they relied on the authority granted to them by the applicant as per the letter dated 17 November 2016⁴. Therefore, there is no merit in the respondent's assertion that the applicant's attorneys had no authority to represent the applicant.
10. The attestation clause in the founding affidavit refers to "he/she" the pronoun. The pronoun "she" is not crossed out or deleted, for that reason the respondent submits that the founding affidavits is not properly commissioned thus rendering the application defective. In this regard the respondent relies on the decision in *Absa Bank v Botha*⁵.
11. In my view the decision in *Absa Bank v Botha*⁶ is distinguishable to the decision in *Malan v Minister of Police NO and Others*⁷ where the court held that reference to the pronouns "he/she" in the attestation clause was of no consequence if it is apparent from the affidavit and the context that the deponent was a male, and that it was logical to conclude that the pronoun "he" should be read into it.

² *Kalk Bay Fisheries Ltd vs United Restaurants Ltd* 1905 TH22. See also *Absa Bank Ltd vs Rheebooskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C) at page 440 paragraph F and *Murray NO and Others vs African Global Holdings (Pty) Ltd and Others* 2020 (2) SA 93 (SCA) at paragraph 31

³ *Ganes and Another vs Telecom Namibia Ltd*, 2004 (3) SA 615 (SCA) at paragraph

⁴ Vide caselines 008-4

⁵ 2013 (5) SA 563 (GNP) at paragraph 10

⁶ *Supra*

⁷ 2019 (2) SACR 469 (GJ) at paragraph 43 and 44

12. I, agree within the remarks by the Judge in the decision *in Malan vs Minister of Police NO and Others* ⁸ that what is important in the affidavit is the contents thereof rather than failure to delete one of the pronouns namely “she/he” of course it depends on the nature of the matter.

13. In my view the defence of the respondent that the founding affidavit is not properly commissioned must fail.

14. The other defences raised by the respondent namely:

14.1 Failure by the applicant to annex relevant agreements.

14.2 Incorrect rates charged.

14.3 Failure to annex the certificate of balance/incorrectness of the certificates of balance.

The above defences have no merit and do not influence the outcome of the whole case.

15. Pertaining to whether winding up order would not be just and equitable in the circumstances, the respondent must convince the court that it has liquid assets already realisable assets out of which the applicants claim can be paid ⁹. However, in the matter before me the respondent failed to provide grounds that the applicant’s debts and the respondent’s other creditors debts will be paid if a liquidation order is not granted, as required.

⁸ Supra

⁹ BP Southern Africa (Pty) Ltd vs Interfrans Oil SA (Pty) Ltd and Others 2017 (4) SA 592 (GJ) at paragraph 18 see also Rosenbach 1962 and Co (Pty) Ltd vs Singh’s Bazaar (Pty) Ltd 1962 (4) SA 593 (D) at 597 E-F.

16. The court is satisfied that a proper case has been made out for an order for the respondent's provisional liquidation.

17. I make the following order

17.1 That an order for the provisional winding up of the Respondent is granted in terms of the provisions of Section 344(f) and Section 344(h) of the Companies Act, 61 of 1973, as amended, and read with the Companies Act, 71 of 2008;

17.2 That a *Rule Nisi* is issued, calling upon all persons concerned to appear and show cause, if any, to this Court on the **25 day of April 2022** why the Respondent should not be finally wound up.

17.3 That the order shall be served forthwith on the Respondent at the Respondent's registered address and a copy of this order shall be published once in the Government Gazette and once in the Citizen newspaper; and Bleed newspaper

17.4 Costs of this application be costs in the liquidation.



D MAKHOB

JUDGE OF THE GAUTENG DIVISION PRETORIA

APPEARANCES:

For the applicant: Advocate AJ Wessels

Instructed by: Van Greunen & Associates Inc.

For the respondent: Advocate JP Coetzee SC

Instructed by: Olivier Attorneys

Date heard: 24 January 2022

Date of Judgment: 16 February 2022