




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

CASE NO: 5473/2017

Delete whichever is not applicable	
(1) Reportable: No.	
(2) Of interest to other judges: No.	
(3) Revised.	
06 July 2022 _____ Date	 _____ Signature

In the matter of:

Bothomley, Peter Charles N.O.

First Applicant

Ganie Salim Ismail N.O.

Second Applicant

Van Wyk, Ethne Mary N.O.

Third Applicant

Montic Dairy (Pty) Ltd (In liquidation)
(Registration Number: 1949/035587/07)

Fourth Applicant

And

Emontic Investments (Pty) Ltd
(Registration Number 1992/005240/07)

First respondent

This Judgment has been electronically delivered and shall be circulated to the parties by way of email. Its date and time of delivery shall be deemed to be 06 July 2022.

JUDGMENT

Munzhelele J

Introduction

[1] This is an application for payment of money due to the liquidators of the fourth applicant, Montic Dairy (Pty) Ltd, a company in liquidation (Montic Dairy) following the sale in execution of its assets by the second respondent. The first, second and third applicants are the liquidators of Montic Dairy. They brought this application to recover the proceeds of the sale of the fourth applicant's movable properties, which the first respondent claims that it is entitled to because of the post-liquidation rent.

[2] Alternatively, the applicants want the first respondent to be ordered to render a complete account, supported by vouchers as contemplated in section 85(5) of the Insolvency Act, 1936, read with section 339 of the Companies Act¹ and item 9(1) of Schedule 5 of the Companies Act², for the sale of the property of Montic Dairy by the first respondent on 8 November 2016. The applicants also want to debate the said account and payment to the applicants as contemplated in section 83(10) of the Insolvency Act³ read with section 339 of the Companies Act, 1973 and item 9(1) of Schedule 5 of the Companies Act, 2008, of whatever amount appears to be due to the applicants upon debate of the accounts. The

¹ 61 of 1973

² 71 of 2008

³ 24 of 1936

applicants also want to claim interest *tempore morae* and want this court to determine the effective date of such payment. The applicants also sought an order for the costs of the application.

[3] The Montic Dairy Pty Ltd is a private company incorporated in terms of the Company Laws of the Republic of South Africa with registration number 1949/035587/07, having its registered office at 42 Lebombo Street Ashley Gardens, Pretoria, Gauteng.

[4] The first respondent is a sister company and a creditor of Montic Dairy, as Montic Dairy was operating from the premises owned by the first respondent. The first respondent has a counter application against the applicants, which entails the following;

4.1. The applicants should be ordered to take any steps necessary to remove their remaining movables assets, records and books belonging to Montic Dairy Pty Ltd from the property known as Tamboekiesfontein within 15 calendar days from the date of the order.

4.2. The court should declare that the first respondent is entitled to administrative rental for the period between the date of Montic Dairy liquidation and the 30 November 2016.

4.3. The court should declare that the first respondent was entitled to deduct administrative rental from the proceeds generated by the auction of the movable assets belonging to Montic Dairy Pty Ltd following its invoices dated 2 November 2016.

[5] The Kopano Auctioneers Pty Ltd (Kopano) is the auctioneer engaged by the first respondent when they realised the movable properties of Montic Dairy in a public auction. It is also a private company incorporated in terms of the laws of the Republic of South Africa, with its registered office at 9 Spies Street, Annlin, Pretoria, Gauteng. No relief is sought against Kopano.

[6] The third respondent is the Master of the High Court, an official of this

honourable court to serve the public in respect of Deceased Estates, Liquidations (Insolvent Estates), Registration of Trusts, Tutors and Curators, as well as Administration of the Guardian's Fund (minors and mentally challenged persons). No relief was sought against the third respondent since it only acted as an agent for the first respondent in selling Montic Dairy's property pursuant to section 83(8) (d) of the Companies Act and by the Master's direction.

Background

[7] The applicants submit that they are entitled to the proceeds of the sale of Montic Dairy's movable properties, which are in the possession of the first respondent. The applicants sought to recover the net proceeds of the movable property realised by the first respondent. In delivering its answering affidavit, the first respondent also launched a counterclaim against the applicant. The first respondent alleged that after Montic Dairy was placed under business rescue proceedings, the first respondent concluded two separate agreements for the provision of post-commencement finance in accordance with section 135 of the Companies Act, 2008.

[8] Furthermore, the first respondent alleges that a pre-liquidation arrear rental is owed to the first respondent because Montic Dairy failed to pay the monthly rental for a substantial period. Therefore, the first respondent was entitled to rely on the security provided by common law tacit hypothec over the movable assets of Montic Dairy. Furthermore, the first respondent contends that there is an obligation on the liquidators "to ensure that all remaining movable assets, records and books belonging to Montic Dairy are removed from the immovable property of the first respondent".

[9] The facts of the case are taken from the pleadings of the applicants and the respondents. The events leading to the present litigation began with Montic Dairy's liquidation and being placed under a winding-up order by this honourable court on 14 June 2016. Prior to Montic Dairy's liquidation, the company conducted business as a dairy from the premises owned by the first respondent, farm Tamboekiesfontein. Wayne Dirk van Biljon ("Mr. van Biljon") and Karl Hans

Kerbert ("Mr. Kebert") were the directors of Montic Dairy, and they are also the directors of the first respondent. On 2 November 2015, Montic Dairy adopted a resolution to voluntarily enter into business rescue proceedings in terms of section 129 of the Companies Act, 2008 (the New Act).

[10] The business rescue was ultimately unsuccessful, and the business rescue practitioners accordingly applied to convert the business rescue proceedings into liquidation proceedings. The final order of liquidation was granted by this honourable Court on 14 June 2016. At the time of liquidation, Montic Dairy was substantially indebted to the first respondent due to failure to pay rent. The first respondent proved a pre-liquidation claim in terms of section 44 of the Insolvency Act, 36 of 1944 (the Insolvency Act) for an amount of R 5 674 536,19 (five million six hundred and seventy-four thousand five hundred and thirty-six rand and nineteen cents). Claims above R 112 000 000 (hundred and twelve million rand) were proved against Montic Dairy by the creditors.

[11] The applicants did not terminate the lease agreement after Montic Dairy was liquidated. The applicants eventually gave notice that the lease would terminate at the end of November 2017. The first respondent alleges that due to continued occupation of the leased premises, it was entitled to receive additional rental payments for the period after the effective date of liquidation. Prior to the second creditors' meeting, the first respondent gave notice in terms of section 83 of the Insolvency Act to the applicants and the Master of its intention to sell the movable assets over which security is held.

[12] The liquidators did not take over the property as contemplated in section 83(3). The first respondent then appointed the second respondent as its agent to sell the movable assets over which it held security in execution. The first respondent then elected to realize the property in a manner contemplated and, on the conditions mentioned in sections 83(3) and 83(8) of the Insolvency Act. On 25 October 2016, the first respondent's attorneys addressed a letter to the liquidators in which they advised, among other things, that the first respondent has engaged the services of the second respondent. Significantly, in the letter, the first respondent's attorneys advised as follows:

"My client entered into a written lease agreement with Montic Dairies (Pty) Limited and is an amount of [siic} R 5 674 536.19 outstanding in terms of the outstanding rental payable to the date of liquidation. My client is also owed administrative rental, which we will deal with separately for the period referred in the insolvency Act, post liquidation".

An auction was arranged for 8 November 2016 by Kopano.

[13] On 25 October 2016, the first respondent addressed a further letter wherein they advised of the details for the proposed auction and significantly advised that the author of the letter has advised both [his] client and the auctioneer about the provisions of section 83(10) of the Insolvency Act. The auction generated a VAT inclusive income reflected in the statements issued by the second respondent, which is R 5 970 438,00 (five million nine hundred and seventy thousand four hundred and thirty-eight rand). This amount was paid over to the first respondent by the second respondent. The first respondent then realized its security in section 83(8)(d) of the insolvency act.

[14] The liquidators requested the first respondent to pay over the proceeds of the liquidation and the first respondent refused to pay the net proceeds from the sale to the liquidators. Instead, the first respondent purported to account to the liquidators for the sale of the properties in terms of section 83(10) of the Insolvency Act. In a letter addressed to the liquidators from the first respondent's attorneys dated 30 November 2016 where it was stated that the first respondent:

(a)"Had applied set-off in terms of the admin rental" purportedly supported by invoices attached to the letter from the date of liquidation until 30 November 2016;

(b)Has also, as per the instructions of van Biljon, retained an additional amount regarding an entirely separate issue relating to Lucky Acres (Pty) Ltd;"

The first respondent's attorneys knew that they were not authorized to apply for the set-off unless the applicants consented to it. The first respondent then, therefore, requested the applicants to provide their instructions in this regard.

[15] On the same day, the first respondent paid an amount of R 2 420 000,05 (two million four hundred and twenty thousand rand and five cents) to the bank account of Montic Dairy. On 6 December 2016, the applicants' attorney replied to the letter of 30 November 2016 and advised the first respondent that the set-off was impermissible and that the applicants did not consent to it. They further advised the first respondent that it was unlawful for the first respondent to deduct the amounts from the net proceeds of the realization of the property. It was also noted that the administrative rental claimed by the first respondent did not accord with the terms of the lease agreement and that only in the event of the liquidation being satisfied that the amounts claimed were due then payment would be made to the first respondent.

[16] The first respondent insisted on refusing to pay the balance of the net proceeds to the liquidators. According to the applicants, the net amount paid by the second respondent was R 6 745 561,78 (six million seven hundred and forty-five thousand five hundred and sixty-one rand and seventy-eight cents). Of this amount, the first respondent paid R 2 420 000,05 (two million four hundred and twenty thousand rand and five cents) on 30 November 2016 and R 139 536,00 (one hundred and thirty-nine thousand five hundred and thirty-six rand) on 26 January 2017. Based on the calculations provided by the second respondent and the first respondent, this leaves a balance of R 4 186 026,73 (four million one hundred and eighty-six thousand twenty-six rand and seventy-three cents) payable to the applicant. The applicants claim an amount of R 4 186 026,73 from the first respondent as net proceeds.

The Issues

[17] In light of the facts of this case and the parties' submission, the primary issue is whether the first respondent is entitled to post-liquidation rent in terms of the lease agreement signed with Montic Dairy. Suppose the answer to the previous question is in the affirmative. In that case, the second issue will be whether the first respondent was entitled to set off the amount with the net proceed of the sale of Montic Dairy's movable assets considering that Montic Dairy is under liquidation. There are other creditors who proved their claims against it.

[18] Whether the applicants should be paid the net proceeds in the amount of R4 186 025,73 which was realized after the auction by Kopano or should the first respondent retain the proceeds as set off for the payment of administrative rental after the liquidation of Montic Dairy. Secondly, whether the first respondent is entitled to administrative rental or was there a failure to vacate the premises of the first respondent by Montic Dairy or are the liquidators failing to remove Montic Dairy's property from the first respondent's premises. Thirdly does the word net proceeds in section 83 includes the administrative rental?

Submissions by the parties

[19] The applicants submit that they are entitled to receive payment of the proceeds (less the commission of the second respondent and advertising costs) generated by the sale of Montic Dairy's movable assets. The first respondent has no objection to the applicants' claim and entitlement. But would like to deduct their post-liquidation rental that accrued between the period of May 2016 and November 2016 before paying the net proceeds to the liquidators. According to Adv. Butler SC, the first respondent seeks final relief on the motion. The final relief can be granted if the facts stated by the applicants (being the first respondents in the counter application) and the facts alleged by the first respondent (being the applicant in the counter application) are admitted or common cause facts.

[20] The applicants submit that under the relevant provisions of the Insolvency Act and Case laws, the first respondent is not entitled to deduct any amounts from the net proceeds but was obliged to pay over the net proceeds to the liquidators after Kopano realized the movable property. The first respondent never raised a defence to the applicants' claim, and its counter application, in so far as it deals with the proceeds from the sale, therefore, must fail for the same reason as it is against section 83 of the insolvency act. According to the applicants, the relief sought in the counterclaim regarding the removal of the company's property cannot be granted by court in light of the facts presented by the applicants, which demonstrates that the applicant has made several attempts to resolve the outstanding issues with the first respondent, but the directors have refused to

cooperate.

[21] The applicants further argued, denying the first respondent's claim regarding rent, saying that the first respondent is painting a picture through the select correspondence annexed to its answering affidavit that the liquidators have failed to remove their movables assets at the premises, whereas that is not correct. Further, on behalf of the applicants, Adv. Butler SC submits that the liquidators are not satisfied that any rent is due to the first respondent in terms of section 37(3) for a number of the following reasons:

- (a) From the statement made by Mr. van Biljon at the meeting held on 10 October 2016 (and confirmed in the email dated 14 October 2016) that there was a sale of the business and confirmed that the new owner (Vorster) *"had affective control of the site and operations and the benefit thereof"*.
- (b) Although Mr. Kerber baldly denies that Montic Dairy was evicted from the premises and that Voster was in control thereof, no explanation whatsoever is provided as to why Mr. van Biljon made the statements he did at the meeting on 10 October 2016, which were confirmed in his email of 14 October 2016.
- (c) Mr. Kerber also contends that the eviction did not occur because certain assets of Montic Dairy remained on the premises. To this statement, the applicants submit that Mr. van Biljon's obstructive attitude resulted in the liquidators not finalizing the outstanding issues with the first respondent, including removing the company's goods from the premises. In any event, the applicants submit that the fact that property remained on the premises is not evidence that the company was not evicted and did not address the statements that emanated from Mr. van Biljon himself (in his email) and the fact that the company was evicted from the premises long before November 2016.
- (d) Mr. van Biljon had refused the liquidators to remove the properties from the

premises until Bothomley resolved his arrears and other issues with the first respondent.

[22] The applicants submitted further that the first respondent must prove any debt owed by Montic Dairy at the time of its liquidation in terms of section 44 of the Insolvency Act. Adv. Butler SC argued that the first respondent has not made out a case for final, declaratory relief sought by it on a motion that it is entitled to administrative rental for the period between liquidation and 30 November 2016. In terms of section 37(2) of the Insolvency Act, even if the first respondent were entitled to a claim for administrative rental, that claim would be limited to a claim for three months of rental, not for the period between May/June to November.

[23] On the other hand, Adv. Vorster argued on behalf of the first respondent that an amount of R 3 096 385,32 (three million ninety-six thousand three hundred and eighty-five rand and thirty-two cents) was due, owing and payable to the first respondent in respect of post-liquidation rent as reflected in the invoice dated 21 November 2016. The first respondent calculated this amount with reference to the monthly rental reflected in the written lease agreement for the period 16 May 2016 to 30 November 2016. Adv. Vorster insists that the first respondent's claim for rental that became due after the commencement of Montic Dairy's liquidation is not a pre-liquidation claim and cannot be proven at the creditor's meeting.

[24] The first respondent submitted that it is entitled to **apply for a set-off** and denied the applicant's argument that this post- liquidation claim is not a liquid. It also denies that the claim has been sub-ordinated in terms of the business rescue plan; and that Montic Dairy was apparently evicted from the premises before November 2016 and therefore not liable to pay the full amount claimed by the first respondent.

[25] Counsel for the first respondent contended that the business rescue plan could never be implemented as the sale of Montic Dairy's business to Cesare Cremona was never completed. Cremona never paid the purchase price to the business. This is confirmed in the extract from the affidavit deposed to by one of the business rescue practitioners, Chevalier.

[26] According to Chevalier's affidavit on 31 March 2016, Cremona failed to pay the first instalments of R 5 000 000 (five million rand) as he was required to do. On 1 April 2016, he defaulted on his obligations to restore the company's working capital to the position as of 12 February 2016 as required in terms of the signed management agreement. Business rescue practitioners wrote a letter through their attorneys to Cremona informing him that he was in breach because he failed to pay the first instalment and was in breach of his obligation to restore the company's financial position.

[27] The business rescue practitioner launched an application as per section 141 of the Companies Act, 2008, for discontinuing the business rescue plan. Adv. Vorster argued that the business plan was never implemented, notwithstanding what the applicants might have suggested in their replying affidavit. Adv. Vorster submitted that the allegation that Montic Dairy was evicted is based on a single statement or sentence in an email by one of the directors of the first respondent. Mr. van Biljon. The applicant relies on this email to support their allegation of the alleged eviction even though the two of the three liquidators were personally present on the farm Tamboekiesfontein on 10 October 2016. The applicants do not allege any actual eviction but attempt to hide behind how Mr. van Biljon worded his email. Significantly, the applicant does not make an express allegation that the company was evicted.

[28] Adv. Vorster submits that the first respondent is only obliged to pay the applicant's net proceeds generated by auction. It is submitted that the phrase "*net proceeds*" in section 83(1) refers to the amount that remains after all lawful deductions have taken place. Adv. Vorster submitted that the first respondent was entitled to deduct the post-liquidation rental from the amount to be paid to the applicants and that the remaining amount should be regarded as the net proceeds.

[29] Adv. Vorster submitted that the applicants' failure to remove Montic Dairy's assets from the rental premises appears from the chronology of events described in the first respondent's answering affidavit. The applicants had a duty to remove Montic Dairy's property and records from the rental premises. As suggested by

the applicants, the assets are not part of the movable property over which the first respondent exercised a hypothec but consist of packaging material. The fact that the applicant had a duty to remove the company's property from the premises was confirmed by the first applicant. The applicants' attorney never disputed the duty to remove the company's property from the premises as late as 22 February 2017 (after this application was launched).

Analysis of the case

[30] From the perusal of the applicants founding affidavit and the replying affidavit, together with the first respondent's answering affidavit and his counter application, one clear thing is that it will be incorrect to assume that, since the properties of Montic Dairy are still found at the premises, it means the applicants have failed to remove Montic Dairy's property from the premises.

[31] On the contrary, on 24 January 2017, the first respondent's attorneys addressed a letter to the applicants' attorneys and attached to the letter was an email from Mr. van Biljon addressed to the first respondent attorneys, where he made it abundantly clear that he would not permit the removal of the company's assets from the premises:

"Until Bothomley has resolved his arrears rentals and other issues with us then I believe as landlord nothing should be allowed to leave the premises. I believe the issues to be resolved include the debtor's cash you are holding on trust, the R1 000 000.00 hypothec, and his removal of everything under his ambit from the premises".

I agree with the applicants that the disassociation with the above statement made by the director and the landlord of the first respondent by the first respondent will be disingenuous. The above statement is abundantly clear that the applicants should never remove the movable properties from the premises until the rent issue is solved. The first respondent cannot later claim that the movable properties have not been removed when they are the ones who blocked the removal thereof.

[32] The first respondent's denial of what Mr. van Biljon, the landlord, had said in

his letter is unrealistic, given that the applicants constantly wanted to meet with the first respondent's directors to resolve these issues. The denial of Mr. van Biljon's statement raises fictitious disputes of fact. The court would be justified in rejecting the first respondent's version merely on the papers and determining the matter on the applicant's version of facts. If there is such a clear indication from the first respondent that the applicants should not dare remove anything before they deal with the issue of rent, then it raises a serious question of whether such post-liquidation rent claim should be accepted by the applicants or not.

[33] This issue raises factual disputes, and the first respondent should have seen that it cannot be dealt with on affidavit without proper evidence led to bring clarity. The applicant's factual version of the fact that they wanted to remove assets of Montic Dairy but couldn't is inherently seen as credible in the circumstances; the court accepts the applicant's factual version and proceeds on the basis that it is correct for purposes of determining whether the first respondent is entitled to the relief sort or not. The first respondent's case for administrative rental claim needs to be proved not only by invoice but also by the facts leading to such claim and should be proved to succeed. One thing which is clear to me is that the rent facts are not a common cause.

[34] Section 83 of the Insolvency Act dictates how a creditor realizes his security and prescribes his obligation thereafter. Innes J in *Walker v Syfret NO*⁴ said:

"The object of the Insolvent Ordinance is to ensure a due distribution of assets among creditors in the order of their preference. And with this object all the debtor's rights are vested in the Master or the trustee from the moment insolvency commences. The sequestration order crystallises the insolvent's position; the hand of the law is laid upon the estate, and at once the rights of the general body of creditors have to be taken into consideration. No transaction can thereafter be entered into with regard to estate matters by a single creditor to the prejudice of the general body. The claim of each creditor must be dealt with as it existed at the issue of the order."

[35] The applicants submitted that the provisions of section 83 require the first respondent to pay the applicants the realized money. There has never been any defence raised or an objection to the applicants' claim and entitlement during the

⁴ 1911 (AD) 141 at 166

pleadings or argument by the first respondent. I also find no facts contrary to the applicant's claim as mentioned on their founding affidavit and the replying affidavit, and as such, the applicant's claim should succeed. The provisions set out by section 83 are peremptory, and failure to do the same is an offence. See section 142(4) of the insolvency act.

“(4) a secured creditor of an insolvent estate who has realized his security in terms of section eighty-three and who has failed after written demand to pay over the proceeds of the realization in accordance with the provisions of subsection (1) of that section, shall, apart from any other offence he may have committed in connection with those proceeds, be guilty of an offence and liable to the penalties mentioned in subsection (2)”.

[36] Section 83 does not allow such a set off to be done; it only allows for paying the net proceeds to the trustee. Therefore, I agree with the applicants that the Insolvency Act “imposes a peremptory and unequivocal duty upon a creditor who disposes of his security” to pay over the proceeds to the liquidators immediately. After that, prove his claim. When its claim is proved and admitted by the trustees, then he is eligible for payment. The first respondent cannot set off his claim with the realized money.

[37] Regarding the administrative rental during and after liquidation, section 37 (3) of the insolvency act provides that the rent due under any such lease from the date of the sequestration of the estate of the lessee to the determination or the cession thereof by the trustee shall be included in the costs of sequestration. However, as already stated above, the first respondent cannot include such administrative rent because there is a dispute regarding whether the applicants are liable for such rent or not.

[38] There is also a dispute regarding the total number of months the first respondent claims. Section 37 (2) of the insolvency act provides that if the trustee does not notify the lessor within three months of his appointment that he desires to continue the lease on behalf of the estate, he shall be deemed to have determined the lease at the end of such three months. The first respondent is claiming more than three months, which raises some questions as to whether the

applicants are liable to pay rent for more than three months or not. This also hinders the first respondent's rent claim from not succeeding.

[39] Liquidators have previously tendered to pay the administrative rent if they had satisfied that the amounts claimed are due. The first respondent argued that they were due and served the invoices to the applicants. However, counsel for the applicants submits that the liquidators are not satisfied that any rent is due to the first respondent except the three months' rent in terms of section 37(2) because of Mr. van Biljon's obstructive attitude, which resulted in the liquidators not finalizing the outstanding issues with the first respondent, including the removal of Montic Dairy's goods from the premises. So, therefore, I find that the liquidators cannot be held liable for the entire rent except for three months' rent until the whole dispute regarding the removal of assets is resolved. This is a factually disputed issue by the first respondent and should have been referred for an oral hearing to interrogate the truth about Mr. van Biljon's statement when he said that "*nothing should leave the premises*". Therefore, the first respondent has failed to establish the basis for seeking an order against the applicants for the entire period for administrative rent.

[40] However, one thing that is clear and admitted by all the parties is that there are properties belonging to Montic Dairy still on the premises, which the liquidators should remove.

[41] In conclusion, I find that even if the applicants might be liable to pay part of the rent, the provisions of section 83(10) of the Insolvency Act are explicit that the money realized should be paid over to the trustees and cannot be set off for administrative rent which the applicants dispute.

[42] I can't entirely agree with the applicants that they were evicted because the business rescue deal failed to materialize. I find that the issue of administrative rent should have been referred for an oral hearing because of the disputes of facts on the statement of Mr. van Biljon. This is why the first respondent's claim for set-off of the administrative rent from the net proceeds should fail. The applicant's claim of payment of the net proceeds should succeed.

Order

[43] The following order is made:

1. The first respondent shall immediately pay the applicants the sum of R 4 186 025,73 (four million one hundred and eighty-six thousand twenty-five rand and seventy-three cents).
2. The first respondent shall pay interest in the amount of R 3 550 437,95 (three million five hundred and fifty thousand four hundred and thirty-seven rand and ninety-five cents) at the rate of 9.5% as calculated from 10 December 2016 to the payment date.
3. The first respondent shall pay interest in the amount of R 426 816,00 (four hundred and twenty-six thousand eight hundred and sixteen rand) at the rate of 9.5% as calculated from 27 January 2017 to the date of payment.
4. The first respondent shall pay interest in the amount of R 208 771,78 (two hundred and eight thousand seven hundred and seventy-one rand seventy-eight cents) at the rate of 9.5% from 16 March 2017 to the date of payment.
5. The first respondent shall pay the applicants' costs, including the costs of two counsels on the applicants' application.
6. The applicants are ordered to take steps necessary to remove their remaining movable assets, records and books belonging to Montic Dairy Pty Ltd from the property known as Tamboekiesfontein within 30 calendar days from the date of the order.
7. The claim for administrative rental for the period between the date of Montic Dairy's liquidation and 30 November 2016 is dismissed.

8. The first respondent's counter application has partly succeeded and therefore each party will pay its own costs on the first respondent's counter application.



M Munzhelele

Judge of the High Court, Pretoria

Virtually Heard on: 25 January 2022

Electronically Delivered on: 06 July 2022

Appearances:

For the Applicant: Adv. J.C Butler SC

Adv. M Maddison

Instructed by: Reitz Attorneys

For the Respondent: Adv J Vorster

Instructed by: Strydom & Bredenkamp Inc