

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

5/3/2025

DATE

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SIGNATURE

CASE NO: 2024-003809

In the matter between:

FIRSTRAND BANK LIMITED**Applicant**

And

OPTICAL MEDIAWORX LOGISTICS (PTY) LTD**Respondent**

NGONIDZASHE FERRIS RUTSITO

Intervening Party

CASE NO: 2024-024772

In the matter between:

FERRIS NGONIDZASHE RUTSITO

Applicant

And

OPTICAL MEDIAWORX LOGISTICS (PTY) LTD

First Respondent

**BUSHBUCKRIDGE INDEPENDENT
DEVELOPMENT (PTY) LTD**

Second Respondent

MASTER OF THE HIGH COURT, JOHANNESBURG

Third Respondent

ABSA BANK LIMITED

Fourth Respondent

MAN FINANCIAL SERVICES (SA) (RF) (PTY) LTD

Fifth Respondent

FIRSTRAND BANK LIMITED

Intervening Party

JUDGMENT

DREYER AJ:

- [1] There are two applications before the Court namely an application for the final winding-up of the Respondent, under case number 2024-003809 (“the liquidation application”) and an application that the First Respondent be placed in business rescue in terms of Section 131(4) of the Companies Act 71 of 2008 (“the Act”) under case number 2024-024772 (“the business rescue application”). The Respondent in the liquidation application, Optical Mediaworx Logistics (Pty) Ltd, is the First Respondent in the business rescue application.
- [2] The liquidation application was launched on 22 January 2024 and the business rescue application on 6 March 2024, subsequent to the liquidation application.
- [3] At the hearing of the applications, the business rescue application was heard first by the Court.

The business rescue application

- [4] The Applicant under case number 2024-024772, Ferris Ngonidzashe Rutsito, seek an order, *inter alia*, that the First Respondent be placed in business rescue in terms of Section 131(4) of the Act.
- [5] After hearing Counsel for the Applicant, the Fourth and Fifth Respondents and the Intervening Party, Firstrand Bank Limited, in the business rescue application, the Court granted an order, *inter alia*, that the business rescue application is struck from the roll and that the Applicant shall cause a copy of the business rescue application to be served on the parties set out in prayers 3.1 to 3.4 of the order by close of business on Wednesday, 5 March 2025. I will set out briefly the reasons for granting the order.

- [6] The question for determination in the business rescue application was whether the business rescue application was 'made' within the meaning of Section 131(6) of the Act.
- [7] Section 131(1) of the Act provides that an applicant in terms of subsection (1) must –
- (a) serve a copy of the application on the company and Commission; and
 - (b) notify each affected person of the application in the prescribed manner.
- [8] The Service Affidavit deposed to by the Applicant's attorney of record states in paragraph 4 that *"Service upon CIPC was made by way of email on 27th March 2024. This was in line with the CIPC practice note 9 of 2017. A copy of the email is attached and marked "SA4".*
- [9] Practice Note 9 of 2017 that CIPC has provided for a dedicated e-mail box to receive legal documentation being corporatelegalservices@cipc.co.za.
- [10] Having regard to Annexure "SA4" it is apparent that the business rescue application was sent to the e-mail address businessrescue@cipc.co.za, and not the e-mail address provided for in Practice Note 9 of 2017.
- [11] In the circumstances it cannot be said that the business rescue application was served on CIPC.
- [12] In *Lutcmann NO and Others v African Global Holdings and Others* 2022 (4) SA 529 (SCA) it was held that the words 'application is made' means: the business rescue application must be issued, served on the company and the Commission, and all reasonable steps must have been taken to identify affected persons and their addresses and to deliver the application to them to meet the requirements of Section 131(6) of the Act.

- [13] The City of Johannesburg and the Cedar Office Body Corporate are 'affected persons' as contemplated in Section 131(2)(b) of the Act. The said affected parties were however not notified of the business rescue application.
- [14] There having been no service on CIPC, the City of Johannesburg and the Cedar Body Corporate it cannot be said that the business rescue application was 'made'.
- [15] Having regard to *Lutcmann NO and Others v African Global Holdings and Others* above, the appropriate order to make is to strike the business rescue application from the roll.

The liquidation application

- [16] In the liquidation application under case number 2024-003809 a provisional order was granted by the Honourable Justice Siwendu on 5 June 2024 whereby placing the Respondent under provisional winding-up.
- [17] The Applicant, Firststrand Bank Limited, now seek a final winding-up order.
- [18] At the time the provisional winding-up order was granted the Respondent had not delivered its Answering Affidavit, despite same being due on or before 20 February 2025. The attorneys of record of the Intervening Party, Ferris Ngonidzashe Ferris Rutsito, proceeded to serve an Affidavit Opposing Liquidation on the Applicant's attorneys of record on 31 July 2024. The Intervening Party is a director and shareholder of the Respondent.
- [19] At the hearing of the liquidation application the only ground advanced by Counsel appearing on behalf of the Intervening Party as to why the provisional winding-up order should not be made final, was that an application for business rescue had been made whereby suspending the liquidation proceedings as contemplated in terms of Section 131(6) of the Act.

- [20] The question for determination in the liquidation application was therefore whether the business rescue application suspended the liquidation proceedings.
- [21] Section 131(6) of the Act provides that if liquidation proceedings have already commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until the court has adjudicated upon the application, or the business rescue proceedings end, if the court makes the order applied for.
- [22] In *Lutcmann NO and Others v African Global Holdings and Others* above, it was held that the purpose to which Section 131(6) of the Act is directed is to suspend liquidation proceedings until the court has adjudicated upon the business rescue application or the proceedings end.
- [23] Having heard the business rescue first, the Court had already found that the business rescue application was not 'made'. The reasons are set out above.
- [24] As the business rescue application was not 'made', the suspension of the liquidation proceedings was therefore not triggered in terms of Section 131(6) of the Act.
- [25] In the Affidavit Opposing Liquidation the Intervening Party averred that the provisional winding-up order was obtained irregularly. This ground was however not persisted with by Counsel for the Intervening Party at the hearing of the matter.
- [26] In paragraphs 49, 50 and 82 of the Affidavit Opposing Liquidation it is admitted by the Intervening Party that the Respondent is in financial distress.
- [27] The Intervening Party advanced no compelling reason why the provisional winding-up order should not be made final.

[28] I therefore make the following order:

- 27.1 The Intervening Party, Ferris Ngonidzashe Rutsito, is granted leave to intervene in the application for the winding-up of the Respondent, Optical Mediaworx Logistics (Pty) Ltd.
- 27.2 The Respondent is placed under final winding up.
- 27.3 The Intervening Party is to pay the costs occasioned by his opposition of the application on scale C.
- 27.4 Any costs other than the costs occasioned by the opposition of the application will be costs in the winding-up.



E DREYER

**ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date for hand down is deemed to be 5 March 2025.

Appearances:

Appearance for Firstrand Bank:
Instructed by:

Adv. M De Oliveira
Werksmans Attorneys

Appearance for ABSA Bank and
MAN Financial Services

Adv. I Posthumus
Marianne Pretorius Attorney

Appearance for Ferris N Rutsito:
Instructed by

Adv. I Mureriwa
Nyachowe Attorneys

Date of hearing:

3 March 2025

Date of Judgment:

5 March 2025