

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CC CASE NO:** \_\_\_\_\_

**SCA CASE NUMBER:** 605 / 2024

**HIGH COURT CASE NUMBER:** D4472/23

In the matter between:

**TONGAAT HULETT LIMITED  
(IN BUSINESS RESCUE)**

First Applicant

**TONGAAT HULETT SUGAR  
SOUTH AFRICA (PROPRIETARY) LIMITED  
(IN BUSINESS RESCUE)**

Second Applicant

**TREVOR JOHN MURGATROYD N.O.**

Third Applicant

**PETRUS FRANCOIS VAN DEN STEEN N.O.**

Fourth Applicant

**GERHARD CONRAD ALBERTYN N.O.**

Fifth Applicant

and

**SOUTH AFRICAN SUGAR ASSOCIATION**

First Respondent

**S.A. SUGAR EXPORT CORPORATION  
(PROPRIETARY) LIMITED**

Second Respondent

**MINISTER OF TRADE, INDUSTRY  
AND COMPETITION**

Third Respondent

**SOUTH AFRICAN SUGAR MILLERS'  
ASSOCIATION NPC**

Fourth Respondent

**SOUTH AFRICAN CANE GROWERS'  
ASSOCIATION NPC**

Fifth Respondent

**SOUTH AFRICAN FARMERS'  
DEVELOPMENT ASSOCIATION NPC**

Sixth Respondent

**RCL FOODS SUGAR & MILLING  
(PROPRIETARY) LIMITED**

Seventh Respondent

**ILLOVO SUGAR (SOUTH AFRICA)  
(PROPRIETARY) LIMITED**

Eighth Respondent

**UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED**

Ninth Respondent

**GLEDHOW SUGAR COMPANY  
(PROPRIETARY) LIMITED**

Tenth Respondent

**HARRY SIDNEY SPAIN N.O**

Eleventh Respondent

**UCL COMPANY (PROPRIETARY) LIMITED  
(PROPRIETARY) LIMITED**

Twelfth Respondent

**ALL REGISTERED GROWERS**

Thirteenth to Twenty-Three  
Thousandth Respondents

**THE AFFECTED PERSONS IN  
THL'S BUSINESS RESCUE**

Twenty-Three Thousand and First  
Respondents and Further Respondents

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## **NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

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**TAKE NOTICE THAT** the applicants hereby apply to the above Honourable Court for an order in the following terms:

1. The applicants are granted leave to appeal against the whole judgment and order handed down by the Supreme Court of Appeal in case number 945/2024 delivered on 15 December 2025.
2. The appeal is upheld with costs, including the costs of two counsel.
3. The order of the Supreme Court of Appeal is set aside and replaced with the following:

- “1. The appeal is upheld with costs, including the costs of two counsel.
2. The order of the Court *a quo* is set aside and substituted with an order in the following terms:
  - 2.1. Declaring that the third to fifth applicants are empowered to suspend, for the duration of the business rescue proceedings, any payment obligation of the first applicant which arises under the Sugar Industry Agreement, 2000.
  - 2.2. Directing the first to fourth, seventh, eighth and twelfth respondents to pay the applicants' costs, including the costs

of two counsel, jointly and severally, the one paying the other to be absolved.

4. In the alternative to paragraph 3 above, the order of the Supreme Court of Appeal is set aside and replaced with the following:

- “1. The appeal is upheld with costs, including the costs of two counsel.
2. The order of the Court *a quo* is set aside and substituted with an order in the following terms:
  - 2.1. Declaring section 136(2)(a)(i) of the Companies Act 71 of 2008 unconstitutional and invalid insofar as it fails to provide for the suspension of regulatory charges that become due during business rescue proceedings.
  - 2.2. Reading in the words “*inter partes*” before the word “*obligation*” and the words “*or regulatory regime*” after the word “*agreement*” in section 136(2)(a)(i) of the Companies Act.
  - 2.3. Directing the first to fourth, seventh, eighth and twelfth respondents to pay the applicants’ costs, including the costs of two counsel, jointly and severally, the one paying the other to be absolved.”

5. That further and/or alternative relief be granted.

**TAKE FURTHER NOTICE THAT** the accompanying affidavit of **GERHARD CONRAD ALBERTYN** will be used in support of this application.

**TAKE NOTICE FURTHER THAT** if you intend to oppose this application you are required, within ten days of service of this application on you, to lodge with the Registrar and to serve on the applicants’ attorneys an affidavit setting out the grounds on which you oppose the application.

**TAKE NOTICE FURTHER** that the applicants have appointed the offices of **WERKSMANS ATTORNEYS** as their attorneys of record, at the address set out below, where they will accept all notices and processes in these proceedings.

**Dated at JOHANNESBURG on 05 FEBRUARY 2026**



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**WERKSMANS ATTORNEYS**

**Appellants' Attorneys**

96 Rivonia Road

11<sup>th</sup> Floor, The Central

96 Rivonia Road, Sandton

Email: [tboswell@werksmans.com](mailto:tboswell@werksmans.com)  
[dpisanti@werksmans.com](mailto:dpisanti@werksmans.com)

Tel: +27 11 535 8459 | +27 11 535 8157

Ref: Mr T Boswell / Ms D Pisanti / **TONG7430.11**

TO:

**THE REGISTRAR OF THE  
ABOVE HONOURABLE  
COURT, JOHANNESBURG**

AND TO:

**SOUTH AFRICAN SUGAR ASSOCIATION**

**First Respondent**

**c/o GARLICKE & BOUSFIELD**

7 Torsvale Crescent

La Lucia Ridge Office Estate.

La Lucia

Email: [howard.stephenson@gb.co.za](mailto:howard.stephenson@gb.co.za)

AND TO:

**S.A. SUGAR EXPORT  
CORPORATION (PROPRIETARY)  
LIMITED**

**Second Respondent**

**C/O GARLICKE & BOUSFIELD**

7 Torsvale Crescent

La Lucia Ridge Office Estate. La Lucia

Email: [howard.stephenson@gb.co.za](mailto:howard.stephenson@gb.co.za)

AND TO:

**MINISTER OF TRADE AND INDUSTRY  
C/O THE STATE ATTORNEY**

**Third Respondent**

316 Salu Building

Cnr Thabo Sehume and Francis Baard Street

Pretoria

Email: [thmaphumulo@justice.gov.za](mailto:thmaphumulo@justice.gov.za)

[KMalatji@thedtic.gov.za](mailto:KMalatji@thedtic.gov.za)

AND TO:

**SOUTH AFRICAN SUGAR  
MILLERS' ASSOCIATION NPC  
c/o GARLICKE & BOUSFIELD INC**

**Fourth Respondent's Attorneys**

7 Torsvale Crescent

La Lucia Ridge Office Estate. La Lucia

Tel: +27 31 570 5483

Email: [andre.liebenberg@gb.co.za](mailto:andre.liebenberg@gb.co.za)

AND TO:

**SOUTH AFRICAN CANE  
GROWERS' ASSOCIATION NPC**

**Fifth Respondent**

170 Flanders Drive, Mount Edgecombe, 4300

Tel: +27 31 508 7200

Email: [central@canegrowers.co.za](mailto:central@canegrowers.co.za)

[thomas.funke@sacanegrowers.co.za](mailto:thomas.funke@sacanegrowers.co.za)

AND TO:  
**SOUTH AFRICAN FARMERS'  
DEVELOPMENT ASSOCIATION  
NPC**

**Sixth Respondent**

170 Flanders Drive  
Mount Edgecombe  
4300

Tel: +27 31 508 7283

Email: [info@sa-fda.org.za](mailto:info@sa-fda.org.za)  
[tsibiya@sa-fda.org.za](mailto:tsibiya@sa-fda.org.za)

AND TO:  
**RCL FOODS SUGAR &  
MILLING(PROPRIETARY)  
LIMITED  
C/O WEBBER WENTZEL ATTORNEYS**

**Seventh Respondent**

15<sup>th</sup> Floor Convention Tower  
Heerengracht  
Foreshore  
Cape Town

Email: [prelisha.singh@webberwentzel.com](mailto:prelisha.singh@webberwentzel.com) /  
[lara.kahn@webberwentzel.com](mailto:lara.kahn@webberwentzel.com)  
[lubumba.kamukwamba@webberwentzel.com](mailto:lubumba.kamukwamba@webberwentzel.com)

AND TO:  
**ILLOVO SUGAR (SOUTH  
AFRICA)(PROPRIETARY)  
LIMITED  
C/O COX YEATS ATTORNEYS**

**Eighth Respondent**

45 Vuna Close  
Umhlanga Ridge  
4319

Email: [TScheepers@coxyeats.co.za](mailto:TScheepers@coxyeats.co.za)  
[LMapiki@coxyeats.co.za](mailto:LMapiki@coxyeats.co.za)  
[JRodd@coxyeats.co.za](mailto:JRodd@coxyeats.co.za)

AND TO:  
**UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED**  
**Ninth Respondent**  
**c/o COX YEATS ATTORNEYS**  
45 Vuna Close  
Umhlanga Ridge  
4319  
Email: [mjackson@coxyeats.co.za](mailto:mjackson@coxyeats.co.za)

AND TO:  
**GLEDHOW SUGAR COMPANY**  
**Tenth Respondent**  
Gledhow Mill Rd, KwaDukuza  
**c/o SHEPSTONE & WYLIE**  
24 Richefond Circle  
Ridgeside Office Park  
Umhlanga Rocks  
E-mail: [afd@wylie.co.za](mailto:afd@wylie.co.za)  
[hspain@gledhow.co.za](mailto:hspain@gledhow.co.za)  
Ref A Donnelly

AND TO:  
**HARRY SIDNEY SPAIN N.O.**  
**Eleventh Respondent**  
**c/o SHEPSTONE & WYLIE**  
24 Richefond Circle  
Ridgeside Office Park  
Umhlanga Rocks  
E-mail: [afd@wylie.co.za](mailto:afd@wylie.co.za)  
[hspain@gledhow.co.za](mailto:hspain@gledhow.co.za)  
Ref A Donnelly

AND TO:  
**UCL COMPANY (PROPRIETARY) LIMITED**  
**(PROPRIETARY) LIMITED**  
**Twelfth Respondent's Attorneys**  
7 Torsvale Crescent  
La Lucia Ridge Office Estate. La Lucia  
Tel: +27 31 570 5483  
Email: [andre.liebenberg@gb.co.za](mailto:andre.liebenberg@gb.co.za)

AND TO:  
**ALL REGISTERED GROWERS**  
**Thirteenth to Twenty-Three Thousandth Respondents**

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