

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

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

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



WERKSMANS ATTORNEYS
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TO:
**THE REGISTRAR OF THE
ABOVE HONOURABLE
COURT, JOHANNESBURG**

AND TO:
SOUTH AFRICAN SUGAR ASSOCIATION
First Respondent
c/o GARLICKE & BOUSFIELD
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La Lucia Ridge Office Estate.
La Lucia
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AND TO:
**S.A. SUGAR EXPORT
CORPORATION(PROPRIETARY)
LIMITED**
Second Respondent
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AND TO:
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AND TO:
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AND TO:
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AND TO:
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C/O WEBBER WENTZEL ATTORNEYS

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AND TO:
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LIMITED**
C/O COX YEATS ATTORNEYS

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AND TO:
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AND TO:
GLEDHOW SUGAR COMPANY
Tenth Respondent
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Ref A Donnelly

AND TO:
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Eleventh Respondent
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Umhlanga Rocks
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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

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