

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2026-031780

In the matter between: -

GERHARD CONRAD ALBERTYN N.O

First Applicant

TREVOR JOHN MURGATROYD N.O

Second Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O

Third Applicant

And

TONGAAT HULLET LIMITED

(IN BUSINESS RESCUE)

First Respondent

THE AFFECTED PERSONS

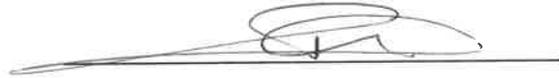
Further Respondents

FILING NOTICE

SIRS;

KINDLY TAKE NOTICE THAT the Minister of Trade, Industry and Competition (“the Department”) hereby file his answering affidavit herewith.

DATED at DURBAN this 5th day of March 2026.



STATE ATTORNEY (KWAZULU-NATAL)

obo MINISTER OF TRADE, INDUSTRY & COMPETITION

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TO: THE REGISTRAR OF THE HIGH COURT

DURBAN

AND TO:

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(IN BUSINESS RESCUE)**

First Respondent

**THE AFFECTED PERSONS IN THE FIRST
RESPONDENT'S BUSINESS RESCUE**

Further Respondents

**ANSWERING AFFIDAVIT: THE MINISTER OF TRADE, INDUSTRY AND
COMPETITION**

I, the undersigned,

PARKS FRANKLYN MPHOTO TAU

do hereby make oath and state:

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1. I am an adult male Cabinet Minister and the Executive authority responsible for the Department of Trade, Industry and Competition with offices at DTIC Campus, 77 Meintjies Street, Sunnyside, Pretoria. In my capacity as such, I am responsible for the administering the Sugar Act 9 of 1998 (“the Sugar Industry 1978”) including determining the terms of the Sugar Industry Agreement 2000 (“the SIA”) in terms of section 4 of the Sugar Act, 1978 and administering the Companies Act 71 of 2008, as amended (“the Companies Act”).
2. Further, the Industrial Development Corporation of South Africa Limited, (“IDC”) a corporation established in terms of section 2 of the Industrial Development Corporation Act, 1940 is fully owned by the South African Government.
3. The facts deposed to in this affidavit are true and correct and fall within my own knowledge save where it is indicated otherwise by the content. Where I rely on information provided to by others, I believe such information to be true and correct. Where I make submissions of law, I do so on the basis of the advice given to me by my legal representatives.
4. I have read the answering affidavit for the IDC deposed to by Bongani Miya and rely on the contents thereof in support of the Department of Trade, Industry and Competition’s opposition to the grant of a winding up order for the First Respondent (Tongaat Hulett Limited or “THL”). I confirm the content of thereof insofar as it relates to the Department of Trade, Industry and Competition and the Industrial Development Corporation of South Africa Limited. I do not intend to traverse each and every allegation in the founding affidavit. I will set out the Department’s position in opposing this application.



5. On 12 February 2026, the Business Rescue Practitioners (“BRP”) of THL launched a liquidation application and seeking the following orders: -
 - 5.1 That the first respondent’s business rescue to be disconnected and that the first respondent be place under provisional winding up;
 - 5.2 That a rule nisi be issued calling upon the first respondent and all affected persons to show cause, if any, to the Court a date to be determined by the Court, why: -
 - 5.2.1 the first respondent should not be finally wound-up; and
 - 5.2.2 the costs of this application in the event of opposition.
6. Essentially, the BRP’s were seeking an order to discontinue the business rescue proceedings and that THL be provisionally wound up predicated on the following reasons: -
 - 6.1 The non-availability of funds to satisfy the immediate operational requirement of THL and the absence of certainty regarding the refinancing or restructuring of the existing post commencement finance (PCF) facility made available by the IDC during the business rescue of THL.
 - 6.2 The demand by the Lender Group being the secure pre-commencement creditors against THL.
 - 6.3 As a result, the applicant contends that there is an urgent need to appoint a provisional liquidator to take control of THL and to attend to urgent matters that require immediate attention, including but not limited, the payment of critical expenses, the maintenance and preservation of THL’s IT systems and continued communication with relevant stakeholders as well as taking control of the remaining assets of THL to preserve value for THL’s creditors.

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7. In these circumstances, the Applicants contend that there is no funding available for THL to continue with its operations and this is contributed by the lack of certainty concerning the existing PCF facility advanced by IDC to THL. On the grounds and for the reasons set out in the IDC's answering affidavit, I deny these assertions.
8. I am of the firm view that the continued business rescues proceedings of THL will prevent a jobs bloodbath often associated with liquidation, stabilize the sugar industry, and support small businesses at risk of losing their main markets.
9. On the grounds and for the reasons set out in the IDC affidavit I support the dismissal of this application for the liquidation of THL and request that this court exercise its discretion and order the continuation of the business rescue. As set out in the IDC's answering affidavit, post-commencement finance remains available and there are restructuring options that are being actively pursued.
10. the IDC proposal provides the building blocks for a corporate rescue, whereas liquidation is a blunt instrument that ignores this progress and prematurely assumes failure where restructuring remains viable.

11. THE DEMAND BY VISION, THE SUCCESSOR IN TITLE TO THE LENDER GROUP (HEREAFTER REFERRED TO AS VISION)

- 11.1 As further set out in the IDC answering affidavit, the BRPs' reliance on Vision's refusal to extend the validity of its agreement undermines the rescue process itself.

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12. I submit that a business rescue plan cannot succeed if stakeholders deliberately frustrate its implementation. The IDC affidavit makes clear that the rescue plan was designed to secure continuity, but Vision's failure to extend validity weakens the framework. The failure lies not in THL's viability but in Vision's unwillingness to honour its commitments. This conduct should not be rewarded by liquidation, nor should it be allowed to derail a rescue process that remains capable of success.

13. THE COMPANIES ACT AND MINISTERIAL OVERSIGHT

13.1 The Companies Act, under which BRPs operate, falls within my purview as Minister. Where its provisions are abused or perverted to force liquidation against the public interest, I am duty-bound to intervene. The BRPs' application reflects such a misuse: instead of pursuing rescue in good faith, they seek liquidation as a shortcut, contrary to the Act's purpose. The IDC affidavit demonstrates that viable rescue options exist. The Act was designed to preserve viable enterprises and jobs, not to facilitate premature liquidation at the behest of creditors or frustrated stakeholders.

14. IDC EXPOSURE AND SHAREHOLDER MINISTRY ROLE

14.1 Beyond my statutory role, I am also the shareholder representative for the IDC, which has already extended post-commencement finance to THL. The IDC is exposed to THL's survival, and I have mandated its continued support. Liquidation would not only crystallise IDC's losses but undermine government's broader industrial policy objectives. The IDC affidavit confirms that its proposal provides "the building blocks for a corporate rescue." My dual role, as regulator under the Companies Act and



shareholder ministry for the IDC, compels a proactive stance in favour of rescue.

15. PUBLIC INTEREST CONSIDERATIONS

15.1 I emphasise the devastating social and economic consequences that will ensue for the South African Sugar Industry and the South African Economy and in particular for the rural economy of KwaZulu-Natal and Mpumalanga small-scale farmers and its farming towns if THL is liquidated. The business is critical to the South African economy, and the regional economy of Kwazulu-Natal and Mpumalanga, and the ecosystem of the region. If it fails, it will not easily be replaced and neither will all the lost direct and indirect jobs be replaced. The sugar industry provides a livelihood in remote rural KwaZulu-Natal and Mpumalanga where limited other opportunities exist and where income from the industry is often the sole income available other than the social grants. There are number of rural families whose livelihood depends on sugarcane growing and milling in KwaZulu-Natal and Mpumalanga and the employment opportunities from commercial farms in remote rural small towns. The livelihood of a large number of most vulnerable persons in rural communities depend on this industry for survival.

15.2 Finally, as Minister I am engaging with stakeholders within the industry to find a solution to the current crisis that is having a devastating impact in the industry and it is apparent to me that they are equally concerned about the effect THL liquidation will the industry as a whole.

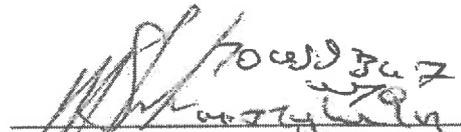


WHEREFORE, I pray for the application to be dismissed with costs, including costs of two counsel where so employed.


DEPONENT

I hereby certify that the Deponent knows and understands the contents of this Affidavit, which was sworn and signed before me at Pretoria on this 5th day of **March 2026** the Regulation contained in Government Regulation No. R1258 of 1972 and R1648 of 1977 as amended, having been complied with.




COMMISSIONER OF OATHS

I CERTIFY THAT THE DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS HANDLED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT FROM MY OBSERVATIONS, AN AMENDMENT OR A CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT.
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MYN IN DRUKSKRIF / PRINTED IN FRONT: M. J. M. M.