

JUSTICE NYAMADZABO'S COURT

**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO: UAHGB – 000065 -26

In the matter between:

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

First Applicant

**TONGAAT HULETT (BOTSWANA)
PROPRIETARY LIMITED**

Second Applicant

TREVOR JOHN MURGATROYD N.O.

Third Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O.

Fourth Applicant

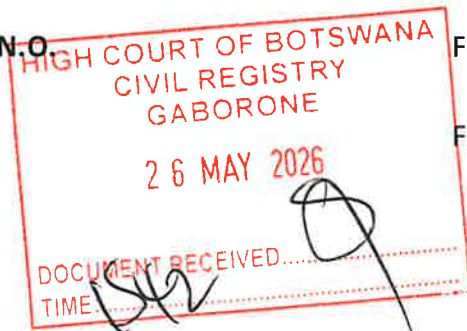
GERHARD CONRAD ALBERTYN N.O.

Fifth Applicant

and

**BOWWOOD AND MAIN NO 296 (RF)
PROPRIETARY LIMITED**

Respondent



In re:

**BOWWOOD AND MAIN NO 296 (RF)
PROPRIETARY LIMITED**

Applicant

and

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

First Respondent

**TONGAAT HULETT (BOTSWANA)
PROPRIETARY LIMITED**

Second Respondent

TREVOR JOHN MURGATROYD N.O.

Third Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Fourth Respondent

FILING NOTICE

BE PLEASED TO TAKE NOTICE THAT the Respondent files herewith:

1. Respondent's Answering Affidavit.

DATED AT GABORONE ON THIS 26th DAY OF MAY 2026.



AT MUZA ATTORNEYS
Respondent's Legal Practitioners
Plot 22964 Phase 4,
P O Box 45075, Fairgrounds,
Gaborone (0337/24/ATM)
alec@atmuza.com
Tel: +267 74136542

TO: THE REGISTRAR
High Court of Botswana
Private Bag 00220,
Gaborone

AND TO: ARMSTRONGS ATTORNEYS
Applicants' Attorneys
2nd Floor Acacia House
Plot 74538, Prime Plaza
New CBD
Gaborone (SAZ/cm/M02649)

ARMSTRONGS ATTORNEYS
TEL: 3953481
26 MAY 2026
RECEIVED
TIME 15:55 SIGN 
NAME SO DITHOLE

NYAMADZABO J.

**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO: UAHGB-000 065-26

In the matter between:

TONGAAT HULETT LIMITED

(IN BUSINESS RESCUE)

TONGAAT HULETT (BOTSWANA) (PTY) LTD

TREVOR JOHN MURGATROYD N.O

PETRUS FRANCOIS VAN DEN STEEN N.O

GERHARD CONRAD ALBERTYN N.O

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

Fifth Applicant

and

BOWWOOD AND MAIN NO 296 (RF) (PTY) LTD

Respondent

In re:

BOWWOOD AND MAIN NO 296 (RF) (PTY) LTD

Applicant

and

TREVOR JOHN MURGATROYD N.O

PETRUS FRANCOIS VAN DEN STEEN N.O

GERHARD CONRAD ALBERTYN N.O

TONGAAT HULETT LIMITED

(IN BUSINESS RESCUE)

TONGAAT HULETT (BOTSWANA) (PTY) LTD

First Respondent

Second Respondent

Third Respondent

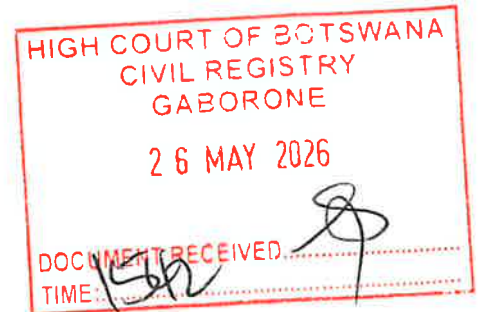
Fourth Respondent

Fifth Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

CANDICE RACHEL RISI,



Do hereby make oath and swear that;

1. I am an adult female of full legal capacity residing in Johannesburg, South Africa, and the sole Director of the Respondent company, Bowwood and Main No 296 (RF) Proprietary Limited, carrying on business at the TMF Building, No 2 Conference Lane, Block 1 Bridgewater One, Bridgeways Precinct, Century City, 7446, Cape Town, South Africa.
2. I depose to this affidavit by reason of my involvement in the matter and in my capacity as the sole director of the Respondent. I aver, therefore, that I am duly authorised to depose to this affidavit in response to the Applicants' founding affidavit.
3. The facts herein are, save where indicated or where the context otherwise indicates, within my personal knowledge and are to the best of my belief true and correct.

4. I depose to this affidavit on the Respondent's behalf in response to the Applicants' application seeking essentially a rescission of the order of this honourable court dated 26 February 2026 ("the *ex parte order*") granted in favour of the Respondent. The affidavit has been deposed to by one Gerhard Conrad Albertyn ("*Albertyn*") who is one of the joint business rescue practitioners ("*the business rescue practitioners*") of the First Applicant, Tongaat Hulett Limited (in business rescue). I have read the affidavit by Albertyn and respond thereto as follows.

5. I wish to respond only as necessary to the Applicants' founding affidavit. Specifically, following the consent order made between the parties and endorsed by this honourable court, this affidavit is limited to addressing the averments made primarily in support of the relief sought by the Applicants in respect of Part B of the application. Where for some reason I have not so responded, the Court must consider that not as an admission of any fact and/or allegation stated therein but rather the converse.

THE BASIS OF THE RESPONDENT'S OPPOSITION TO RESCISSION

6. Without necessarily restating the entire history of the matter to its full extent and repeating any averments made in the founding affidavit which are admitted in this answering affidavit, it is of equal importance that those facts that justify the Respondents opposition be restated.

7. It therefore needs to be recalled why the Respondent approached the *ex parte* in the manner that it did. In order to avoid any prolixity I wish to incorporate the averments which I made in the affidavit made in support of the *ex parte* together with the annexures there attached as if specifically pleaded herein.

8. It is common cause that on 15 November 2022, the Respondent company instituted an urgent application (the Perfection Application) against, *inter alia*, the First, Third, Fourth and Fifth Applicants to perfect the Respondent's various general notarial bonds (which shall be set out in further detail below) ("*General Notarial Bonds*"), passed over the movable assets, wheresoever situated, of the First Applicant and its related entities namely:
 - 8.1 Tongaat Hulett Sugar South Africa Limited (in business rescue) (*THSSA*);
 - 8.2 Tongaat Hulett Estate Proprietary Limited (*THE*); and
 - 8.3 Voermol Feeds Proprietary Limited (*Voermol*)
(collectively "*the Tongaat Debtors*")

9. On 17 November 2022, the High Court of South Africa handed down an order issuing a *rule nisi* with regard to the Respondent's right to perfect its security over all of the movable assets of the First Applicant, which movable assets are subject to the General Notarial Bonds ("*Rule Nisi Order*").

10. On 16 May 2023, the High Court of South Africa handed down its second order in terms of which it ordered that the *rule nisi* be confirmed, thereby perfecting the

Applicant's security over the moveable assets subject to the General Notarial Bonds (*"the Perfection Order"*).

11. In the circumstances, the Respondent holds security in terms of the General Notarial Bonds of the Tongaat Debtors, and consequent upon the granting of the *ex parte* order took steps to exercise such Perfection Order in Botswana.
12. As stated by the Applicants in the founding papers (paragraph 29), the orders were made under South African law with the consent of the Third to Fifth Respondents as the business rescue practitioners of the First Applicant.
13. On 12 February 2026, the Respondent became aware that the business rescue practitioners of the First Applicant, Tongaat Hulett Limited, had applied to the High Court of South Africa, Kwa-Zulu Natal Local Division, Durban for an order placing Tongaat Hulett Limited into provisional liquidation, and that the application had been set down for hearing on 27 February 2026.
14. The prospect of liquidation of the First Applicant was and remains a real one. The Respondent was advised that its position in Botswana under the GNB would be recognised for purposes of protecting its rights, if the SA order was recognised by a Botswana court, and the application was brought for that purpose. This advice was acted on as a cumulative measure, without derogating from the legal position that obtains in regard to the subject shares, under both the GNB and a Security Cession and Pledge in favour of Bowwood over various investments, including the First Applicant's Botswana holdings.

15. It is on the above basis that the relief being sought is being opposed, in summation:

15.1 There is no statutory or common law obligation to provide any notice of the *ex parte* proceedings regard being had to the order of the South African High Court for the perfection, which had already considered the merits of the matter, and the taking into possession of any such assets under the general notarial bonds, wheresoever situated, including those in Botswana;

15.2 The Perfection Order was granted with the consent of the Third to Fifth Applicants. The basis for the present complaint, therefore, is inconceivable when the very same practitioners agreed to the Perfection Order, which included the assets of THL wheresoever situate;

15.3 The South African court having been competent to deal with the merits of the Perfection Application, it was not for the Botswana court to rehear any merits in respect of the South African proceedings in the recognition and enforcement application, further having regard to the prior consent given by the Third to Fifth Applicants in respect of the Perfection Order.

16. The Respondent's legal representatives will at the hearing of this matter advance argument in that regard.

17. I now turn to deal with the affidavit of the Applicants and will mostly restrict myself to the allegations that are directed at me personally and answer issues which touch on the sort of relief that the Applicants seek, being only in respect of the

Rescission of the *ex parte* order. To the extent that I do not deal with any allegation, it is denied.

AD SERIATIM RESPONSE TO THE APPLICANT'S FOUNDING AFFIDAVIT

18. **Ad Paragraphs 1 – 10**

No issues arise herein which call for a response from the Respondent.

19. **Ad Paragraph 11 – 15**

Save to deny that the Applicant are entitled in any way to relief that they seek as set out in the Founding Affidavit no issues arise under these paragraphs which call for a substantive response from the Respondent.

20. **Ad Paragraphs 16 – 20**

20.1 The contents of the above paragraphs are denied.

20.2 The Respondent avers that no notice was in fact necessary as the Third to Fifth Applicants consented to the South African Perfection Order being granted and the subject matter thereof being the very General Notarial Bonds which were recognised in the *ex parte* proceedings.

20.3 The reasons expressed earlier in the body of this affidavit speak specifically to the reasons which led the Respondent to justifiably seek an *ex parte* order, primarily being to preserve and protect its existing security under the Security Cession and Pledge.

20.4 The Applicants do not specifically speak to any fact relevant which they allege the respondent omitted to disclose under these paragraphs the bulk of which, when spoken to in the Founding Affidavit, were in fact disclosed. Effectively, no such material facts which the Respondent is said to have not disclosed are mentioned in any form or specificity.

21. **Ad paragraphs 21 – 25**

No issues arise herein which call for a response from the Respondent in any substantive form.

22. **Ad Paragraphs 26 – 27**

22.1 It is unclear what the Applicants refer to in the above paragraphs as I have been advised that a general notarial bond provides a means for a creditor to secure a debt against a debtor's movable property without the need for physical possession of the property.

23. **Ad Paragraphs 28 -29**

The averments made in the above paragraphs do not call for a response from the Respondent save to state that the reasons for the exclusion of a *rule nisi/return day* have already been explained previously in the body of this affidavit.

24. **Ad Paragraphs 30– 35**

24.1 The contents of the above paragraphs are denied.

- 24.2 More specifically, the Respondent avers that it makes no difference that the judgment sought to be recognised was not a judgment or a writ capable of direct execution.
- 24.3 As was set out in the Founding papers to the *ex parte* application, the common law allows for enforcement of such foreign judgment or court order by the Botswana Courts provided:
- 24.3.1 that the Court that pronounced the judgment had jurisdiction to entertain the case;
 - 24.3.2 that the judgment is final and conclusive in its effect and has not become superannuated;
 - 24.3.3 that the recognition and enforcement of the judgment by the Botswana Courts would not be contrary to public policy; and
 - 24.3.4 that the judgment was not obtained by fraudulent means.
- 24.4 The necessary averments meeting the above requirements were placed before the Honourable Court for due consideration prior to the granting of the *ex parte* order.
- 24.5 It is reiterated that there is no general requirement either in terms of the Judgments Act or the common law relating to enforcement for the service of enforcement proceedings on the Applicants.
- 24.6 This is even more so that the Third to Fifth Applicants consented to the very same process before the Kwa-Zulu Natal Local Division proceedings regarding the Perfection Order.

25. **Ad Paragraphs 36 – 45**

The contents of the above paragraphs are admitted only to the extent that they recount the exchange that occurred between the parties' respective legal representatives incorporated in the said paragraphs.

26. **Ad Paragraphs 46 – 49**

26.1 The contents of the above paragraphs are denied.

26.2 There was no obligation to provide such attorneys with the appropriate circumstances which were considered by the Respondent in seeking the orders sought that it did, and the Applicants cannot without more question that due consideration was given to the application by the judge when it granted the order.

26.3 Any suggestion that the application was done in haste is misleading, as it is abundantly clear that the Applicants were aware of the *ex parte* order as far back as 31 March 2026 and were provided with a copy of that application only seeking to make any progress on the matter almost a month later, on 24 April 2026.

27. **Ad Paragraphs 50 – 59**

27.1 The contents of the above paragraphs are denied.

27.2 More specifically it is denied that the order was erroneously granted.

27.3 I have been advised that recognition and enforcement proceedings by themselves are not in any way a rehearing of the merits of a matter already decided in a foreign jurisdiction, in this case the South African proceedings.

27.4 At most the act of recognition constitutes a judicial act of recognition and registration of a final, conclusive foreign order under the common law.

27.5 There was therefore no need or any basis for the Applicants being heard on the substance of the order before the order was granted.

28. **Ad Paragraphs 60 – 68**

28.1 The contents of the above paragraphs are denied.

28.2 As stated previously the Respondent was advised by its attorneys of record, which advice it accepted, that where a foreign judgment or court order does not fall within the ambit of the Enforcement Act, the common law allows for enforcement of such foreign judgment or court order by the Botswana Courts provided:

28.2.1 that the Court that pronounced the judgment had jurisdiction to entertain the case;

28.2.2 that the judgment is final and conclusive in its effect and has not become superannuated;

28.2.3 that the recognition and enforcement of the judgment by the Botswana Courts would not be contrary to public policy; and

28.2.4 that the judgment was not obtained by fraudulent means.

28.3 It was averred in those proceedings and repeated here that the High Court of South Africa's *rule nisi* issued on 22 November 2022 and the subsequent confirmation of the *rule nisi* on 16 May 2023 comprise a final order and conclusive judgement. The said order is extant and has not been superseded or replaced by the High Court of South Africa that issued the said order, which also had jurisdiction over the First, Third to Fifth Applicants by virtue of the said Applicants' registered address being situated within the High Court of South Africa's jurisdiction, and by their submission to the jurisdiction of the South African High Court.

28.4 Further, the recognition and enforcement of the said Court order by the High Court of Botswana is not contrary to public policy. The Honourable Court had the power to exercise its common law jurisdiction to recognise and register the final and conclusive order of a competent foreign court.

29. **Ad Paragraphs 69 – 72**

29.1 The contents of the above paragraphs are denied.

29.2 The complaint raised by the Applicants in respect of this affidavit is an irregularity in form only and cannot possibly prejudice them. The Respondent has been advised that where there is no prejudice to the opposing party and the deponent has substantially complied with the Rule as in the present case, a Court is entitled by the same Rule 13 to receive the affidavit in court, notwithstanding the irregularity.

29.3 I aver therefore that even if that issue had been raised, the same result would have still been obtained.

30. Ad Paragraphs 73 – 74

30.1 The contents of the above paragraphs are denied.

30.2 As stated previously, the hearing of an application for recognition and enforcement does not in itself involve a rehearing on the merits of a case properly decided by a competent court, in this instance, the Kwa-Zulu Natal Division of the High Court, South Africa.

31. Ad Paragraph 75 – 91

31.1 The contents of the above paragraphs are denied.

31.2 More specifically it is denied for reasons already given that there was a need to provide notice to the Applicants as alleged or at all in respect of the *ex parte* proceedings.

31.3 The orders sought were not rendered contrary to natural justice and were, in fact, granted with the consent of the business rescue practitioners in the South African court.

32. Ad Paragraph 112 – 113

32.1 The contents of the above paragraphs are denied.

- 32.2 More specifically it is denied that the *ex parte* order is liable to be rescinded.
- 32.3 I wish to reiterate that the order granted in South Africa, which was by the consent of the business rescue practitioners, provided specially that the Respondent, or any of its duly authorised agents or a Sheriff of the High Court was authorised to take possession of all the movable assets of the Tongaat Debtors and hold such movable assets in its possession and be constituted as pledgee on the addresses so specified or wheresoever the said moveable assets may be found.
- 32.4 With the full knowledge of the same moratorium that they allege the business rescue practitioners by their own words consented to the perfection order being granted.
- 32.5 This is without evening mentioning that the said business rescue practitioners have not sought to be recognised within the jurisdiction as such or have not provided such information in the present proceedings that they are in fact so recognised.
- 32.6 The information alleged to have been material and was not disclosed was in fact material that was placed before this honourable for due consideration and was so considered.

WHEREFORE I pray that the Applicants' application be dismissed with costs on attorney and client scale.

Crisi

CANDICE RACHEL RISI

THUS SIGNED AND SWORN TO at SEBENZA, EDENVALE on this 26 day of May 2026 at 13 h 50 the deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath, that the oath which she has taken in respect thereof is binding on her conscience, and that the contents of this affidavit are both true and correct.

Mohamu Rodgers Mkunzi

COMMISSIONER OF OATHS

FULL NAME: *Mohamu Rodgers Mkunzi*

DESIGNATION: *Sgt*

ADDRESS: *64 Moped road
Sebenza SAPS*

