

COURT ONLINE COVER PAGE

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

CASE NO: 2026-031780

In the matter between:

**Gerhard Conrad Albertyn NO ,Trevor
John Murgatroyd NO ,Petrus Francois
Van Den Steen NO**

Plaintiff / Applicant / Appellant

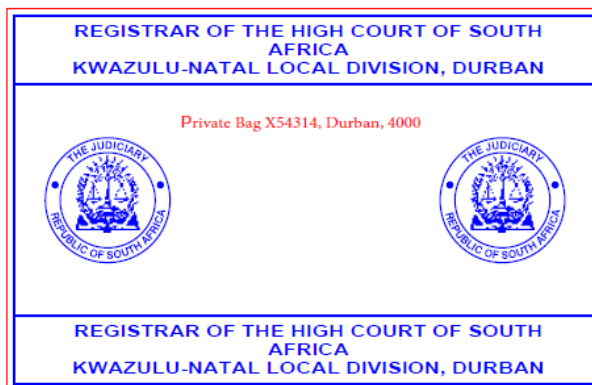
and

**Tongaat Hulett Limited,The Affected
Persons**

Defendant / Respondent

Replying Affidavit

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**Registrar of The High Court,
KwaZulu-Natal, Durban.**

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 HULETT LIMITED (IN BUSINESS RESCUE)

First Respondent

THE AFFECTED PERSONS

Further Respondents



APPLICANTS' REPLYING AFFIDAVIT TO THE SUPPLEMENTARY AFFIDAVITS OF VISION, ABRINA, SACGA AND THE MINISTER FILED PURSUANT TO THE COURT ORDER OF 16 APRIL 2026

I, the undersigned,

GERHARD CONRAD ALBERTYN

do hereby make oath and say –

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- 1 I am the deponent to the Applicants' supplementary affidavit delivered pursuant to the Court order granted on 16 April 2026 which was delivered by the applicants on 20 May 2026 ("**the BRPs' Supplementary Affidavit**"). My particulars appear from what is stated in the supplementary affidavit.
- 2 I am one of three jointly appointed business rescue practitioners ("**the BRPs**") of Tongaat Hulett Limited (under business rescue") ("**THL**"). I am authorised to depose to this affidavit in my capacity as such.
- 3 I attach marked "**TR1**" and "**TR2**," confirmatory affidavits deposed to by Trevor John Murgatroyd ("**Murgatroyd**") and Petrus Francois van den Steen ("**Van den Steen**") in which they confirm the allegations made herein insofar as they relate to the BRPs.
- 4 The facts herein are, to the best of my belief, both true and correct and within my personal knowledge unless context indicates otherwise.
- 5 This affidavit constitutes a response to the following affidavits filed pursuant to this Honourable Court's order of 16 April 2026 ("**the order**"):
 - 5.1 Vision Investments 155 (Proprietary) Limited's ("**Vision**") supplementary affidavit dated 24 May 2026 ("**Vision's Supplementary Affidavit**");;



- 5.2 the supplementary answering affidavit deposed to by Thomas Bernhard Funke on behalf of the South African Cane Growers' Association NPC ("**SACGA**") dated 27 May 2026 ("**SACGA's Supplementary Affidavit**");
- 5.3 the supplementary affidavit deposed to by Adharsh Kadarnath Maharaj on behalf of Abrina 9422 (Proprietary) Limited ("**Abrina**") dated 27 May 2026 ("**Abrina's Supplementary Affidavit**"); and
- 5.4 the supplementary answering affidavit delivered on behalf of the Minister of Trade, Industry and Competition ("**the Minister**") which affidavit was provided, unsigned, on 29 May 2026 ("**the Minister's Supplementary Affidavit**")
- 6 This affidavit should be read together with the Applicants' prior affidavits ("**the prior affidavits**") being –
- 6.1 the founding affidavit dated 12 February 2026;
- 6.2 the replying affidavit to RGS's preliminary answering affidavit and answering affidavit to RGS's counter-application, dated 4 March 2026 ("**the BRP Reply**");
- 6.3 the consolidated replying affidavit to the answering affidavits of the IDC, Vision, SACGA, Abrina and the Minister, dated 6 March 2026 ("**the Consolidated Reply**");



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- 6.4 the BRPs' supplementary affidavit ; and
- 6.5 the BRPs' answering affidavit to RGS's supplementary affidavit, dated 22 May 2026 (**“the BRP Answer to RGS Supplementary affidavit”**).
- 7 Unless the context indicates otherwise, I adopt defined terms from the prior affidavits.
- 8 I do not respond seriatim to the affidavits of Vision, SACGA, Abrina and the Minister referred to above. This affidavit addresses all four supplementary affidavits thematically, focusing on material issues.
- 9 Accordingly, this is the Applicants' consolidated reply to Vision's Supplementary Affidavit, SACGA's Supplementary Affidavit, Abrina's Supplementary Affidavit and the Minister's Supplementary Affidavit. Where issues overlap, they are dealt with under the relevant thematic heading.
- 10 Any allegation in these supplementary affidavits which is not addressed or which is inconsistent with what is stated in previous affidavits deposited to by or on behalf of the BRPs is denied.



VISION'S SUPPLEMENTARY AFFIDAVIT

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- 11 Vision is THL's largest secured creditor — it has claims exceeding R11 billion, security over THL's material assets and holds approximately 75% of creditor voting interests. No business rescue plan can be adopted without Vision's support.
- 12 Vision has stated in its supplementary affidavit (and for the reasons advanced by it) that there does not appear to be reasonable prospects for THL's rescue and liquidation appears unavoidable.



- 13 Vision records in its supplementary affidavit *inter alia* that :

- 13.1 it has engaged, or attempted to engage, actively with the IDC, the BRPs and THL management in an attempt to find a viable and workable solution, to no avail;
- 13.2 its preferred outcome remains a credible rescue that preserves THL's business and protects value; and
- 13.3 despite that preference, Vision has concluded that rescue is no longer achievable. It says so expressly. That conclusion from the single stakeholder whose co-operation is indispensable to any rescue speaks for itself and is, the BRPs respectfully submit, determinative and supportive of the Applicants' entitlement to the relief sought in this application.

- 14 The BRPs are advised that section 141(2)(a) of the Act requires this Court to determine whether a “reasonable prospect” of rescue remains. The assessment is forward-looking and objective. It requires a factual foundation including whether any proposed plan commands the support of the major creditors required to vote on and adopt it.
- 15 The major secured creditor holding 75% of the voting interests informs this Court under oath that rescue is not achievable. This is compelling and supports the Applicants' assertion that the statutory threshold has indeed been reached.
- 16 Vision's affidavit also places substantial factual evidence before this Court that independently reinforces the Applicants' case. Vision confirms that no committed funding exists beyond 30 June 2026, placing THL in an untenable position from which no rescue can realistically be mounted. Vision further sets out in detail the IDC's failure — notwithstanding the extension granted by this Court on 16 April 2026 — to engage with Vision with the required urgency and decisiveness required to find a viable and workable solution and to enable an agreement capable of averting liquidation to be concluded.
- 17 Furthermore, Vision addresses the Botswana proceedings and correctly acknowledges the fact that they are entirely irrelevant to any issue before this Court.



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18 Vision correctly concludes that there is no objectively demonstrated reasonable prospect of rescue within the meaning of Chapter 6 of the Act and that liquidation appears inevitable.

19 The cumulative effect of that which is recorded by the BRPs and now by Vision, is plain. The BRPs, have concluded, in fulfilment of our peremptory statutory duties under section 141(2) of the Act that there is no reasonable prospect of THL being rescued. That conclusion is now expressly supported by THL's major secured creditor and the holder of approximately 75% of creditor voting interests. The IDC has failed to produce any funded alternative. No party, whether the IDC, Vision, RGS or anyone else for that matter, has presented anything capable of being placed before creditors for a vote. The evidential foundation for the relief sought is overwhelming and uncontroverted.



20 This does not detract from the BRPs' desire, and continued efforts, to find a way to rescue the business of THL. Whilst these efforts continue unabated, the BRPs are not able to force the outcome sought by all the responding parties without the required funding and the voting support of the majority creditor. These two factors remain in issue. Had this not been the case, the contents of this affidavit would have been very different.

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(i) *Vision's concurrence with the assessment under section 141(2)(a) of the Act*

21 Vision expressly states at paragraphs 14 and 32 of its Supplementary Affidavit that it agrees with the BRPs' assessment under section 141(2)(a) of the Act. That conclusion aligns with the statutory assessment communicated in the Founding Affidavit and the BRPs' Supplementary Affidavit.

22 I am advised that Vision's concurrence is of direct legal relevance. Where the dominant secured creditor has emphatically stated that it will not support any alternative plan, no plan can be adopted under section 152(2). The statutory machinery of rescue simply cannot function in the absence of that support.



23 The statutory test under section 141(2)(a) is not whether rescue is theoretically conceivable. It is whether there is a "reasonable prospect" of achieving the goals set out in section 128(1)(b) of the Act.

24 Business rescue encompasses two alternative statutory goals -

24.1 the rehabilitation of the company such that it can continue in existence on a solvent basis; or, failing that

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24.2 a result that achieves a better return for creditors or shareholders than would result from immediate liquidation.

25 The achievement of either goal suffices, but the prospect of achieving it must be reasonable and supported by a factual foundation.

26 Where the dominant secured creditor has emphatically stated that it will not support any alternative plan, no plan can be adopted under section 152(2). The statutory machinery of rescue simply cannot function in the absence of that support.



(ii) *The absence of committed funding beyond 30 June 2026*

27 Vision accepts that the absence of committed funding beyond 30 June 2026 places THL in an untenable position. A practitioner cannot responsibly continue incurring debts and obligations in these circumstances even if in the course and scope of continued trading activities to maintain business operations and retain value for creditors.

28 As at the date of deposing to this affidavit, no party — whether Vision, the IDC or any other entity — has provided THL with unconditional funding sufficient to sustain operations beyond 30 June 2026.

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- 29 The extension afforded by this Court's order of 16 April 2026 has not resulted in any certainty or a viable solution.
- 30 The factual matrix giving rise to the BRPs' statutory obligation under section 141(2)(a)(ii) remains materially unchanged. The justification for the relief has been reinforced by the passage of time.

(iii) *Engagements with the IDC since 16 April 2026*



- 31 Vision's Supplementary Affidavit details the engagements, or rather lack thereof, between Vision and the IDC since 16 April 2026.
- 32 The BRPs called for an urgent meeting between the IDC, Vision and the BRPs on 5 May 2026. The hearing is scheduled for 17 and 18 June 2026. Very little time remains. The meeting was critical. It took place on 7 May 2026 and failed to achieve consensus on any material issue.
- 33 Despite the BRPs' efforts, working with the IDC and Vision, no viable solution has been presented by the IDC or by Vision, and no binding agreement has been concluded. Nothing is available to present to the creditors of THL and no transaction capable of implementation exists. No funding commitment has been made beyond 30 June 2026. That is the position.

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34 I highlight the following facts which are confirmed by Vision and which are, amongst others, relevant to this Court's assessment under the relevant statutory provision –

34.1 on 20 April 2026, Vision's attorneys sought urgent engagement with the IDC;

34.2 on 6 May 2026, the IDC's attorneys responded that the IDC "cannot be compelled to partner with Vision" and that engagements "could not be construed as an admission of any agreement";



34.3 the IDC rejected Vision's VSSA proposal, citing a projected R5.4 billion impairment as unacceptable; and

34.4 the IDC concluded that it "cannot proceed on the basis of the VSSA proposal as currently structured."

35 The outcome is plain. The IDC and Vision, the parties who can materially impact the rescue of THL, appear to be presently unable to reach consensus and, on the contrary, appear to be at odds with each other. No agreed transaction exists. No funding commitment has been made. We, the BRPs, remain bound by our statutory obligations.

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36 The BRPs do not seek to attribute blame. I am advised that the enquiry under section 141(2)(a) is forward-looking — it asks whether rescue remains possible, not who rendered it an impossibility. The attribution of blame does not alter the statutory conclusion.

(iv) *THL's request for extended and increased PCF*

37 Vision notes THL's request to the IDC dated 15 May 2026 for a PCF extension to 30 September 2026 and increase to R3.5 billion until 31 March 2027. I confirm that request was made to provide liquidity during the 2026/2027 milling season and afford growers payment certainty, not on the basis that a concluded rescue transaction exists or that a reasonable prospect of rescue has been restored.



38 The IDC has made no commitment to extend or increase the PCF beyond its current terms.

39 Vision is concerned about an open-ended PCF extension without an agreed transaction, without proper consultation with Vision and without a clear path to exit business rescue. Vision records that if PCF is extended merely to postpone the inevitable, the result will be a further erosion of value and increased indebtedness. Vision states correctly that "that is not rescue".

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40 The BRPs share that concern. Business rescue is temporary. It cannot continue indefinitely in the hope that circumstances might change and in the absence of any prospect of change. A practitioner cannot continue to incur debts, even if in the ordinary course of business and with a view to preserving the value of the company, absent demonstrable rescue prospects.

(v) *The Botswana Proceedings*

41 Vision addresses the Botswana proceedings involving Bowwood and Main No 296 (RF) Proprietary Limited ("**Bowwood**") at paragraphs 78 to 87 of its Supplementary Affidavit. Vision characterises them as protective and preservation-oriented and concerned with the recognition of security rights in relation to shares in Tongaat Hulett Botswana Proprietary Limited ("**THB**"). The Botswana court has regulated the current position in the proceedings by consent pending the determination of the rescission application instituted by the BRPs and THB to *inter alia* set aside the ex parte order granted therein.



42 The BRPs' position remains as set out in the BRP Answer to RGS Supplementary affidavit.

43 Even if Vision's Botswana conduct is as egregious as RGS alleges, and the BRPs express no concluded view on that question, that would not, of itself, create a reasonable prospect of rescue. Rescue requires funding. None has materialised.

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The Botswana proceedings are being used as a distraction from the central issue and have no bearing on the relief sought.

SACGA'S SUPPLEMENTARY AFFIDAVIT

44 I turn to deal with SACGA's Supplementary Affidavit deposed to by Thomas Bernhard Funke on 27 May 2026.

45 Before addressing SACGA's specific allegations, I place the following on record.



45.1 The BRPs are aware of the dire socio-economic consequences associated with a liquidation of THL.

45.2 The BRPs are acutely and painfully aware of the devastating consequences that a liquidation of THL will have on the people of KwaZulu-Natal and Mpumalanga. That awareness is not expressed in abstract. It is not mere lip service. It is not a recent or tactical concession made in response to the opposition's affidavits. It has been at the forefront of our minds since the day we were appointed as THL's business rescue practitioners in October 2022.

46 In the BRPs' founding affidavit in the application ("**the SASA application**") between THL and Others v SASA and Others launched in this Court under case number D4472/2023 and which was deposed to at an early stage of THL's

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business rescue, it was stated by the BRPs under oath that THL's inability to be rescued "would be calamitous to the South African sugar industry and would have serious ramifications for the economy of KwaZulu-Natal and nationally."

47 It was further then recorded that, at peak season, THL's operations directly employ more than 23 000 people and create more than 185 000 employment opportunities; that THL sources the majority of its sugarcane from independent farmers providing a livelihood to more than 21 000 farmers of whom more than 15 000 are small-scale farmers and co-operatives; and that an independent assessment estimated that THL's trading activities generated approximately R28.8 billion of output in the South African economy in 2021, contributing approximately R11 billion to GDP. That was said in 2022. It remains true today.



48 In that same affidavit, I recorded that undermining THL's rescue "would be catastrophic for THL and all affected persons" expressly identifying those persons as including THL's creditors, its supplying growers ("a large percentage of which are black small-scale growers"), its shareholders, its trade unions and its approximately 2 500 employees. From the very inception of THL's business rescue, the BRPs have understood and documented the human cost of failure.

49 For over three years since then, we have worked tirelessly alongside THL's employees, its management, its growers and its communities. We have witnessed first-hand the dependency of over 16 000 small-scale growers and their families on

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the continued operation of THL's mills. We know that Felixton, Maidstone and Amatikulu are not merely industrial assets. They are the economic, social and institutional anchors of their surrounding communities. Their closure will be catastrophic.

50 We do not dispute, and have never disputed, that a liquidation of THL will result in wide-scale job losses, the destruction of grower livelihoods, the destabilisation of rural communities and the potential collapse of a significant portion of South Africa's sugar industry. Whilst we appreciate this fact, it appears that others may not.



51 SACGA's Supplementary Affidavit provides a comprehensive and sobering account of the consequences that would flow from mill closures. Mr Funke explains that the closure of THL's mills and refinery representing roughly 25% of South Africa's sugar production will result in the loss of approximately 35 500 direct jobs and 87 500 indirect jobs, will effectively eliminate the primary income source for 17 259 registered growers and will impact over one million people. We do not take issue with these assertions. They are consistent with the evidence we placed before this Court in the SASA application and with our own understanding of THL's socio-economic footprint, as documented since October 2022.

52 The BRPs recorded in the SASA application that the sugar industry as a whole creates approximately 85 000 direct jobs and 350 000 indirect jobs primarily in rural

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and deep rural areas with scant alternative employment and that approximately one million South Africans depend on the industry for their lives and livelihood. THL's contribution to those figures is substantial and disproportionate. SACGA's evidence confirms and amplifies what we have always known.

53 SACGA further explains the cascading effects that mill closures would have throughout the sugar value chain including, but not limited to, disruption to cane transport systems, refinery operations, downstream food manufacturing supply chains, municipal revenue and the broader socio-economic fabric of rural KwaZulu-Natal and Mpumalanga. The industry generates an average annual direct income exceeding R25 billion, with a multiplier of R3.20 for every R1 of revenue, translating to approximately R80 billion throughout upstream and downstream value chains and surrounding communities. These figures underscore the scale of what is at stake.



54 SACGA draws attention to the biosecurity risks associated with unharvested cane — the build-up of *Eldana saccharina* pest populations, the risk of field fires and the long-term degradation of cane fields that cannot be replanted for up to ten years. These risks are dire.

55 THL has invested approximately R1.85 billion since 2022 in rehabilitating milling infrastructure to achieve some of the highest levels of mechanical efficiency recorded in recent years. That investment, and the human effort behind it, needs to be preserved.

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56 The BRPs emphasise that the liquidation of THL is not the preferred or desired outcome. This is the antithesis of the BRPs objective. We have dedicated over three years of our professional lives to attempting to rescue this company. We have engaged tirelessly with the IDC, Vision, Government, the cane growers, SASA and with every stakeholder who has come forward. We have explored every opportunity that has presented itself. We have done so because we understand what is at stake.

57 But the situation in which THL finds itself is beyond our control. Despite every effort, no party has committed the funding required to sustain THL's operations beyond 30 June 2026. No implementable rescue plan exists. No binding transaction has been concluded. The IDC have not provided the required funding. The DTIC has not advanced matters to enable funding to be provided by government. Moreover, Vision, as the largest secured creditor, has confirmed under oath that rescue is not achievable.

58 I am advised that section 141(2) of the Act is peremptory. It does not afford the BRPs a discretion. Where a practitioner concludes that there is no reasonable prospect of rescue, the practitioner must apply to court to terminate the business rescue.

59 The socio-economic consequences, however devastating, unfortunately do not override that peremptory statutory obligation. Had the BRPs not brought this



application, we would have been in breach of our statutorily imposed obligations and exposed to personal liability and professional sanction.

60 We say this not to diminish the suffering that will follow if liquidation is ordered. We say it because the BRPs compliance with their statutorily imposed obligations have placed us in an impossible position not of our own making and one which we know will cause enormous human hardship. That is the tragedy of this matter.

(i) GrowerCo proposal



61 SACGA refers to a proposal by GrowerCo (Proprietary) Limited (in formation) ("GrowerCo"). The BRPs welcome any *bona fide* proposal from any affected person and have made this clear throughout.

62 However, the GrowerCo proposal does not constitute a business rescue plan within the meaning of section 150 of the Act. It is a high-level concept document that does not satisfy the content requirements of section 150(2), has not been placed before creditors for a vote, does not address Vision's secured claims of over R11 billion, does not identify unconditional and immediately available funding and remains contingent on IDC participation which has not materialised. The proposal emanates from an entity not yet incorporated, with no legal personality, no concluded agreements and no binding commitments from the growers who are to participate.

63 The proposal accordingly falls far short of what is required to establish a reasonable prospect of rescue under section 141(2)(a).

64 The growers' equity contribution is not cash but a perpetual commitment of feedstock supply converted into an equity stake. That does not inject a single rand of liquidity into THL. THL's immediate crisis is a liquidity crisis. A non-cash equity contribution, whatever its long-term structural merit, does not address THL's immediate and critical funding shortfall.



65 The BRPs cannot, in the prevailing circumstances, treat the GrowerCo proposal as evidencing a reasonable prospect of rescue.

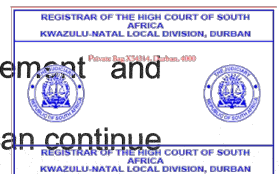
(ii) Continuation of milling operations

66 SACGA emphasises that the 2026 milling season has commenced and cane deliveries are on track. The BRPs do not dispute this. The commencement of the milling season was facilitated by the conclusion of PCF11 on 16 April 2026 — this is the interim funding that founded the postponement that this Court granted.

67 The commencement of milling does not demonstrate a reasonable prospect of rescue within the meaning of section 141(2)(a) of the Act. It demonstrates only that THL remains entirely dependent on IDC funding to operate on a day-to-day basis. This funding will cease when the current PCF facility expires on 30 June 2026. The

question before this Court is not whether THL's mills can physically crush cane or continue operating the mills. That is a short-sighted blinkered question focusing on the present. The correct question is whether there is a reasonable prospect of achieving the statutory goals of business rescue as defined in section 128(1)(b) of the Act. No funded, implementable plan exists that is capable of achieving those goals — and no party has placed one before the BRPs or before this Court.

68 SACGA asserts, on the basis of discussions with THL management and representatives of the IDC, that cashflow projections demonstrate THL can continue to carry on business until the end of the milling season and indeed to September 2027, provided that the IDC PCF facility remains available. The BRPs make two observations in this regard -



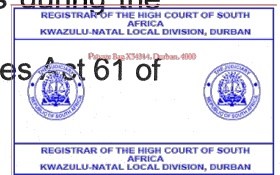
- 68.1 first, the availability of the IDC PCF facility beyond 30 June 2026 is not committed. No binding commitment has been made by the IDC to extend the facility. The premise upon which SACGA's assertion rests — namely continued IDC funding — is uncertain and unresolved;
- 68.2 Secondly, continued trading under the protection of PCF does not constitute rescue within the meaning of section 128(1)(b) of the Act. A reasonable prospect of rescue must be based on reasonable grounds and requires more than a mere speculative suggestion. The ability to continue trading on borrowed

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money, without any path to solvency or an implementable plan, does not establish such a prospect.

(iii) The section 341(2) validation order

69 SACGA seeks an order validating payments made by THL to growers during the period from 12 February 2026 in terms of section 341(2) of the Companies Act 61 of 1973.



70 Whilst it is understood why SACGA seeks this relief, it is not relief which can be sought and granted in this forum. The relief sought, whilst fully understandable from a risk mitigation perspective, and which would in the normal course enjoy support from the BRPs, is inappropriate at this point in time.

71 In terms of s341, dispositions and share transfers after winding-up are void unless a Court directs otherwise. Fundamental to the applicability of the provisions of s341 is the liquidation of the company. Presently there is no order, whether provisional or final, placing THL under winding-up. Accordingly, the provisions of the section which pertains to liquidated companies cannot be relied upon.

72 Aside from the fact that this Court has not granted an order (i) terminating the business rescue proceedings and (ii) granting the liquidation of THL, such relief in

any event requires a substantive application to Court which will have to be considered on its own merits.

(iv) Viability of THL's operations

- 73 SACGA makes various assertions regarding milling viability, referring to statements by THL's CEO (which I address more fully below) and the IDC's answering affidavit. The operational viability of THL's mills is not the issue. The issue is THL's financial viability and its commercial insolvency and whether it has the ability to pay its debts as they fall due and to continue in existence on a solvent basis. On any objective assessment, THL cannot do so without substantial external funding that no party has committed to provide.



(v) Repetition of SACGA's earlier affidavit

- 74 A substantial portion of SACGA's Supplementary Affidavit repeats or amplifies evidence placed before this Court in its earlier answering affidavit. The BRPs dealt with that evidence in the Consolidated Reply. I do not repeat what is stated therein. The BRPs' position remains as set out in the Consolidated Reply.

ABRINA'S SUPPLEMENTARY AFFIDAVIT

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75 I now address the assertions in Abrina's Supplementary Affidavit deposed to by Adharsh Kadarnath Maharaj on 27 May 2026.

76 Any allegations not specifically addressed by the BRPs in such affidavit are denied.

77 Whilst the BRPs have attempted to avoid repeating the assertions already contained in this reply in addressing Abrina's repetitive allegations, some repetition may occur.

78 Abrina's deponent, Mr Maharaj is an attorney and the sole director of Abrina which trades as Hariyali Farms and which is a cane grower contracted to THL to supply sugar cane. Abrina is not a creditor or affected person of THL. It is not authorized to make assertions on behalf of or represent other cane growers. Abrina speaks for itself and serves its own interests.

79 It is against the above that I address the content of Abrina's supplementary affidavit. Abrina's affidavit is unfortunately laden with vitriolic and unfounded criticism and misguided and ill-conceived complaints about the conduct of the business rescue and the management and operation of THL's business.

(i) *Criticism regarding the institution of the application*



80 Abrina's criticism regarding the institution of this application by the BRPs self-servingly ignores the statutorily imposed obligations on the BRPs in terms of section 141(2) of the Act which compelled the BRPs to institute this application.

81 Abrina's is unable to produce a single shred of evidence which contradicts the BRPs submissions regarding the dire financial position of THL, the failed implementation of the BR plan or THL's commercial and factual insolvency.

(ii) *The April Hearing and the BRPs' alleged 'Approbation and Reprobation'*



82 The regrettable diatribe by Abrina regarding the hearing which took place on 16 April 2026, and its selective referrals to the submissions made thereat entirely disregards the purpose for which the postponement of the hearing was sought.

83 Abrina accuses the BRPs of having frozen the "*litigation without resolving the core underlying dispute*". The accusation is made notwithstanding that the BRPs explained in painstaking detail in their founding affidavit, the BRP Reply and in the Consolidated Reply, the efforts made by the BRPs since September 2025 to resolve the underlying core issues. Abrina offers no challenge to the allegations regarding the dire financial position of THL and its factual and commercial insolvency but more significantly offers no solution and limits itself to unfounded and unbridled criticism.

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84 Furthermore, Abrina's contentions misconstrue the law and the facts. Section 141(3) of the Act vests this Court with a discretion to make any order it considers appropriate in the circumstances. When the IDC offered interim funding on 16 April 2026, the BRPs responsibly informed the Court of that development and supported a postponement to allow the parties to explore whether rescue remained achievable. That conduct was entirely consistent with the BRPs' duties.

85 This does not constitute approbation and reprobation. The postponement simply afforded the parties a window of opportunity which opened because of additional funding being secured to enable the parties to engage during that window to attempt to achieve consensus as to the terms which would culminate in the rescue of THL. To the knowledge of the BRPs, they have failed to do so within the time afforded, and no other party has intervened with a viable alternative.



(iii) *Alleged Duplicitous Conduct*

86 Abrina's allegations about alleged duplicitous conduct are similarly without foundation and demonstrate a complete lack of understanding of business rescue and the duties of business rescue practitioners to continue to operate and manage the business of the company in the interests of its creditors.

87 Abrina alleges that the BRPs have engaged in "duplicitous conduct" by issuing an operational status update to growers on 22 May 2026 confirming the commencement of the 2026 milling season whilst simultaneously pursuing this application.

88 There is nothing contradictory or duplicitous about these two positions. The commencement of milling operations was enabled by the interim PCF funding secured from the IDC on 16 April 2026. The operational update reflected the position on the ground namely that THL's mills were physically operational because interim funding existed. This does not alter the BRPs' statutory conclusion that no reasonable prospect of rescue exists within the meaning of section 141(2)(a).



89 The existence of short-term operational liquidity is not the same as having a funded and implementable rescue plan. Communicating to growers that milling operations have commenced is not inconsistent with informing this Court that rescue remains unachievable.

90 However, the most significant fallacy of Abrina's allegations is that it ignores the following:

90.1 In the operational status issued by THL's Group CEO, he dedicates a paragraph to THL's liquidity position and cane payments. It is pertinently recorded by him that:

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"As always, payment timing will remain linked to underlying cash generation and proceeds from sugar sales will continue to be managed prudently within the existing liquidity framework" (my emphasis);

90.2 The significance of the above qualification will undoubtedly be appreciated by all cane growers who are aware of this application. Aside from extensive communications with the cane growers regarding the application, all pleadings / affidavits in relation to the application are publicly available on [THL's website](#), and, as Abrina knows, the pending application has been widely reported in the press.



90.3 Abrina and all cane growers are well aware of their risks in continuing to do business with THL and cannot seriously or genuinely contend that the management statement advising of *inter alia* the continued operation of the mills is a misrepresentation of anything. To the contrary it evidences the fact that THL is continuing with its operations and trading activities to the benefit of all affected persons, including but not limited to the cane growers notwithstanding its ongoing financial constraints.

90.4 Finally, cane growers who have delivered their cane in May 2026 pursuant to the re-opening of the mills are only due to be paid in June 2026 and, depending of course on what transpires on 17 June 2026, there is sufficient funding to discharge these payments and the IDC has authorised that these payments be

made. The misdirected alarm regarding payment is to suit Abrina's narrative and is disingenuous.

91 Abrina purports to respond to the BRPs Supplementary Affidavit ad seriatim at paragraphs 9 to 26 of its Supplementary Affidavit. The responses consist largely of bare denials and assertions that the BRPs have "failed to provide evidence" of THL's financial position. These contentions are rejected.

92 The BRPs have placed voluminous evidence before this Court in the Founding Affidavit, the Consolidated Reply, the BRP Supplementary Affidavit, and this affidavit demonstrating THL's insolvency and the absence of any funded rescue path. Abrina has placed no contradicting financial evidence before the Court. Its allegations that the BRPs have approached this Court without candour are unfounded and disregard the extensive factual record.

93 Abrina's further allegation that the BRPs should have pursued "remedies other than liquidation" against Vision for breach of the adopted plan misconceives the enquiry under section 141(2)(a). The statutory question is whether there is a reasonable prospect of rescue and not whether legal remedies may exist against a non-performing plan proponent. The pursuit of such remedies would not, of itself, restore funding or create a rescue prospect.



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- 94 In the premises, Abrina's Supplementary Affidavit does not advance any new fact or argument that alters the BRPs' conclusion.

THE MINISTER'S SUPPLEMENTARY AFFIDAVIT

- 95 On the 29th of May 2026, and in disregard for the time periods directed in the Court order of 16 April, the Minister's unsigned affidavit was provided to the BRPs



- 96 Save for stating that the BRPs have not met the evidentiary burden required for the relief sought, the Minister has not provided this Court with a single objective or factually tenable basis as to why this Court should exercise its discretion in refusing the relief sought by the BRPs.
- 97 In stating that the BRPs have failed to meet the evidentiary burden for determining that THL is no longer capable of being rescued, the Minister ignores its (i) dire financial position, (ii) factual and commercial insolvency and (iii) the BRPs' demonstrated inability to implement the adopted BR Plan. The only sustainable conclusion is that the Minister has not had regard to the affidavits exchanged in this application.
- 98 The Minister contends that the BRPs have failed to meet the evidentiary burden because, *inter alia*, the adopted plan provides for a R75 million distribution to

unsecured creditors that liquidation would not, and because the liquidation comparison in the plan is said to be outdated. Neither contention withstands scrutiny.

- 99 As to the R75 million distribution to unsecured creditors contemplated in the adopted plan - that distribution was predicated on the successful implementation of the Vision Plan, including the conclusion of the sale of business agreements and the provision of adequate funding. The Vision Plan has failed on implementation. The sale of business agreements have lapsed. No funding exists to give effect to the plan. In these circumstances, the R75 million distribution is no longer capable of being made under the adopted plan. The Minister's reliance on a benefit that is contingent upon a plan that has demonstrably failed is misplaced.



100 As to the liquidation comparison -

- 100.1 the comparison contained in the adopted plan was prepared during plan formulation on the basis of assumptions that were applicable at that time;
- 100.2 the BRPs are not required, in an application under section 141(2)(a) of the Act, to prepare a fresh liquidation comparison as a precondition to the relief sought; and

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100.3 the statutory enquiry is whether there is a reasonable prospect of rescuing the company and not whether the BRPs have updated every appendix to an adopted plan that has failed on implementation.

101 In any event, THL's financial position has deteriorated materially since the plan was adopted, rendering any suggestion that a better return remains achievable through business rescue untenable in the absence of any committed funding.

102 The BRPs have set out in comprehensive detail in the BRPs' Founding Affidavit, the BRPs' Reply and, in the BRPs' Supplementary Affidavit, facts which are not seriously disputed, and which overwhelmingly support the relief sought by the BRPs. In fact, the objective facts on which the BRPs rely in support of meeting their "evidentiary burden" are supported by what is stated by THL's largest secured creditor, Vision. It appears that the Minister has failed to take cognisance of the extensive detail and supporting documents attached to the many affidavits exchanged herein.

103 The Minister provides no assistance whatsoever to this Court in refuting the BRPs allegations and other than feigned offers of assistance, to the BRPs' knowledge, he has done nothing to provide any solution to THL's present predicament.

104 The Minister's Supplementary Affidavit does not advance a single new fact or argument that alters the BRPs' conclusion regarding the continued rescue of THL.



105 Any allegation by the Minister not addressed is denied.

THL'S FINANCIAL POSITION AND INSOLVENCY

106 The BRPs reaffirm their considered and inescapable conclusion, as stated in the Founding Affidavit and in the BRP Supplementary Affidavit, that there is no longer a reasonable prospect of THL being rescued within the meaning of section 141(2)(a) of the Act.



107 The statutory test under section 141(2)(a) is not whether rescue is theoretically conceivable. It is whether there is a “reasonable prospect” of achieving the goals set out in section 128(1)(b) of the Act. Those goals are defined with precision so that the rehabilitation of the company is such that it can continue in existence on a solvent basis or, failing that, achieves a better return for creditors or shareholders than would result from immediate liquidation.

108 At the time the BRPs instituted this application, THL could not satisfy either limb of this statutory test. That position has not changed. The justification for the relief has rather been reinforced.

109 As at the date of deposing to this affidavit, more than three months after the institution of these proceedings, no party, including Vision, the IDC or the Minister, has produced any new facts, evidence or funding altering the BRPs' conclusion. All

that we, the BRPs, have been left with by the parties who have opposed this application, is unsubstantiated and unsupported hope, without any unconditional financial commitment. Whilst the BRPs are sympathetic and continue to engage with all parties towards finding solutions, we cannot proceed on the basis of hope.

110 THL is hopelessly factually and commercially insolvent.

111 THL satisfies both limbs of the definition of “financial distress” under section 28(1)(f) of the Act. I deal with each limb in turn.



112 The first limb is the inability to pay debts as they fall due, that is commercial insolvency.

113 It is reasonably unlikely that THL will be able to pay all of its debts as they become due and payable within the immediately ensuing six months –

113.1 THL’s sole source of operating liquidity is the IDC’s PCF facility, which is not committed beyond 30 June 2026. No other party has provided unconditional and committed funding sufficient to sustain THL’s operations beyond that date;

113.2 THL’s monthly cash requirements vastly exceed its internal cash generation. As I recorded in the BRP Reply, THL’s forecast gross funding requirements for March 2026 alone totalled approximately R1.5 billion comprising *inter alia*

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cane payments of approximately R456 million, operating expenses of approximately R338 million, off-crop maintenance capital expenditure of approximately R86 million, SASA levies of approximately R133 million, salaries of approximately R135 million, and export costs of approximately R110 million. THL does not have the capacity to generate these sums without PCF drawdowns;

- 113.3 THL has experienced repeated and severe liquidity crises throughout its business rescue. As I recorded in the Founding Affidavit, THL at one point had only R300 million in cash available to cover approximately R750 million in payments, with approximately R11 million of headroom — managed through cash rationing, not solvency;
- 113.4 the existing R2.3 billion PCF facility has been fully drawn. The additional R200 million under PCF11 provides only a temporary and conditional runway to 30 June 2026, subject to IDC budget approvals which have been delayed; and
- 113.5 on 8 February 2026, Vision issued a demand to THL for payment of R11.7 billion under the relevant finance and security agreements. I am advised that this demand is not enforceable during business rescue by reason of the moratorium in section 133 of the Act. Its relevance is that it demonstrates, objectively and unambiguously, that THL's largest creditor considers THL to be in default of its obligations.

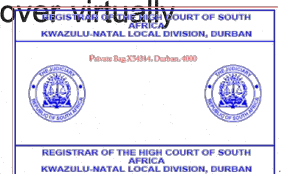


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114 The second limb relates to factual insolvency. THL is factually insolvent –

114.1 THL's liabilities massively exceed the value of its assets. Vision's secured claims exceed R11 billion. The IDC's PCF exposure is approximately R2.5 billion. All of THL's assets are encumbered: the IDC holds security over THL's bank accounts, inventory and debtors, and Vision holds security over virtually all remaining assets;



114.2 THL's asset base is eroding under adverse market conditions, increased volumes of imported sugar, declining global sugar prices, a stronger exchange rate reducing duty protection, and delays in implementing tariff adjustments. Continued trading under these conditions without funding certainty accelerates the erosion of THL's asset base;

114.3 no funded transaction exists that could restore THL to balance-sheet solvency. The Vision Plan has failed on implementation. The sale of business agreements have lapsed. No alternative plan exists; and

114.4 even under the Vision Plan's own projected income statement and balance sheet, THL would have remained insolvent, in the short term, if the plan had been implemented successfully. If THL was projected to remain insolvent under

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the best-case implementation of the adopted plan, its insolvency in the absence of any plan is established *a fortiori*.

115 The combined effect of the facts set out above is that THL is hopelessly factually and commercially insolvent. It cannot pay its debts as they fall due. Its liabilities vastly exceed the value of its assets. Its asset base is eroding under adverse market conditions.



116 No party has produced any objective financial evidence whether in the form of financial statements, management accounts, or binding funding commitments that contradicts the BRPs' conclusion. On the contrary, the evidence placed before this Court by Vision, the IDC, and by the parties opposing this application, uniformly confirms THL's insolvency. There is nothing left to sustain a finding that rescue remains reasonably possible.

117 I refer to Mr Aitken's letter relied upon by RGS, read together with annexures "SA4" and "SA5" to the BRP Supplementary Affidavit, in support of this incontrovertible fact.

118 Neither Vision nor the IDC can genuinely deny these facts.

119 Vision's Supplementary Affidavit does not deny them. To the contrary, it confirms them.

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120 THL's insolvency is not a new development, a temporary liquidity shortfall, or a cyclical downturn. It is the structural and irreversible consequence of the inability to implement the adopted plan, the collapse of the sale of business agreements, the absence of committed funding, and the inability of any stakeholder (including the government), over a period now exceeding three months since the institution of these proceedings, to produce a funded, implementable rescue transaction. The BRPs have exhausted every avenue available to them.

CONCLUSION AND RELIEF



121 Notwithstanding the opposition to this application mounted by multiple parties over multiple rounds of affidavits not one of them has provided this Court with a single objective or factually tenable basis as to why this Court should exercise its discretion in refusing the relief sought by the BRPs.

122 The BRPs share the concerns of all opposing parties in relation to the adverse socio-economic consequences of liquidation, whilst devastating, cannot override the peremptory statutory obligation imposed on business rescue practitioners by section 141(2) of the Act. The opposing parties' desire to avoid liquidation however sincere does not constitute a reasonable prospect of rescue.

123 Vision's Supplementary Affidavit sadly reinforces the Applicants' case. THL's largest secured creditor holding approximately 75% of voting interests expressly agrees that

there are presently no reasonable prospects for THL's rescue and that liquidation appears unavoidable.

124 No committed funding exists beyond 30 June 2026. No creditor-supported plan is on the table. The IDC and the Minister have not translated their stated commitment to the objectives of business rescue into an implementable solution. Neither the GrowerCo proposal nor any other proposal placed before the BRPs constitutes a viable, funded and implementable business rescue plan within the meaning of the Act.



125 THL is hopelessly factually and commercially insolvent. It satisfies both limbs of the definition of financial distress under section 128(1)(f) of the Act. No party has placed before this Court any objective evidence to the contrary.

126 The BRPs, have done everything possible and have explored every opportunity in an attempt to avoid this application. Regard being had to our statutory duties, we have been left with no alternative but to proceed with this application.

127 The facts set out in the BRPs' Founding Affidavit, which are not seriously or genuinely disputed, overwhelmingly support the BRPs' request for the relief as set out in the notice of motion.

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128 The BRPs accordingly persist in seeking the relief set out in the notice of motion, namely an order –

128.1 discontinuing the business rescue proceedings of THL in terms of section 141(2)(a) of the Act; and

128.2 placing THL under provisional winding-up.



129 It is not the BRPs' wish that THL be placed in liquidation. The BRPs have approached this Court with heavy hearts, in fulfilment of our peremptory statutory duties under section 141(2) of the Act, for the reasons set out in all of the affidavits filed by us in this matter.

130 The BRPs have dedicated over three years of our professional lives to the rescue of THL. We have engaged with every stakeholder who has come forward and we have explored every opportunity that has presented itself. The relief we seek is not a course we have chosen; it is a course that has been imposed upon us by the facts and by the law.

131 The principal reasons advanced across all of the BRPs' affidavits may be summarised as follows -

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131.1 THL is hopelessly factually and commercially insolvent, it has no committed funding beyond 30 June 2026, and no party has produced any unconditional funding capable of restoring THL to solvency or sustaining its operations;

131.2 No funded, creditor-supported and implementable business rescue plan exists or has been placed before the BRPs or before this Court, despite the extension afforded by the order of 16 April 2026; and

131.3 THL's largest secured creditor, Vision, holding approximately 75% of creditor voting interests, has expressly confirmed under oath that there are presently no reasonable prospects for THL's rescue and that liquidation appears unavoidable.



132 In the premises, the BRPs have concluded, in accordance with section 141(2)(a) of the Act, that there is no reasonable prospect of THL being rescued. Section 141(2)(a) is peremptory - where a practitioner forms that conclusion, the practitioner *must* apply to court for an order discontinuing the business rescue proceedings and placing the company into liquidation.

133 On the facts of this matter, THL cannot continue in existence on a solvent basis as contemplated by section 128(1)(b)(iii) of the Act, nor has any party demonstrated that business rescue will achieve a better return for creditors or shareholders than would result from immediate liquidation. The statutory threshold has been reached.

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The BRPs respectfully submit that this Honourable Court should grant the relief sought in the notice of motion.

WHEREFORE the BRPs request this Honourable Court to grant the relief as sought in the Applicants' notice of motion.

GERHARD CONRAD ALBERTYN N.O.



I certify that this affidavit was signed and sworn to before me at **JOHANNESBURG** on 2 June 2026 by the deponent who acknowledged that he knows and understands the contents of this affidavit, has no objection to taking this oath, considers this oath to be binding on his conscience and uttered the following words - 'I swear that the contents of this affidavit are both true and correct, so help me God.'

COMMISSIONER OF OATHS

Name:
Address:
Capacity:

MAGDALENA FRANCIINA MARGARETHA VAN DER WALT
Commissioner of Oaths by Appointment
Reference Number: 1/9/4 10.06.2010
The Central, 96 Rivonia Road
Sandton, Johannesburg 2196

COURT ONLINE COVER PAGE

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

CASE NO: 2026-031780

In the matter between:

**Gerhard Conrad Albertyn NO ,Trevor
 John Murgatroyd NO ,Petrus Francois
 Van Den Steen NO**

Plaintiff / Applicant / Appellant

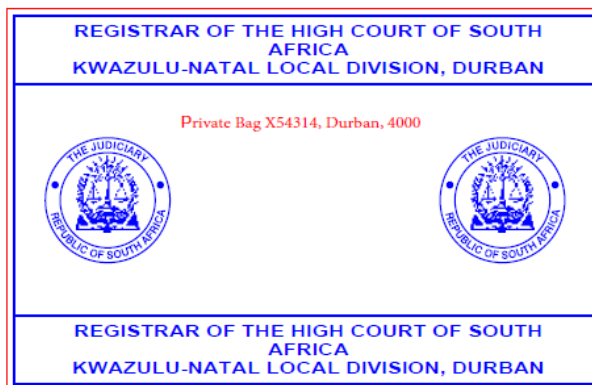
and

**Tongaat Hulett Limited,The Affected
 Persons**

Defendant / Respondent

Annexure 01

NOTE: This document was filed electronically by the Registrar on 2/6/2026 at 11:42:47 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED
 BY:

**Registrar of The High Court,
 KwaZulu-Natal, Durban.**

"TR1"

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.

TREVOR JOHN MURGATROYD N.O.

PETRUS FRANCOIS VAN DEN STEEN N.O.

And

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

THE AFFECTED PERSONS

First Applicant

Second Applicant

Third Applicant

First Respondent

Further Respondents



CONFIRMATORY AFFIDAVIT

I, the undersigned,

TREVOR JOHN MURGATROYD

do hereby make oath and state that -

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

- 2 The facts in this affidavit are both true and correct.

- 3 I have read the applicants' replying affidavit to the supplementary affidavits of Vision, Abrina, SACGA and the Minister filed pursuant to the court order of 16 April 2026 ("the affidavit") deposed to by GERHARD CONRAD ALBERTYN and I hereby confirm the truth and correctness of the contents of the affidavit insofar as the contents thereof relate to me and the applicants.



TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at _____ on ____ JUNE 2026 by **TREVOR JOHN MURGATROYD** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name
Address
Capacity

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COURT ONLINE COVER PAGE

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

CASE NO: 2026-031780

In the matter between:

**Gerhard Conrad Albertyn NO ,Trevor
John Murgatroyd NO ,Petrus Francois
Van Den Steen NO**

Plaintiff / Applicant / Appellant

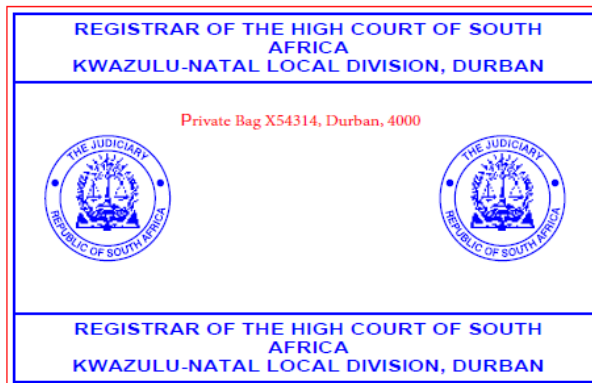
and

**Tongaat Hulett Limited,The Affected
Persons**

Defendant / Respondent

Annexure 02

NOTE: This document was filed electronically by the Registrar on 2/6/2026 at 11:46:28 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED
BY:

**Registrar of The High Court,
KwaZulu-Natal, Durban.**

"TR2"

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.

TREVOR JOHN MURGATROYD N.O.

PETRUS FRANCOIS VAN DEN STEEN N.O.

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

THE AFFECTED PERSONS

First Applicant

Second Applicant

Third Applicant

First Respondent

Further Respondents



CONFIRMATORY AFFIDAVIT

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that -

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

- 2 The facts in this affidavit are both true and correct.

- 3 I have read the applicants' replying affidavit to the supplementary affidavits of Vision, Abrina, SACGA and the Minister filed pursuant to the court order of 16 April 2026 ("**the affidavit**") deposed to by GERHARD CONRAD ALBERTYN and I hereby confirm the truth and correctness of the contents of the affidavit insofar as the contents thereof relate to me and the applicants.



PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at _____ on ___ JUNE 2026 by **PETRUS FRANCOIS VAN DEN STEEN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - '*I swear that the contents of this affidavit are both true and correct, so help me God.*'

COMMISSIONER OF OATHS

Name
Address
Capacity

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