

IN THE SUPREME COURT OF APPEAL

SCA CASE NUMBER: 605 / 2024

In the matter between:

**TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE) AND FOUR OTHERS**

First to Sixth Appellants

and

**SOUTH AFRICAN SUGAR ASSOCIATION
AND THE OTHER RESPONDENTS**

Respondents

NOTICE OF APPEAL

TAKE NOTICE that the appellants hereby note an appeal to this Honourable Court in respect of the judgment (other than paragraphs 188 to 200 thereof) and the order, including the order as to costs, of the Honourable Mr Justice Vahed handed down on 4 December 2023.

TAKE NOTICE FURTHER that leave to appeal to the Supreme Court of Appeal was granted by this Court (per Mokgohloa JA and Dippenaar AJA) on 25 July 2024, as appears from the order annexed, marked "A".

TAKE NOTICE FURTHER that appellants seek the following order:

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:
 1. Declaring that the third to fifth applicants ("**the BRPs**") are empowered to suspend, for the duration of the business rescue proceedings, any payment

obligation of the first applicant ("THL") which arises under the Sugar Industry Agreement, 2000; and

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.

TAKE NOTICE FURTHER that, *in the alternative* to the order above, the appellants seek the following order:

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:
 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; and
 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.
 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.

Dated at **JOHANNESBURG** on **26 AUGUST 2024**



WERKSMANS ATTORNEYS

Appellants' Attorneys

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C/O MICHAEL DU PLESSIS ATTORNEYS

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Email: michael@mdplaw.co.za

Ref: Mr M du Plessis

TO:

**THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
BLOEMFONTEIN**

AND TO:

SOUTH AFRICAN SUGAR ASSOCIATION

First Respondent

C/O GARLICHE & BOUSFIELD

7 Torsvale Crescent

La Lucia Ridge Office Estate. La Lucia

Email: howard.stephenson@gb.co.za

**Service in terms of
Uniform Rule 4A(1)(c)**

AND TO:

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

Second Respondent

C/O GARLICHE & BOUSFIELD

7 Torsvale Crescent

La Lucia Ridge Office Estate. La Lucia

Email: howard.stephenson@gb.co.za

**Service in terms of
Uniform Rule 4A(1)(c)**

AND TO:
MINISTER OF TRADE AND INDUSTRY
C/O THE STATE ATTORNEY (KWAZULU-NATAL)
Third Respondent
Email: thmaphumulo@justice.gov.za
KMalatji@thedtic.gov.za

**Service in terms of
Uniform Rule 4A(1)(c)**

AND TO:
SOUTH AFRICAN SUGAR MILLERS'
ASSOCIATION NPC
c/o **GARLICKE & BOUSFIELD INC**
Fourth Respondent's Attorneys
7 Torsvale Crescent
La Lucia Ridge Office Estate. La Lucia
Tel: +27 31 570 5483
Email: andre.liebenberg@gb.co.za

**Service in terms of
Uniform Rule 4A(1)(c)**

AND TO:
RCL FOODS SUGAR & MILLING
(PROPRIETARY) LIMITED
C/O WEBBER WENTZEL ATTORNEYS
Seventh Respondent
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com

**Service in terms of
Uniform Rule 4A(1)(c)**

AND TO:
ILLOVO SUGAR (SOUTH AFRICA)
(PROPRIETARY) LIMITED
C/O COX YEATS ATTORNEYS
Eighth Respondent
45 Vuna Close, Umhlanga Ridge, 4319
Email: TScheepers@coxyeats.co.za
LMapiki@coxyeats.co.za
JRodd@coxyeats.co.za

**Service in terms of
Uniform Rule 4A(1)(c)**

AND TO:
UCL COMPANY (PROPRIETARY) LIMITED
(PROPRIETARY) LIMITED
Twelfth Respondent
16 Noodsberg Road, Dalton, KwaZulu-Natal
Email: lutger@ucl.co.za

**Service in terms of
Uniform Rule 4A(1)(c)**



SUPREME COURT OF APPEAL OF SOUTH AFRICA

**CASE NO: 605/2024
KZD CASE NO: D 4472/2023**

BEFORE THE HONOURABLE JUSTICE MOKGOHLOA JA AND DIPPENAAR AJA

On the 25th JULY 2024

In the application between:

TONGAAT HULETT LTD (IN BUSINESS RESCUE)	1st Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PTY) LTD (IN BUSINESS RESCUE)	2nd Applicant
TREVOR JOHN MURGATROYD N.O.	3rd Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	4th Applicant
GERHARD CONRAD ALBERTYN N.O.	5th Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	1st Respondent
SOUTH AFRICAN SUGAR EXPORT CORPORATION (PTY) LTD	2nd Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	3rd Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	4th Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	5th Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	6th Respondent
RCL FOODS SUGAR& MILLING (SOUTH AFRICA (PTY) LTD	7th Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	8th Respondent
UMFOLOZI SUGAR MILLING (PTY) LTD	9th Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD	10th Respondent
HARRY SIDNEY SPAIN N.O.	11th Respondent
UCL COMPANY (PTY) LTD	12th Respondent
ALL REGISTERED GROWERS	13th- Twenty Three Thousandth Respondents

