

Mongezi Mpahlwa

Director



Mongezi Mpahlwa is a Director in our Dispute Resolution practice. Mongezi has experience in the fields of inter alia corporate and commercial dispute resolution, insolvency law, credit law (foreclosures, corporate recoveries, business rescue, liquidations etc.), insurance law (life assurance, pension fund and disability fund claims), regulatory work of accounting and international auditing standards, general litigation and arbitrations etc.

About Mongezi

Credentials

Education

- B.Com (Law) LLB, University of the Western Cape
- Admission as an attorney, Western Cape High Court Division, Cape Town, 2014
- Certificate in Advanced Case Management (LEAD), 2015
- Admission as an attorney, Gauteng High Court Division, Pretoria, 2016
- International Commercial Arbitration Certificate, University of Pretoria, 2018

Memberships

- Black Lawyers Association (BLA) National Executive Committee (Treasurer, 2018 to date)

Experience

- **Regulatory framework**

Expertise in the regulatory framework of accounting and international auditing standards. He initiated and successfully prosecuted disciplinary proceedings on behalf of the Independent Regulatory Board for Auditors (IRBA) against a former partner of one of the large auditing firms in the country for accounting irregularities and transgressing various auditing standards. The auditor was struck off from the register of registered auditors for an indefinite period after being found guilty of improper conduct, aiding and abetting tax evasion and dishonesty.

Contact Mongezi

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[Mongezi on LinkedIn](#)

Expertise

Dispute Resolution

Business Rescue, Restructuring & Insolvency

Public Law

Location

Johannesburg

Language

English

isiXhosa

isiZulu

- **Insolvency and business rescue**

He also specialises in the insolvency and business rescue practice area, with extensive experience in liquidations and business rescue proceedings in sectors such as mining, agriculture, private healthcare and hospitality, amongst others. He was recently involved in an application for the disposition without value of two payments of R 12 million and R 19 million in terms of sections 26 and 29 of the Insolvency Act 24, 1936 respectively on behalf of an insolvent estate.

- **Business re-structuring and recoverie**

Mongezi has experience in business re-structuring and recoveries for State-Owned-Enterprises such as the Industrial Development Corporation of South Africa and the Public Investment Corporation. He assisted in placing an investee company under business rescue following an irresolvable deadlock between the directors, which was resolved by the removal of one of the directors from the company's board.

- **Commercial arbitrations**

Experience in commercial arbitrations involving body corporates, director and shareholder disputes, commercial lease disputes and has acted for the Cape Peninsula University of Technology, Jocelyn Mansions, Synergy Income Fund Limited and Old Mutual Properties amongst others. He was involved in the dispute in respect of the bankability of the Gautrain project, which marked the evolution of public railway transport in South Africa. He was also involved in the recent case against the South African National Roads Agency (SANRAL) initiated by a Contractor in order to prevent SANRAL from exercising its rights to call up various on-demand guarantees following the termination of the construction agreement valued at R 1,6 billion.

- **Old Mutual Life Assurance Company**

He has acted on behalf of Old Mutual Life Assurance Company (South Africa) Limited in defending fraudulent life assurance, pension fund and disability fund claims lodged on behalf of beneficiaries.

- **Landmark silicosis class action lawsuit**

He was involved in the initial stages of the landmark silicosis class action lawsuit instituted against various South African mining companies and was part of an international team of lawyers involved in setting up satellite offices across the country for purposes of consulting with claimants and taking statements.

News

[The extent of business rescue practitioners' powers to suspend a company's contractual obligations](#)

Chapter 6 of the Companies Act 71 of 2008 (Companies Act) confers various powers on business rescue practitioners (BRPs) once they have assumed their responsibilities to restructure the affairs of a company that has been placed under business rescue. This is achieved through the temporary supervision of the company, and the management of its affairs, business and property, by the BRP; a temporary moratorium on the rights of claimants against the company or in respect of property belonging to the company or lawfully in the possession of the company; and the development and implementation, if approved, of a business rescue plan to rescue the company by restructuring its affairs, amongst other things.

[From promise to peril: The duty of credit providers to conduct proper affordability checks](#)

Credit providers have a general duty to conduct proper affordability assessments prior to granting loans or providing credit of any sort to debtors. Failure to adequately do so may amount to reckless credit.

[Insolvency enquiries: Who may examine witnesses?](#)

Insolvency enquiries envisioned under section 417 and 418 of the Companies Act 61 of 1973 (Act) are convened either by the court or the Master of the High Court (Master). Typically, such enquiries provide a useful method for liquidators to obtain the necessary information from relevant parties to assist them in winding up the affairs of a company.

[Kicking for touch: The unintended consequences of suspending winding-up proceedings pending business rescue](#)

"Kicking for touch" is a phrase known by many in the world of sports. It is used loosely by sports players on the rugby field to describe a move to play away from a team's goal line to that of its opponent so as to gain a tactical advantage. It brings the game to life. In the context of insolvency, kicking for touch has become a misnomer used to describe a litigant seeking to use every trick in the book to delay the finalisation of court proceedings. In this context, section 131(6) of the Companies Act 71 of 2008 bears this out. The section makes provision for a fresh business rescue application to suspend the already ongoing winding-up of a company under financial distress, therefore delaying the inevitable liquidation of that company.

[High Court dismisses challenge to mandatory audit firm rotations](#)

On 2 December 2021, the Pretoria High Court handed down judgment in the case of East Rand Member District of Chartered Accountants and Others v Independent Regulatory Board for Auditors and Others (case no. 37249/2018). The successful party, the Independent Regulatory Board for Auditors (IRBA), was represented by Mongezi Mpahlwa, a Director in our Dispute Resolution practice.

Videos

[We need business rescue to combat extreme rise in liquidations](#)

Mongezi Mpahlwa, Director of our Dispute Resolution practice joined Tumisang Ndlovu on Newzroom Afrika to discuss the need for business rescue to combat the extreme rise in liquidations.

[Watch as Mongezi Mpahlwa offers advice for prospective law students](#)

It was never Mongezi Mpahlwa's intention to study law, but having relished the inherent problem-solving aspects of the law subjects structured into his BCom degree, he went on to graduate and then pursued an LLB degree.

Podcasts

[Mongezi Mpahlwa - Smile FM - Smart Contracts and Online Dispute Resolution](#)

Mongezi Mpahlwa, Director in our Dispute Resolution practice joined Smile FM to discuss smart contract technology and online dispute resolution. He explains the effectiveness of the digitalised contracts, as they track and monitor compliance with the terms of the contract, allowing either party to freeze further execution in the event of a dispute.

[All news by Mongezi Mpahlwa →](#)

Recognition

- The Legal 500 EMEA 2022-2024 recommended Mongezi for dispute resolution.
- Mail & Guardian's 200 Young South Africans (2017 publication) listed Mongezi in the Justice and Law section as one of the exceptional South Africans under 35 who "have stood out from the pack and who show us what to look forward to in the country's future".