



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: **2705/2023**

In the matter between:

PHILIP ROBERTS N.O.

First Applicant

HEILTJE MAGDALENA ROBERTS N.O.

Second Applicant

STANLEY ROBERTS N.O.

Third Applicant

[The first to third applicants cited in their respective capacities
as trustees for the time being of the **Uzenheim Trust**
IT: 001055/2015(B)]

and

NUTRI CHEF (PTY) LTD

First Respondent

WILLEM MICHIEL BOSCH

Second Respondent

JUDGMENT BY:

C REINDERS, J

HEARD ON:

14 SEPTEMBER 2023

DELIVERED ON:

2 JANUARY 2024

This judgment was delivered in open court and subsequently distributed to the parties by electronic mail communication.

- [1] The applicants are the trustees for the time being of the Uzenheim Trust (the Trust). Nutri Chef (Pty) Ltd (Nutri Chef) is the first respondent and its sole director, Mr WM Bosch (the second respondent). References to the parties will be interchangeably as the applicant(s), the Trust, the respondent(s) and Nutri Chef.
- [2] The applicant by way of motion proceedings seeks relief from the respondents in the following terms:
- "1. That the respondents be ordered to make available the documents set out herein to the Trust, within 14 days of date of this order, by delivery of true copies thereof to the applicants' attorney of record c/o Mr B.M. Jones, Honey Attorneys, Honey Chambers, Northridge Mall, Kenneth Kaunda Road, Bloemfontein, Free State Province, namely:
 - 1.1 The first respondent's Memorandum of Incorporation, alternatively, articles of association and memorandum of association from its incorporation, inclusive of any amendments that may have been affected to the documentation aforesaid;
 - 1.2 The first respondent's notices, reports and minutes in respect of its annual meetings;
 - 1.3 The first respondent's share register from its incorporation interest to present;
 - 1.4 The first respondent's annual financial statements for the financial years ending February 2019 to February 2023;
 - 1.5 Minutes and resolutions of the board of directors of the first respondent for the past 5 years; and
 - 1.6 Trial balances, balance sheets, general ledgers, cash flow, income and expenditure statements and bank statements of the first respondent for the years ending 1 February 2018 to February 2023."

The applicants also move for a cost order on a punitive scale against the respondents.

- [3] The Trust relies thereon that it is entitled to the relief as it is a co-shareholder of the respondent and by operation of law is entitled to the documentation. It annexes share certificates, all dated 14 August 2017, which indicate that the Trust is the registered proprietor of twenty ordinary no par value fully paid shares in the respondent. It further extensively deals with the provisions of the Companies Act¹ in its founding papers.
- [4] The respondents oppose the relief sought and place reliance thereon that the Trust sold its 20% shareholding in Nutri Chef to the second respondent and one Mr Gutter on 10 July 2018.
- [5] In its replying affidavit the applicants at the time of the replying affidavit stated that the singular issue in this matter revolves around determination of the question whether the applicant is a shareholder of the first respondent. In addition thereto, the applicant in the affidavit states that if the answer to the aforementioned question is in the positive, then and in that event, it follows that the legal relief sought by the application is to be granted and conversely, should the answer be in the negative then, and in that event, the relief sought stands to be dismissed. In principle I agree.
- [6] The aforementioned approach was also the approach by both counsel who appeared respectively for the applicants and respondents. I thank them for their comprehensive heads of argument and contributions to assist me in arriving at a conclusion herein.

¹ 71 of 2008.

- [7] The relief that applicant seeks is final in nature and, as rightly pointed out by counsel, simply requires of me to make a final finding whether the applicant is a shareholder of the first respondent. In saying so I do not lose sight of the relief sought in the notice of motion referred to *supra*. In motion proceedings where final relief is sought, the factual dispute is to be resolved in line with the principles set out in ***Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd***.² This principle entails that the facts as stated by the respondent, together with the admitted facts in the applicant's founding affidavit constitute the factual basis for making a determination, unless the dispute of fact is not real or genuine, or the denials in respondent's version are bold or not creditworthy, or the respondent's version is palpably implausible or far-fetched, or so clearly untenable that a court is justified in rejecting that version on the papers. Put differently, in order to determine whether the relief is to be granted, I must adjudicate the matter on the respondent's version unless I can reject it as far-fetched or palpably false.
- [8] Before I deal with the respondent's version it needs mention that there was no request or suggestion that the matter be referred to oral evidence. I am therefore required to make a finding on the affidavits.
- [9] The respondents do not deny that the applicant was a co-shareholder at the time when the share certificates were issued in August 2017. They however aver that the sale agreement in respect of the Trust's Nutri Chef shares, coincided with a transfer agreement in terms of which the Trust expressly or impliedly ceded its rights and beneficial ownership of its shareholding to the second respondent and Mr Gutter. The sale and transfer of the Trust's Nutri Chef shares, so respondents aver, was part of a composite agreement aimed at dissolving a longstanding business alliance with Mr Roberts which was complexly interwoven through private companies, trusts and commercial ventures. The respondents refer to some of the entities (referred to as "main

² 1984 (3) SA 263 (A) at 634e-635c.

protagonists” by them) and mentions a mining enterprise (4Arrows Mining & Engineering (Pty) Ltd), 4Arrows Crushing (Pty)Ltd (for crushing and screening raw material), a holding company Moongate 194 (Pty) Ltd, Jovibright (Pty) Ltd (the owner of a Cessna airplane), Plantco (Pty) Ltd (currently in liquidation), Diesoline (Pty) Ltd (a company which supplies diesel for the plant equipment), the Joncore Trust (owner of certain trucks) and the first respondent (which primarily focuses on the acquisition, sale and leasing of earthmoving equipment).

[9.1] The respondents aver that a separation agreement was concluded on 10 July 2018 as the business relationship between the parties became strained. A systematic extrication was proposed in respect of Mr Roberts and his involvement in the aforementioned entities. The terms of the agreement were summarized by the respondents as follow:

- “18.1 We will acquire Mr Roberts’ shares in Plantco and Diesoline, and the Trust’s shareholding in Moongate and Nutri Chef for the nominal value of R1 for each set of shares. The contingent and future rights of beneficial ownership in these shares will transfer to us immediately.
- 18.2 We will acquire the Trust’s shares in Jovibrite for a sum of R 1 233 210.00. The contingent and future rights of beneficial ownership in these shares will transfer to us immediately.
- 18.3 We will repay Mr Robert’s and Joncor’s loan accounts in the aggregate sum of R 4 337 662.00 (the loan accounts).
- 18.4 Mr Roberts will resign as a director of Moongate, Plantco and Jovibrite;
- 18.5 Nutri Chef will purchase the International truck from Joncor for R 1 200 000.00 and the Mercedes truck for R 350 000.00;
- 18.6 The aggerate(*sic*) of the amounts payable under the separation agreement to Mr Roberts, the Trust and Joncor, which was R 7 461 261.00, would be paid in monthly instalments of R 350 000.00. per month.”.

- [9.2] It is averred by the respondent that thereafter Mr Roberts resigned as a director of Plantco, Moongate and Jovibrite. The aggregate sum of R 7 641 261.00 was paid in monthly installments. The International and Mercedes trucks were delivered by Joncor to Nutri Chef, and the shares in Moongate, Nutrichef, Diesoline, Plantco and Jovibrite were transferred to Mesrs Bosch and Gutter.
- [9.3] Respondents aver that in as far as the written agreement relied upon by applicant does not reflect this position, it should be rectified and adjudicated upon in its rectified form.
- [10] The applicant in its replying affidavit disputes that such an agreement was or could have been reached on 10 July 2018 as the meeting was only scheduled for 11 July 2018. Applicants dispute that the shares in Nutri Chef have ever been sold or transferred and annexes some correspondence to lend credibility to its version. Applicant denies that the agreement should be rectified.
- [11] I am of the view that the dispute of facts that has developed on the papers cannot be resolved by me simply on the papers. I can most definitely not reject the respondent's version as palpably false. The applicants do not seriously dispute the respondents' version that there had been a longstanding business relationship between the various role players which became strained and which resulted in a process of a systematic extrication of Mr Roberts. It is not seriously in dispute that R 7 461 261.00 was paid in monthly installments over the period 31 August 2018 to 26 March 2020, that Mr Roberts resigned as director of the entities mentioned and that the shareholding was transferred to the second respondent and Mr Gutter. It is only the shareholding in Nutri Chef that remains a bone of contention. The respondents mention that in the five years following the separation agreement, the Trust never asserted or sought to exercise any of the rights accorded to shareholders, nor did it seek to participate in or vote at meetings. The Trust did not assert a right to receive any declared dividends and conducted itself on the basis that it was no longer a shareholder in Nutri

Chef. In reply the applicants merely stated that in the last two years preceding the application it has attempted to assert the applicant Trust's rights flowing from its shareholding, but to no avail.

[12] As stated, I hold the considered view that I cannot resolve the dispute on the papers alone. The version of the respondents is not in the circumstances so far-fetched and/or untenable that I can reject it outright. I make no final finding as to the parties' rights as I am for the reasons stated, unable to do so. In as far as I am not in a position where I am convinced that the orders can be granted as prayed for, the application is to be dismissed. There is no reason to deviate from the usual rule that the unsuccessful party be ordered to pay the costs.

[13] I therefore make the following order:

The application is dismissed with costs.


C. REINDERS, J

On behalf of the applicants:

Adv S Tsangarakis
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of the respondents:

Adv WA van Aswegen
Instructed by:
Peyper Attorneys
BLOEMFONTEIN