

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

Case number 2023-103030

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES:NO

JUDGMENT 14/10/2023, RECTIFIED 17/10/2023

DATE: 17/10/2023

in the matter between –

JUST SPLENDID (PTY) LTD

First applicant

(Registration No. 2005[...])

BONTLE CORNELIA KHUNOU

Second applicant

(Identity No. 87[...])

And

ONICA KHUNOU

First respondent

(Identity No. 69[...])

TSHEPO ABRAM PHIRI

Second respondent

(Identity No: 82[...])

LIFE PARTNERS HOLDINGS (PTY) LTD

Third respondent

(Registration No. 2020[...])

VELOSA & ASSOCIATES INC

Fourth respondent

(Registration No. 1998[...])

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

Fifth respondent

EX TEMPORE JUDGMENT

MOORCROFT AJ

1. This is an application in the urgent court to interdict a meeting that originally was called for the 15th of October 2023 to remove a director of a company in terms of section 71 of the Companies Act, 71 of 2008. Notice of the intended meeting was given to the director by e-mail on 24 September 2023. The director is now the second applicant and it is common cause that there is a dispute regarding ownership and control of the company.

2. On 5 October 2023 a notice of motion was signed seeking to interdict the holding of the meeting and also to interdict the respondents from invoking section 71 of the Companies Act, as well as other relief. The prayers read as follows:

“1. Dispensing with the forum and services provided for in the rules and allowing the matter to be heard as on of the urgency under rule 6(12).

2. Interdicting the respondents from holding the so-called meeting of shareholders of the said company on the 15 October 2023, or any other day before the return date at suite 212, 2nd floor, Block B, Cresta, Johannesburg at that meeting.

3. Interdict the respondents from making unfounded statement that are also baseless in law to the extent that the respondents will be make the following statement that that “the second applicant has neglected her fiduciary duty as director, by failing to draw annual financial statement for the company.

4. Interdict the respondents from accusing the second applicant that she is or might be guilty of transferring company funds since 2020 from the company's bank account to her own bank account without legal cause. the respondents are not the shareholders of the first applicant, they have no standing in law to pose as director and or shareholders, none of the respondents is a shareholder and or directors

5. Interdicting the respondents and restraining them from their attempt to invoke section 71(1) of the companies act in the republic due to the fact that section 71 is intended to assist the shareholders and the respondent are not directors and the owners of the first respondent

6. That the respondents and all members who are intending to accuse or have accused the second respondent from the so-called improper management of the company funds. The respondents as stated earlier, are not shareholders and are therefore not in any position in law. to out the illegal instruction by the respondent and be interdicted from carrying o

7. That the respondents and all parties that are cited here including all the respondent be interdicted from accusing or making false claim that the second respondent lacked accountability in the management of the company

8. any of the members that will eventually join the from accusing sole intention of furthering the conduct of the respondents, be interdicted if and when the claim is made by the all one or some of the respondent that they as so-called shareholders accused the second respondent that the

9. Interdict the respondents from dispossessing the second applicant of being in control of first applicant 9(a) that the responded be interdicted from depriving the second applicant from being in possession and control of the immovable and movable property and asserts belonging to the first applicant 9(a) the respondent be interdicted to the extent that their conduct is contrary to the decision of the CIPC

10. That rule nisi be issued calling upon the respondents to show good cause on why the relief sought herein should not be made final.

11. That the interim relief as prayers for in prayers 1-11 operate as interim relief pending final determination of this application.

12. That all the fruits that the respondents benefited illegally should be surrendered to the control of the second applicant, including rent collected and the proceed from any illegally alienated asserts of the first applicant.

13. That the respondent surrenders all the books and the name of the tenants including their lease agreements.”

3. On the same day a founding affidavit was signed.

4. On 10 October 2023 the respondents' attorneys realised that the date of 15 October was wrong and advised the director that the meeting would take place on 17 October and not on the 15th. I do not have to find whether this notice or indeed the first one constitutes proper notice in terms of the Companies Act but the fact remains that the director who is now the second applicant knew of the intended meeting already on 24 September 2023.

5. The application was then enrolled before Opperman J in the urgent court in Johannesburg for hearing on 12 October 2023 on an ex parte basis. Opperman J removed the matter from the roll for want of service. The applicants then proceeded to set the matter down for 10:00 on Saturday the 14th of October 2023 and served the application late on the afternoon of the 12th. The application was partially uploaded on the CourtOnline and Caselines platforms but not all the documents were uploaded. Reference is made for instance to a number of annexures but only one annexure, B11, was in fact attached to the founding papers. This annexure is comprised of part of the papers in a previous application between the parties.

6. The founding affidavit does not deal with the question of urgency other than to allege that the meeting is due to take place on 15 October 2023, and that the second

applicant would be prejudiced. The affidavit does not say when the second applicant became aware of the meeting and it was left to the respondents to place this fact before the court.

7. Counsel who appeared for the applicants did not know when the second applicant first knew of the scheduled meeting.

8. The application also does not tell the court that the matter was in the urgent court on 12 October 2023 and was removed from the roll by the presiding judge.

9. Counsel appearing for the respondents sought an order that the matter be struck from the roll with a punitive cost order and that an order be made that the application only be re re-enrolled with the consent of the deputy judge president. The submission was made on the basis that the application constituted an abuse of the process of court.

10. Both counsel addressed me on these issues.

11. Having read the papers I am of the view that the application constitutes an abuse of the process of court.

11.1. The papers as presented to court do not contain all the annexures;

11.2. The question of urgency is not sufficiently dealt with in the founding affidavit;

11.3. There is no explanation of why the papers were ready on the 5th of October and then not served.

11.4. The relief sought is inappropriate in some of the instances.

11.5. The notice and founding affidavit were both signed on 5 October 2023 and the applicants then waited until 12 October to serve the application with a hearing date of 14 October 2024.

11.6. The application could therefore have been served on 5 or 6 October but the applicants instead sought relief in the urgent court on 12 October without attempting to make out a case for ex parte relief.

12. I do not find it necessary to order that the matter only be re-enrolled with the consent of the Deputy Judge President. I am of the view that such an order is not necessary as the applicants are represented by counsel.

13. I therefore make the following order:

1. *The application is struck from the roll;*
2. *The second applicant is ordered to pay the cost of the application on the scale as between attorney and own client.*

**J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **14 OCTOBER 2023** and was corrected on 17 October 2023

COUNSEL FOR APPLICANT:	T SEOKA
INSTRUCTED BY:	-
COUNSEL FOR RESPONDENTS:	C VAN DER MERWE

INSTRUCTED BY:

MARK

ANTHONY

BEYL

ATTORNEYS

DATE OF THE HEARING:

14 OCTOBER 2023

DATE OF JUDGMENT:

14 OCTOBER 2023 (corrected on
17 OCTOBER 2023)