

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number: 2024-055364

|         |                                                                                   |
|---------|-----------------------------------------------------------------------------------|
| (1)     | REPORTABLE: NO                                                                    |
| (2)     | OF INTEREST TO OTHER JUDGES: NO                                                   |
| (3)     | REVISED: NO                                                                       |
| 28/5/24 |  |
| DATE    | SIGNATURE                                                                         |

In the matter between:

**JOHANNES IZAK STYGER**

**AND THREE OTHERS**

1<sup>st</sup> to 4<sup>th</sup> Applicants

and

**DDD DIESEL DELIVERIES (PTY) LTD**

**AND FOUR OTHERS**

1<sup>st</sup> to 5<sup>th</sup> Respondents

**Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 10: 00 am on 29 May 2024.

**Summary:** Interdict of a meeting to consider a removal of a director of a company. The procedural requirements contemplated in section 71 of the Companies Act, 2008 were met. Interdictory relief inappropriate. Urgency

**prompted by the meeting scheduled for 29 May 2024. Held: (1) The application is dismissed. Held: (2) The applicant is to pay the costs of the respondents at scale B.**

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## **JUDGMENT**

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**MOSHOANA, J**

### *Introduction*

[1] This is an urgent application in terms of which the applicant, Mr Johannes Izak Styger seeks an interdict against a shareholders' meeting scheduled at 10h00 am on 29 May 2024 to consider his removal as a director of DDD Diesel Deliveries (Pty) Ltd (DDD). As an ancillary relief, the applicant seeks an order to allow or permit him to fulfil his duties as a director within the contemplation of section 66 of the Companies Act, 2008.

[2] The application is duly opposed by DDD and other respondents. This Court retired well after the Court hours on the day this application was heard and indicated to the parties that this judgment shall be handed down before 10:00am on 29 May 2024.

### *Background facts pertinent to the application*

[3] Given the fact that the present application was launched on an urgent basis, it is unnecessary to punctiliously narrate all the facts in the present dispute. It suffices to mention that the applicant and the respondents are at present in an acrimonious relationship. The applicant has fallen into disfavour with the alleged sole shareholder of DDD.

[4] The relevant salient facts are that the applicant was appointed as a director of DDD. Allegedly, he was appointed to look after the interests of a family trust which purchased shares in DDD. Although it is alleged that the family trust had injected a substantial sum of money in DDD, parties before me are not in agreement that the

family trust had fully paid the purchase price in order to acquire ownership of shares in DDD.

[5] On the applicant's version, DDD has more than one shareholder, whilst the respondents contend that DDD has only one shareholder. It is common cause that on 9 May 2024, the applicant received a notice from the alleged sole shareholder of DDD calling upon him to attend a meeting at which a resolution to remove him as a director shall be considered. The applicant was afforded an opportunity to make representation personally or through a representative before a resolution is adopted.

[6] The reaction of the applicant to this notice was to about ten days later launch the present application. With regard to urgency, counsel for the respondents conceded that in so far as it relates to the shareholders meeting and the possible resolutions to be adopted, urgency may be claimed by the applicant. In relation to the ancillary reliefs, counsel argued that urgency may not be claimed in that regard.

### *Analysis*

[7] An interdict is a special remedy available for an unlawful conduct. The applicant contends that the scheduled meeting is an unlawful one in that the notice calling for it was issued by a person who is not a shareholder of DDD and other shareholders were not notified of the scheduled meeting. Mr Willem Gerhardus Kok (Mr Kok) avers that he is the sole shareholder in DDD. Clearly, this Court is faced with a genuine dispute of fact. Motion proceedings concern themselves with questions of law with limited to no factual disputes.

[8] The applicant makes a positive allegation that Mr Kok is not a sole shareholder of DDD. In terms of section 1 of the Companies Act, 2008, a shareholder means the holder of a share issued by a company and who is entered as such in the certificated nor uncertificated securities register, as the case may be. The applicant produced some documents allegedly emanating from the auditors of DDD which documents suggests that there are only two shareholders; namely; the family trust and Mr Kok's wife. Mr Kok also produced a document, which reflect him as the sole shareholder

[9] On this aspect, this Court is faced with a serious dispute of fact which is incapable of being resolved on the papers. Rule 6(5)(g) of the Uniform Rules provides that where an application cannot properly be decided on affidavit the Court may



amongst other things dismiss the application. The unlawfulness alleged by the applicant is that the notice is invalid in that it is not issued by the shareholder. On application of the *Plascon-Evans* principles, the averments made by Mr Kok and the admitted facts, do not justify an order sought by the applicant

[10] Having chosen motion proceedings, the applicant must have foreseen this serious dispute of fact. The averment that Mr Kok is the sole shareholder must be accepted by this Court. Such acceptance, displaces an allegation that the notice is invalid because it was issued by a non-shareholder. Section 77(1) of the Companies Act, 2008 does provide that a director may be removed by an ordinary resolution adopted at the shareholders meeting. It is common cause that the applicant received a notice within the contemplation of section 71(2)(a). It is also common cause that the applicant was afforded a reasonable opportunity to make a presentation before the proposed resolution to remove him as a director is put to vote.

[11] In the circumstances, the scheduled meeting is not unlawful. Thus, there is no basis in law to issue an injunction against the holding of a meeting contemplated in section 71. The applicant is not immune from being procedurally removed as a director. DDD and its shareholder is intending to procedurally remove the applicant as a director. If it later turn out, in proper action proceedings, that the removal was for any reason unlawful, the applicant is entitled to a remedy in law. However, absent unlawfulness at this juncture, this Court is not empowered to interdict the meeting simply because of the *fait accompli* alleged by the applicant. The outcome of the scheduled meeting remains an enigma. No one, including the applicant and this Court, is possessed of a crystal ball to foretell whether the resolution will be adopted or not. Even if adopted, there is nothing unlawful with such a mere adoption.

[12] For all the above reasons, I make the following order:

#### *Order*

1. The application is heard as one of urgency in terms of rule 6(12) of the Uniform Rules
2. The application is dismissed.

3. The applicant is to pay the costs of this application on a party and party scale to be taxed or settled at scale C.



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**GN MOSHOANA**

**JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, PRETORIA**

**APPEARANCES:**

For Applicant:

Mr F C Lamprecht

Instructed by:

Theron, Jordaan & Smit Inc,

For Respondent:

Mr R De Leeuw

Instructed by:

EW Serfontein & Assoc, Pretoria

Date of the hearing:

28 May 2024

Date of judgment:

29 May 2024