



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 11 June 2024

In the matter between:

Case No. A26/2019

TSEBANE MOLABA INCORPORATED

First Appellant

KOTISHI BERNARD MOLABA

Second Appellant

and

ELIZABETH LETOANE MOLATEDI NO

Respondent

CORAM: MUDAU J, MALINDI J AND WILSON J

JUDGMENT

WILSON J (with whom MUDAU J and MALINDI J agree):

- 1 The first appellant, Tsebane Molaba, is a firm of attorneys incorporated as a “profit company” in terms of the Companies Act 71 of 2008. The second appellant, Mr. Molaba, is a director of that firm. The respondent, Ms. Molatedi, is the executrix of the estate of Matifane Tsebane. Mr. Tsebane was once a

director of Tsebane Molaba, but this appeal was argued on the basis that he resigned his directorship on or about 1 July 2010.

2 In November 2016, Mr. Tsebane sued in the court below for access to Tsebane Molaba's company records. He claimed that he had a right to inspect those records under section 26 of the Companies Act. Section 26 (1) entitles the holder of a "beneficial interest" in any securities issued by a profit company to inspect the records set out in the section. Mr. Tsebane apparently did not accept that he had in fact resigned as a director of Tsebane Molaba. However, his case was that, even if he had, he remained one of its shareholders. He was, as such, beneficially interested in the firm's securities, and he had a right to inspect the records he sought.

3 The appellants resisted Mr. Tsebane's application on essentially two grounds. First, it was said that Mr. Tsebane sought the records to further an unlawful or oppressive purpose. On that basis, the appellants asked the court below to exercise its discretion against allowing inspection of the records. However, the court below held that it had no discretion to refuse inspection if the records sought fell within the scope of section 26, and if Mr. Tsebane had demonstrated a beneficial interest in the firm's securities.

4 That led the court below to an examination of the appellants' second basis of opposition. This was that, by virtue of section 23 (2) of the Attorneys Act 53 of 1979 (now repealed), Mr. Tsebane had lost his shares in the firm by operation of law when he ceased to be a director. Section 23 (2) of the Attorneys Act provides that attorneys firms may be incorporated as companies provided that "[e]very shareholder of the company shall be a director of the company, and

only a shareholder of the company shall be a director thereof". The effect of this provision, the appellants argued, is that Mr. Tsebane lost his shares when he ceased to be a director of the firm.

5 The court below rejected this argument too. It held that section 23 (2) does not authorise the uncompensated expropriation of Mr. Tsebane's shares merely because he ceased to be a director. There was no evidence before the court below that Mr. Tsebane's shares had been sold or transferred, whether to another director of the firm or otherwise. For that reason, whatever the effect of section 23 (2) was, it could not have been that Mr. Tsebane lost ownership of his shares on the termination of his directorship.

6 The court below accordingly made a fairly extensive order directing that Mr. Tsebane be given a range of company records generated during the period of January 2010 and November 2016. The appellants now appeal against that order, relying on the same arguments they advanced in the court below.

7 Mr. Tsebane died on 6 August 2020, while this appeal was pending. He was substituted as a party to the appeal by the executrix of his estate, Ms. Molatedi. Before us, it was accepted that Ms. Molatedi requires the firm's records for the sole purpose of valuing Mr. Tsebane's shareholding in the firm.

8 This puts an end to any suggestion that the records are being sought for an unlawful purpose. Ms. Molatedi seeks what is necessary to determine the value of the shares that everyone accepts Mr. Tsebane owned while he was a director of the firm. There can be nothing unlawful or oppressive about that.

- 9 Mr. Louw, who appeared together with Ms. Pretorius for the appellants, argued that, by operation of section 23 (2) of the Attorneys Act, Mr. Tsebane was divested of the shares on his resignation, and that they were transferred to Mr. Molaba by virtue of Article 18 of the standard articles of association which applied under the Companies Act 61 of 1973. After that transfer, Mr. Louw argued, Mr. Tsebane was left with a personal right to payment of the value of the shares. He had no beneficial interest in any of the firm's securities, and no right to inspect the firm's records under section 26 (1) of the Companies Act 71 of 2008.
- 10 I have my doubts about whether Article 18 has the effect that Mr. Louw argues, but that does not matter. In my view, once it is accepted that Mr. Tsebane had at least a personal right to be paid the value of the shares, there was no basis for resisting the relief he sought in the court below. Section 1 of the Companies Act defines a "beneficial interest when used in relation to a company's securities" as "the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities".
- 11 In my view, this definition is broad enough to cover Mr. Tsebane's interest in valuing and obtaining payment for his shares, even if he had been divested of them by operation of law. In their written submissions, the appellants argued

that a “beneficial interest” is held only by a person who has the right to receive a “distribution” from “the company”. Since Mr. Tsebane’s rights were, at best, a right to payment from Mr. Molaba, and not from the company, it was argued that he had no beneficial interest in the company’s securities.

12 This, however, overlooks the fact that Mr. Tsebane’s shares need not have been transmitted to Mr. Molaba. They could just as easily have been purchased by or transmitted to the firm itself if its articles of association so provided (a situation specifically envisaged and catered for by section 22 (5) of the Attorneys Act). We heard no argument on this point, and it is far from clear on whom the shares would settle in the event that Mr. Tsebane was divested of them.

13 Moreover, and in any event, the appellants’ argument does not address the beneficial interest identified in paragraph (b) of the definition: the exercise of “any or all of the rights attaching to the company’s securities”. One of those rights is the right to be paid the fair value of the shares on relinquishing or being divested of them – whether in favour of another director or the company itself. As section 1 of the Companies Act makes clear, a beneficial interest in a company’s securities need not be derived from ownership of them. All that need be demonstrated is a person’s “right or entitlement” whether through “ownership, agreement, relationship or otherwise”. Both Mr. Tsebane and his estate plainly had a right attaching to the firm’s securities derived through “agreement, relationship or otherwise”, even if Mr. Tsebane no longer owned his shares after he left the firm.

- 14 It follows that Mr. Tsebane had a beneficial interest in the shares whether or not he owned them at the time he brought his application in the court below, and that he was entitled to the information he sought there.
- 15 For the purposes of this appeal, it does not matter whether Mr. Tsebane resigned or was otherwise discharged from the firm, or whether he owned the shares beyond his resignation. The least that everyone accepts is that Mr. Tsebane, and by extension his estate, has the right to their value, whatever that was, as at the date he ceased to be a director of the firm, whenever that was. We heard no argument on how the shares should be valued, or what the effective date of their valuation should be. Nor did we hear any argument on the extent to which the likely value of the shares at any particular time affected the scope of the disclosure the court below ordered. It is accordingly unnecessary for us to consider whether, when or how section 23 (2) of the Attorneys' Act divested Mr. Tsebane of his shares.
- 16 It follows that there is no basis for us to interfere with the order of the court below. Mr. Tsebane's estate is entitled to the information necessary to value his shareholding, and it has not been established that the court below ordered wider disclosure than was necessary to achieve that purpose.
- 17 The appeal is dismissed with costs.


S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the

judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 11 June 2024.

HEARD ON: 22 May 2024

DECIDED ON: 11 June 2024

For the Appellants: AJ Louw SC
K Pretorious
Instructed by Couzyn Hetzrog & Horak

For the Respondent: M Stubbs
Instructed by Webber Wentzel