

REPUBLIC OF SOUTH AFRICA



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

Case No: 056029/2024

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date:

In the matter between:

RASEGOWA TRADING & PROJECTS CC

1st Applicant

WALTER CHAANE

2nd Applicant

and

BEYOND JOINT VENTURE (PTY) LTD

1st Respondent

MPUMELELO NTHUTHUKO NGWENYA

2nd Respondent

IN RE:

BEYOND JOINT VENTURE (PTY) LTD	1 st Applicant
MPUMELELO NTHUTHUKO NGWENYA	2 nd Applicant
and	
RASEGOWA TRADING & PROJECTS CC	1 st Respondent
WALTER CHAANE	2 nd Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	3 rd Respondent
GAUTENG DEPARTMENT OF HEALTH	4 th Respondent
GAUTENG DEPARTMENT OF INFRASTRUCTURE AND DEVELOPMENT	5 th Respondent
FIRST NATIONAL BANK	6 th Respondent

JUDGEMENT

MOOKI J

- 1 The first and second applicants in the main proceedings (“the Joint Venture parties”) obtained an order, ex parte, against the first and second respondents (“the Close Corporation parties”) on 28 May 2024. The court (Molopa-Sethosa J) issued a rule nisi. The Close Corporation parties anticipated the return day. The Close Corporation parties also seek a reconsideration of the order made on 28 May 2024.
- 2 The Joint Venture parties essentially sought relief that the first applicant (“the Joint Venture”) should continue to have sole control over the business banking account of the first respondent (“the Close Corporation”) and that

the second applicant (“Mr. Ngwenya”) be restored as a member of the Close Corporation.

- 3 The Joint Venture and the Close Corporation concluded several agreements in which the Joint Venture advanced funds to the Close Corporation. This was to allow the Close Corporation to carry-out projects at the behest of the Gauteng Department of Health and/or the Gauteng Department of Infrastructure & Development (referred to collectively as “the client departments”).
- 4 Payments for projects were to be deposited into the Close Corporation’s business account with First National Bank (“the bank account”). The Joint Venture would have sole control over the bank account whilst the agreements subsisted.
- 5 The Joint Venture was entitled to nominate a person to become a member of the Close Corporation during the subsistence of the agreements. The Joint Venture nominated Mr. Ngwenya, who was appointed a member of the Close Corporation.
- 6 The accountant for the Joint Venture informed Mr. Ngwenya that the Joint Venture no longer had access to the bank account. Mr. Ngwenya also established that he was no longer a member of the Close Corporation. He made enquiries with the third respondent (“the CIPC”).
- 7 The CIPC advised Mr. Ngwenya that the CIPC had been notified of his resignation as a member of the Close Corporation. Mr. Ngwenya denied having resigned.

- 8 Mr. Ngwenya eventually became aware of a document that recorded his resignation as a member of the Close Corporation. He maintains that he did not sign the document. He also maintains that the signature on the document was not his signature, and that a fraud had been committed.
- 9 The immediate trigger for the *ex parte* application was informed by a payment that was expected to be made by the client departments. The Joint Venture parties contended that the removal of Mr. Ngwenya as a member of the Close Corporation was calculated to prevent the Joint Venture from accessing the bank account. The Joint Venture parties contended that this was a breach of the various agreements because the Joint Venture had not been repaid in terms of those agreements.
- 10 The second respondent (“Mr. Chaane”) deposed to the opposing affidavit on behalf of the Close Corporation parties. He raised several contentions as to why the rule should be discharged; including that: the applicants did not make the required full disclosure in *ex parte* proceedings; that the agreements relied upon had elapsed by effluxion of time; that the agreements had terminated; that the Joint Venture, in fact, breached its obligations and was liable to the Close Corporation.
- 11 Mr. Chaane contended that the Joint Venture no longer had sole control of the bank account because the agreements that underpinned the arrangement no longer applied. He also explained why Mr. Ngwenya was no longer a member of the Close Corporation.

- 12 Mr. Chaane averred that the Joint Venture took an amount of R647 750.00 that belonged to the Close Corporation when the Close Corporation was not indebted to the Joint Venture. He further stated that “I am of the view that we should terminate the relationship as all our obligations have been complied with according to me”, “in the light of the fact that an amount of R647 750.00 was already been taken,...”. It was at this point, according to Mr. Chaane, that he “took further steps” that Mr. Ngwenya “no longer had authority to have access or any sole mandate over the account of [the Close Corporation].”
- 13 Mr. Ngwenya averred that Mr. Chaane opposed the order because the Joint Venture parties refused to pay him a portion of monies paid into the bank account.
- 14 The interim order was served on the Close Corporation parties on 4 June 2024. An amount of R647 750.00 was paid into the bank account on 6 June 2024. Mr. Chaane sent Mr. Ngwenya a text on 7 June, requesting that Mr. Chaane be paid R147 000.00 from the R647 000.00. The Close Corporation parties filed their opposing affidavit on 24 June 2024, after the Joint Venture parties had refused to pay Mr Chaane.
- 15 Mr. Chaane protested that there was no basis for Mr. Ngwenya to suggest that Mr. Chaane committed fraud in how Mr. Ngwenya’s membership of the Close Corporation was terminated. Mr. Ngwenya annexed to his replying affidavit a document recording that Mr. Ngwenya had resigned as a member of the Close Corporation. The document is dated 29 April 2024. It recorded the following:

WE WALTER AND NTUTHUKO BOTH MEMBERS OF THE
ABOVEMENTIONED CLODE (sic) CORPORATION HAD AGREED
AND RESOLVED THAT MR. NGWENYA IS RESIGNING

WS CHAANE

(Signed)

MN NGWENYA

(Signed)

- 16 Mr. Ngwenya denied signing the document or having any knowledge of the document. Mr. Chaane did not aver that Mr. Ngwenya signed the document.

Analysis

- 17 The relief sought in the *ex parte* application was for a restoration of conditions as between the Close Corporation parties and the Joint Venture parties. The restoration entailed Mr. Ngwenya being reinstated as a member of the Close Corporation. It also entailed the Joint Venture having sole control and access to the Close Corporation's banking account.
- 18 The Close Corporation parties did not institute a counterclaim in their response to the *ex parte* application. Put differently, the Close Corporation parties did not seek self-standing relief. The court cannot, therefore, decide whether the agreements between the parties are current or whether the Joint Venture had breached its obligations under those agreements.
- 19 Mr. Ngwenya did not resign his membership in the Close Corporation. I agree that his removal was fraudulent. He was removed at the instance of Mr. Chaane, who drew the document purporting to be a resolution that Mr. Ngwenya had resigned his membership in the Close Corporation. Mr.

Chaane presented the purported resignation to the CIPC, which acted on the document.

- 20 Mr. Chaane forged Mr. Ngwenya's signature. He knew that Mr. Ngwenya had not resigned. The forgery was calculated to remove Mr. Ngwenya from being the "eyes and ears" of the Joint Venture. Mr. Ngwenya's absence would mean that the Joint Venture no longer had control of the Close Corporation's business account, as agreed by the parties.
- 21 There would have been no need for Mr. Chaane to forge Mr. Ngwenya's signature if, as claimed by Mr. Chaane, the agreements between the parties no longer applied. Indeed, Mr. Chaane did not, in his answering affidavit, put a single document in which the Close Corporation parties protested any aspect of the relationship between the parties. There was no suggestion that the Joint Venture parties had breached their obligations or that the agreements between the parties had terminated.
- 22 Mr. Chaane complains that the court erred in awarding costs against the Close Corporation parties on an adverse basis. I disagree. The order for costs was well-founded. Mr. Chaane deceived the CIPC that Mr. Ngwenya had resigned as a member of the Close Corporation. The deception was calculated to undermine the interest of the Joint Venture in its agreements with the Close Corporation, which Mr. Chaane is responsible for.
- 23 I disagree that the Joint Venture parties did not make the full disclosure required in *ex parte* applications. The various contentions by Mr Chaane lack merit. Mr Ngwenya set out why notification of the proceedings would

defeat the relief sought. Mr. Chaane was at ease in forging Mr. Ngwenya's signature. The Joint Venture parties had good reason to fear that Mr. Chaane may well dissipate funds in the business account had Mr. Chaane had prior knowledge of the relief sought by the Joint Venture parties.

- 24 The Close Corporation parties sought a reconsideration in terms of Rule 6(12)(c). A reconsideration offers an aggrieved party a mechanism to redress imbalances in and injustices and oppression from the granting of an urgent order in his absence.¹
- 25 There is no basis for a reconsideration. The Joint Venture parties had good cause to seek the relief that they did. I am not persuaded that the Joint Venture parties did not disclose material facts or that they misstated those facts.
- 26 The case advanced for the Close Corporation parties as to the status of the agreements was contradictory. This is illustrated, for example, by the claim that the agreements had lapsed by effluxion of time whilst at the same time the Close Corporation parties say the Joint Venture breached the agreements and was indebted to the Close Corporation.
- 27 The various complaints raised on behalf of the Close Corporation parties, which complaints are unsubstantiated, do not detract from the Joint Venture parties having laid a proper basis for the relief that they obtained.
- 28 I make the following order.

¹ ISDN Solutions (Pty) Ltd v CSDN Solutions CC and Others 1996 (4) SA 484 W

Paragraphs 2, 3, 4, 5, 6, 7, and 9 of the order made on 28 May 2024 in case number: 2024 - 056029 are confirmed.

[REDACTED]

O MOOKI

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Appearance:

**On behalf of the first and second:
Applicants**

M Mavhungu

Instructed by:

Modiba D Attorneys

**On behalf of the first and second:
Respondents**

MA Madira

Instructed by:

Abrams Madira Inc.

Date of Hearing:

5 July 2024

Date of Judgement:

11 July 2024