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

CASE Number: **025143/2022**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

2025/07/03

**In the matters between: -**

**AS VAN DYK FAMILIE TRUST (PTY) LTD**

**FIRST APPLICANT**

**JUSTUS VAN DER BERG N.O.**

**SECOND APPLICANT**

**MARIA JOHANNA ELIZABETH VAN DER BERG**

**THIRD APPLICANT**

And

**ANDRIAS PHILLIPPUS RUDOLPH KEMP**

**FIRST RESPONDENT**

**ZEEKOEGAT NR. (PTY) LTD**

**SECOND RESPONDENT**

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**JUDGMENT**

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**BAQWA, J**

**Introduction**

[1] The applicants seek an order compelling the first respondent to convene a shareholder's meeting as contemplated in section 61 (12) read with 61(3) of the

Companies Act 71 of 2008 (the Act) for the shareholders of the second respondent and other ancillary relief together with costs on a punitive scale.

- [2] The respondent seeks a dismissal of the application, alternatively that it be referred to trial for what they submit are substantial factual disputes raised by the respondent, such as the failure to join the remaining shareholders and non-compliance with rule 41 A which requires an applicant or plaintiff to serve on each party to an action a notice which states whether they agree or oppose the referral of the matter to mediation.

#### The parties

- [3] The first applicant is As Van Dyk Family Trust (Pty) Ltd registration number 81/011236/07, a private company with limited liability, registered in terms of South African Law.
- [4] The second applicant is Justus Van der Berg N.O. an adult male of the farm Boeken-houtskloof who acts herein as a trustee of the Justrie Trust, Master's reference IT 12253/99.
- [5] The third applicant is Maria Johanna Elizabeth Van der Berg N.O a major female of the farm Boeken-houtskloof also in her capacity as trustee of the Justrie Trust
- [6] Johan David Kemp who is mentioned as a trustee in the letter of authority of the Justrie Trust, is deceased and has not yet been replaced by another trustee.
- [7] The first respondent is Andreas Phillipus Ruldolph Kemp, a major male attorney residing on the farm Zeekoegat 290 JR, Gauteng.
- [8] The second respondent is Zeekoegat Nr 14 (Pty) Ltd registered in terms of the Company Laws of South Africa with registered address at plot 1[...] Z[...], Pretoria.
- [9] The applicants served an application in terms of Rule 30 in they alleged that the

answering affidavit was irregular but that application seems to have been abandoned.

[10] Similarly the applicants had raised the issue of representation of second respondent by the first respondent as being incompetent in terms of Rule 7 but that is also no longer being pursued.

### The Facts

[11] Both the first applicant and the Justrie Trust are shareholders of the second respondent and they base their locus standi on their shareholding and that it entitles them to approach this court in term of section 61 (12) (b) of the Act.

[12] The first respondent is the sole remaining director of the second respondent and there have been attempts to compel him as its sole director to convene a shareholder' meeting. One such meeting was scheduled to take place on 13 July 2021 at the office of J P Botha Accountants though it later turned out to have been called in a defective manner.

[13] As a result, the shareholders abandoned any reliance on the purported removal of the first respondent as a director of the second respondent at that meeting. They decided to initiate a new process.

[14] The first applicant and the Justrie Trust are shareholders of the second respondent, each holding 14% of the issued shares therein.

[15] The last shareholders meeting was convened about 5 years ago and despite numerous requests by the applicants to the first respondent to call a meeting to discuss important matters including a possible removal of the first respondent as a director of the second respondent, the requests have fallen on deaf ears.

[16] In terms of section 61 (3) of the Act, the board of a company must call a shareholders meeting if one or more written and signed demand is delivered to the company and such demand specifies the purpose for such meeting at

the earliest possible time. The demand must be by at least 10% of the voting rights entitle to be exercised in relation to the matter proposed to be considered at the meeting.

#### Demand by the applicants

[17] On 3 May 2022 the first applicant and Justrie Trust delivered a signed and written demand (the notice) which complies with section 61 (3) of the Act on the first respondent.

[18] The said notice was personally delivered on the first respondent by A van Dyk Snr and Adriana Esther Van Rensburg on 3 May 2022 and he is enjoined accordingly to convene a shareholders meeting by statute.

#### Failure to comply with a demand

Should a company fail to convene a meeting for any reason other than those contemplated in section 61 (11) when requested by shareholders in terms of subsection (3) to convene a meeting a shareholder may apply to a court for an order requiring the company to convene a meeting on a date considered by the court as appropriate in circumstances such as those set out in the present application.

#### The issues

[19] What this court has to determine is whether the issues raised by the first respondent such as the non-joinder of other shareholder and the allegations that the applicants had disposed of their of their shares in terms of agreements of sale are sustainable in law.

[20] In short the court has to determine whether there is any justification for the first respondent 's failure to call a shareholders meeting or whether first respondent should be directed to convene a shareholder's meeting as requested.

#### Opposition by the respondents

[21] This application is being opposed by the respondents. The first respondent

delivered an answering affidavit totalling 157 pages without the annexures. With the annexures the affidavit is 739 pages.

[22] It does appear that this amounts to an obfuscation by the respondents as their affidavit fails to address any of the issues applicable to this application.

[23] Whilst it is common cause that the history of this matter involves other members of the family that history does not impede the application of the provisions of section 61 (3) of the Act. That section, in essence is meant to provide an opportunity for any affected shareholder to be updated and informed regarding company matters and the issue of non-joinder is merely a red-herring raised by the respondent by the respondents.

[24] Further, the issue of the purported sale of shares predates this application by about ten (10 years) and it is common cause that the relevant sale agreements were never pursued to their logical conclusion.

[25] Notification of other shareholders is provided for in the application itself in that, if the applicants succeed and the order is granted, the court shall order that the first respondent as the sole director should call a shareholders meeting as prayed for in prayer 1 of the notice of motion, and that he must notify all the shareholders thereof as prayed for in prayer 2 of the notice of motion.

[26] No rights of theirs will be infringed or affected prejudicially by the order of the court in these proceedings.

[28] Instead, they will be granted an opportunity to vote and exercise their rights which then have been denied in excess of five (5) years.

[29] The other shareholders' rights are therefore not prejudicially affected by the granting or dismissal of this application.

[30] Further, other shareholders have an additional protection in that they can apply to set aside the order in terms of section 61 (5) of the Act on the basis that the

application is frivolous or vexatious.

[31] In light of the above, I make the following order

Order

31.1 That the First Respondent be directed to convene a shareholder's meeting of the Second Respondent, as contemplated in section 61(12), read with section 61(3) of the Companies Act, Act 71 of 2008, for the shareholders of the Second Respondent by no later than 15 April 2025;

31.2 That the First Respondent be directed to deliver a notice to all shareholders of the Second Respondent in the prescribed manner and form for the meeting at least 10 (ten) business days before the meeting is to begin;

31.3 That the First Respondent be directed to deliver the notice to all shareholders of the Second Respondent in the prescribed manner and form for the meeting, within 14 (fourteen) days from the service of any order granted in terms hereof;

31.4 That should the First Respondent fail to deliver a notice as envisaged in paragraphs 2 to 3 supra, that the First, alternatively the Second and Third Applicant/s be authorised to deliver a notice to all shareholders of the Second Respondent in the prescribed manner and form as of the record date for the meeting at least 10 (ten) business days before the meeting is to begin;

31.5 That the content of the Demand for a Shareholders' Meeting dated 28 April 2022 and the proposals contained therein, delivered on 3 May 2022 in terms of section 61(3) of the Companies Act, Act 71 of 2008 on the First Respondent, and of which a true copy is appended hereto marked "X", be discussed, and resolved during said meeting; and

31.6 That the costs of the application be borne by the Second Respondent which costs are to be taxed on Scale C in terms of Rule 69(7), such costs to include costs of counsel.

**SELBY BAQWA**

JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Date of hearing: 14 October 2024

Date of judgment: 7 March 2025

**Appearance**

On behalf of the Applicants

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Instructed by

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