



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO.
30 April 2025. DATE SIGNATURE	

Case No: 112164/2024

In the matter between:

**KOSMOSDAL EXTENSION 61 AND EXTENSION 62
HOME-OWNERS ASSOCIATION NPC**

Applicant

and

XOLANI NJOKWENI

First Respondent

**MEMBERS OF KOSMOSDAL EXTENSION 61 AND
EXTENSION 62 HOMEOWNERS AS INDICATED IN
ANNEXURE "A"**

Second Respondent

Delivered: This judgment was handed down electronically by circulation to the parties by e-mail and the uploading of the judgment to the caselines profile. The date for the handing down of the judgment shall be deemed to be 30 April 2025.

JUDGMENT

GROBLER AJ

- [1] The parties in the matter under consideration are engaged in a dispute about who should serve on the Board of Directors of the Kosmosdal Extension 61 and Extension 62 Homeowners Association NPC (hereinafter referred to as "The Kosmosdal HOA"). The Kosmosdal Homeowners Association has 596 members, each member constituting a household with one or more residents.
- [2] The Respondents, being members of The Kosmosdal HOA, held a meeting on 9 September 2024 where resolutions were purportedly adopted to remove the existing directors of Kosmosdal HOA and to appoint new directors.
- [3] The Applicant holds the view that the 19 September 2024 meeting was not a valid meeting properly constituted in terms of the Memorandum of Incorporation (hereinafter referred to as "the MOI") and that the removal of the existing directors, the appointment of new directors and all subsequent actions performed by the directors purportedly appointed on 19 September 2024 are invalid.
- [4] The Applicant approached the Court and obtained an interim order on 18 December 2024 (after the application was removed from the roll by notice on 8 October 2024 and struck off the roll with costs due to a lack of urgency on 15 October 2024) in the following terms:

"1. That this application be regarded as urgent and that the normal forms and periods for filing and serving of notices and affidavits is dispensed with.

2. That a provisional order is granted, serving as an interim interdict, pending finalisation of this application on the opposed roll set down for 22 April 2025, in the following terms,

2.1 That the Respondents are barred and interdicted from spreading or dispensing misleading communications regarding the Applicant and the Board of the Applicant, which communications include, but are not limited to:

2.1.1 That a valid members' meeting occurred on the 19th of September 2024;

2.1.2 That the resolutions, as provided for in terms of the meeting on the 19th of September 2024, were validly adopted;

2.1.3.1 That the meeting on the 19th of September 2024 resulted in the removal of the Applicant's existing directors;

2.1.4.1 *From attempting to alter the records of their Companies and Intellectual Property Commission in respect of the directors of the Applicant.*

2.2 *Any funds paid in accordance with the Respondents' directions to Trafalgar Property Management (Pty) Ltd is to be kept in Trust until this matter is finalised by the said Trafalgar.*

3. *Costs are reserved for adjudication at the main hearing as referred to above."*

[5] The Applicant now seeks confirmation of the provisional order granted on 18 December 2024.

[6] The following further relevant factual information should be noted.

[6.1] Firstly, The Kosmosdal HOA caused its annual general meeting (AGM) to take place on 27 November 2024 – i.e. after the Applicant's application was struck of the roll for a lack of urgency on 15 October 2024 and before the provisional order was granted on 18 December 2024.

[6.2] Secondly, certain members of The Kosmosdal HOA, including the First Respondent, brought an urgent application under case number 131762/2024 to stay the AGM that was scheduled for 27 November 2024, but the application was dismissed with costs on 26 November 2024.

[6.3] Thirdly, as part of the business of the AGM on 27 November 2024, directors were appointed and re-appointed, meaning that some of the directors that were purportedly removed at the meeting of 19 September 2024 were re-appointed and some new directors were appointed.

[6.4] Fourthly, there is no currently pending dispute about the validity of the resolutions taken at the AGM of 27 November 2024.

[7] Approximately one month before the return date of the provisional order (on 14 March 2025 to be precise), the Respondents launched a counterclaim seeking the following relief:

- “1. *Declaring that special general meeting held 19 September 2024 was validly called as prescribed by the MOI, and the resolutions taken there that are valid and enforceable.*
2. *Declaring that the directors elected, on 19 September 2024 are the lawful directors of the Second Respondent, namely:*

 - 2.1 *Andile Dube-Rakgosi;*
 - 2.2 *Mzukisi Dyasi;*
 - 2.3 *Maite Modiba;*
 - 2.4 *Kgoramela Joseph Kgasago;*
 - 2.5 *Yolisa Nomathamasanqa Dyasi;*
 - 2.6 *Siphiwe Tshabalala;*
 - 2.7 *Nkoatse Mashamaite.*
3. *The Respondents pay the costs of this application on an attorney and client scale.*

[8] The Applicants oppose the counterclaim.

[9] Mr Roos on behalf of the Applicant submitted that the validity of the 19 September 2024 is determinative of the issues before Court. Mr Roos submitted that, if it is found that the meeting of 19 September 2024 was not a valid meeting, the counterclaim should be dismissed and the provisional order should be confirmed. If the 19 September 2024 meeting was a valid meeting on the other hand, the counterclaim should succeed and the provisional order should be dismissed. Ms Isaaks, on behalf of the Respondents agreed that the validity of the 19 September 2024 meeting is determinative of the issues before Court.

[10] Mr Roos, on behalf of the Applicant submitted that the meeting on 19 September 2024 was invalid for at least two reasons relating to a failure to comply with the requirements of the MOI when the Respondents purported to call the meeting of 19 September 2024.

[11] The relevant portions of the MOI relied upon by Mr Roos provide as follows:

"13.4 The Board or a Member entitled to vote, may, whenever she/he/it thinks fit, convene a Members' Meeting, or put the proposed resolution by way of a Round Robin Resolution contemplated in Clause 1.2.22 to a vote. A Members' Meeting must be convened or the Board must put the

proposed resolution by way of a Round Robin Resolution contemplated in Clause 1.2.22 to a vote if one or more Written and signed demands for such a Members' Meeting or Round Robin Resolution is/are delivered to the Company, and

13.4.1 Each such demand describes the specific purpose for which the Members' Meeting is proposed; and

13.4.2 In aggregate, demands for substantially the same purpose are made and signed by Members holding at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered."

And

"13.7 A Members' Meeting shall be called on at least (ten) Business Days' notice delivered by the Company (and for this purpose Clause 23.3 shall not apply) to all Members entitled to vote or otherwise entitled to receive notice."

[12] Mr Roos submitted that there is no evidence before Court that the Respondents complied with the requirement that a written demand/demands for the meeting of 19 September 2024 was delivered to the Applicant signed by members holding at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered as provided for in clause 13.4.2 referred to above. The matter to be considered was of course the termination of the existing directors/removal of the Board of the Applicant and the appointment of new directors.

[13] Failing proof of compliance with the aforementioned requirement, so the argument went, the Respondents were in terms of paragraph 3.4 not entitled to convene the meeting of 19 September 2024, even if it is accepted for argument's sake (and without making any finding in this regard) that members could do so without the Board.

[14] Ms Isaaks was constrained to concede that the Respondents did not present evidence to Court to prove compliance with the provisions of clause 13.4.

[15] Mr Roos furthermore submitted that there is no evidence before Court that the Respondents complied with the requirement that notice of a meeting should be given to all members entitled to vote or otherwise entitled to receive notice as provided for in clause 13.7.

- [16] Failing proof of compliance with the aforementioned requirement, so the argument went, the Respondents failed to give proper notice of the meeting of 19 September 2024 as provided for in the MOI, even if it is accepted for argument's sake (and without making any finding in this regard) that members of the HOA, and not the company as provided for in paragraph 13.7 may give notice of the meeting.
- [17] Ms Isaaks was constrained to concede that the Respondents did not present evidence to Court to prove compliance with the provisions of clause 13.7 of the MOI.
- [18] In the premises it is clear that the Respondents failed to comply with the relevant provisions of the MOI leading to the inescapable conclusion that the meeting of 19 September 2024 was not a valid meeting and that the Respondent's counter-application stands to be dismissed, and that the interim order obtained on 18 December 2024 should be confirmed.
- [19] Insofar as the confirmation of the provisional order granted on 18 December 2024 is concerned, the funds referred to in paragraph 2.2 of the provisional order, which was paid to Trafalgar Property Management (Pty) Ltd and kept in Trust there, should now be paid over by them to an account nominated by the Applicant.

[20] Accordingly, the following order is issued:

ORDER:

1. The provisional order granted on 18 December 2024 is made final in the following terms:

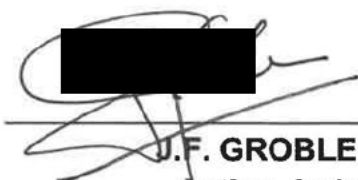
1.1 The Respondents are barred and interdicted from spreading or dispensing misleading communications regarding the Applicant and the Board of the Applicant, which communications include, but are not limited to:

1.1.1 That a valid Members' Meeting occurred on 19 September 2024;

1.1.2 That the resolutions, as provided for in terms of the Meeting on 19 September 2024, were validly adopted;

1.1.3 That the meeting on 19 September 2024 resulted in the removal of the Applicant's existing directors;

- 1.1.4 From attempting to alter the records of the Companies and Intellectual Property Commission in respect of the directors of the Applicant.
- 1.2 Any payments paid into Trust as per the interim interdict granted on 18 December 2024 shall be transferred into an account nominated by the Applicant.
2. The Respondents are ordered to pay the costs of the application inclusive of the costs reserved on 18 December 2025 jointly and severally, the one to pay the other to be absolved, including the costs of counsel on Scale C.
3. The Respondents' counterclaim is dismissed with costs jointly and severally, the one to pay the other to be absolved, including the costs of counsel on Scale C.


J.F. GROBLER
Acting Judge
High Court of South Africa
Gauteng Division of Pretoria

Date heard: 23 April 2025
Judgment delivered: 30 April 2025

Counsel for the Applicant: W. Roos
Instructed by Jukes & Associates

Counsel for the Respondents: W. Isaaks
Instructed by Giyosi Inc. Attorneys
