

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2025-012813

DATE: 17 February 2025

In the matter between:

WIA INVESTMENTS SA (PTY) LIMITED

Applicant

and

JEFFREY SIDNEY ROBILE

First Respondent

SLOBBODAN ('BOBBY') KUPRESAAN

Second Respondent

SUNELEX ENERGY (PTY) LIMITED

Third Respondent

Neutral Citation: *WIA Investments SA v Robile and 2 Others (2025-012813)*

[2025] ZAGPJHC --- (17 February 2025)

Coram: Adams J

Heard: 11 February 2025

Delivered: 17 February 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 17 February 2025.

Summary: Civil procedure – urgent application – for interdictory relief against directors of company – factual dispute going to the heart of the matter – respondents' version cannot possibly be rejected on the paper – this is fatal to applicant's cause – application should also fail due to lack of urgency – any urgency self-created –

Urgent application struck from the roll for lack of urgency.

ORDER

- (1) The applicant's urgent application be and is hereby struck from the urgent court roll for lack of urgency.
 - (2) The applicant shall pay the first and the second respondents' costs of this urgent application, such costs to include Counsel's charges on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.
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JUDGMENT

Adams J:

[1]. On 15 August 2024 a company by the name of Sunelex Group (Pty) Limited (Sunelex Group) and the applicant (WIA Investments) concluded a written Sale of Shares and Claims Agreement (sale agreement) in terms of which Sunelex Group sold to WIA Investments all of the issued shares in the third respondent (Sunelex Energy), as well as the loan account of Sunelex Group against Sunelex Energy, for the purchase price of R150 million. The first respondent (Mr Robile) and the second respondent (Mr Kupresaan) are shareholders in and of Sunelex Group. They acted as directors at all relevant times of Sunelex Group. The purchase price of R150 million was payable by the seller to the purchaser on the 'effective date', defined as the day following the date of fulfilment of the conditions of the sale agreement.

[2]. At a meeting on 22 October 2024 ostensibly of the shareholders of Sunelex Energy, which meeting had been convened by WIA Investments, Messrs Robile and Kupresaan were removed as directors of Sunelex Energy. They refuse to accept their removal and have steadfastly maintained that they are and remain directors of the company. The resolution taken at the meeting on 22 October 2024 to have them removed as directors of Sunelex Energy, so Mr Robile and Mr Kupresaan contend, is a nullity as WIA Investments, despite

their claim to the contrary, did not acquire the shareholding in the said company and could therefore not make those decision qua majority shareholders of Sunelex Energy.

[3]. In this opposed urgent application WIA Investments applies on an urgent basis for an order in the following terms: -

- ‘(1)
- (2) The first and second respondents are hereby restrained and interdicted from representing the third respondent in any capacity whatsoever, inclusive that of director.
 - (3) The first and second respondents are furthermore restrained and interdicted from interacting with any financial institutions, with a view to soliciting funds, or even creating the impression that they are attempting to act in the interest of the Matjhabeng Solar Energy Project in the Free State Province.
 - (4) The First and Second Respondents are hereby restrained and interdicted from instructing Deon Govender and/or Bonisile Majavu, respectively the firms Covington & Burlingh (Pty) Ltd and Bonisile Majavu Incorporated, or any other firm of attorneys for that matter to represent them in as far as the Matjhabeng Solar Energy Project is concerned.
 - (5) The relief sought from paragraphs 2 to the present one of this order is to operate as interim relief pending an application to be brought by the CIPC of South Africa supported by the Applicant, with a view to having the First and Second Respondents declared delinquent Directors, and in addition thereto, put on probation for life, which application is to be initiated by no later than February 2026, when the South African Police Services, as well as the CIPC shall have completed their investigation into the fraudulent activities of the First and Second Respondents in respect of the Matjhabeng Solar Energy Project.
 - (6) The First and Second Respondents are hereby ordered to pay the costs of this application on an attorney and client basis, with the C scale in mind.
 - (7) Further and/or alternative relief.’

[4]. In issue in this opposed urgent application is whether factually Messrs Robile and Kupresaan could and should have been removed validly as directors of Sunelex Energy at the 22 October 2024 meeting. Closely related to this issue

is whether factually the meeting of the shareholders of Sunelex was properly convened and whether any resolutions passed at that meeting had any binding force.

[5]. The main difficulty with the applicant's cause is that there is clearly a factual dispute between the parties, which goes to the heart of the matter. The dispute in a nutshell is whether, by the date of the 'shareholders meeting' on 22 October 2024, WIA Investments had acquired the majority shareholding in Sunelex Energy, entitling it to remove the first and the second respondents as directors of the said company. The first and the second respondents allege that the purchase consideration had not been paid by WIA Investments as provided for in the sale of shares agreement. Therefore, so the contention on behalf of the respondents goes, a condition precedent had not been fulfilled, which, in turn, means that the sale and transfer of the shares did not materialise. On my reading of the papers, there appears not to be any dispute about this fact. That then means that the applicant's case falls flat on that factual basis alone.

[6]. The point is that the factual dispute is fatal to the applicant's case even in the context of what it terms an application for interim relief, which requires the applicant to demonstrate a *prima facie* right even if open to some doubt. The applicant is not entitled to the relief claimed by it in this application in view of the version of the first and the second respondents, which cannot possibly be rejected out of hand.

[7]. For this reason alone, the application should fail.

[8]. There is another reason why the applicant's application should fail and that relates to the issue of urgency. The first and the second respondent also oppose the urgent application on the grounds that the application is not urgent. In the event that it is determined that there is any urgency, then it is submitted on behalf of the respondents, that the urgency is entirely self-created. The applicant, so the respondents contend, have been aware since at least 22 October 2024 that, according to them (the applicant), that they (the first and the

second respondents) are supposedly no longer directors of the Sunelex Energy. The first and second respondents made it clear all along that they continue to regard themselves as directors. The rhetorical question to be asked is why the applicant took so long from November 2024 to February 2025 to launch this application, if, in their view, the matter is so urgent.

[9]. I find myself in agreement with the submissions on behalf of the first and the second respondents. The simple fact of the matter is that howsoever one views this matter the applicants should have launched this application much sooner than they actually did.

[10]. This Court has consistently refused urgent applications in cases when the urgency relied-upon was clearly self-created. Consistency is important in this context as it informs the public and legal practitioners that Rules of Court and Practice Directives can only be ignored at a litigant's peril. Legal certainty is one of the cornerstones of a legal system based on the Rule of Law.

[11]. For all of these reasons, I am not convinced that the applicant has passed the threshold prescribed in Rule 6(12)(b) and I am of the view that the application ought to be struck from the roll for lack of urgency.

[12]. The application therefore falls to be struck from the roll and the costs.

Order

[13]. In the result, I make the following order:

- (1) The applicant's urgent application be and is hereby struck from the urgent court roll for lack of urgency.
- (2) The applicant shall pay the first and the second respondents' costs of this urgent application, such costs to include Counsel's charges on scale 'B' of the tariff applicable in terms of the Uniform Rules of Court.

L R ADAMS

*Judge of the High Court
Gauteng Division, Johannesburg*

HEARD ON:	11 February 2025
JUDGMENT DATE:	17 February 2025 – Judgment handed down electronically
FOR THE APPLICANT:	C Georgiades SC
INSTRUCTED BY:	Ngcingwana Incorporated, Sandton
FOR THE FIRST AND SECOND RESPONDENTS:	A E Ayayee
INSTRUCTED BY:	Bonisile Majavu Incorporated, Johannesburg
FOR THE THIRD RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance