



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 2025-035918

In the matter between:

**ANWESKUS EIENDOME EN BEHERENDE
PRIMERE KOOPERASIE BEPERK**

First Applicant

CHRISTIAAN JACOBUS RICHTER

Second Applicant

MARTHINUS THEUNIS STEYN CALITZ

Third Applicant

HENDRIK JOHANNES JAKOBUS HANEKOM

Fourth applicant

DANIEL JOHANNES GROVE

Fifth Applicant

and

GERT HERMIAS AGENBAG

First Respondent

TREVOR HAYES

Second Respondent

CAREL JOHANNES WARNICH

Third Respondent

GERHARDUS PETRUS BRITS

Fourth Respondent

Heard on: 25 March 2025

Delivered Electronically on: 30 April 2025

JUDGMENT

LEKHULENI J

Introduction

[1] On 23 November 2024, the second to fifth applicants were elected as directors of the first applicant during a special general meeting called by the applicants. The applicants held the special general meeting to appoint new directors for the first applicant, replacing the first to the fourth respondents in their current roles as directors of the first applicant. The first and third respondents contest the validity of the special general meeting held on 23 November 2024. They do not accept the outcomes of the proceedings conducted at that meeting, which resulted in their removal as directors of the first applicant.

[2] In this application, the applicants seek a declaratory order confirming that the special general meeting of the first applicant, held on 23 November 2024, was validly constituted. In addition, the applicants seek an order to confirm that the respondents were properly removed from their positions as directors of the first applicant at the special general meeting convened on 23 November 2024. Furthermore, the applicants request that the second, third, fourth, and fifth applicants be officially recognised as directors of the first applicant.

[3] In summary, the subject matter of this application concerns the respondents' alleged failure to vacate their office as the board of directors of the first applicant and

to hand over the management of the first applicant to the new directors (the second to the fifth applicants) elected at a special general meeting held on 23 November 2024. The respondents opposed this application save for the fifth respondent. The fifth respondent did not take part in these proceedings.

Background Facts

[4] The first applicant is Anweskus Eiendome en Beherende Primere Kooperasie Beperk, a primary Co-operative constituted and registered in terms of the Co-operatives Act 14 of 2005 (*the Co-operatives Act*) with the CIPC under registration number 2016/001839/24, and having its registered address at Byneslaagte Farm, Lutzville, Matzikama Municipality, Western Cape.

[5] The background of the first applicant as explained in the respective affidavits, is that it began with a group of independent thinking Afrikaners seeking freedom, and a place to provide a haven for themselves and their families. The intention was to establish a community where these Afrikaners could thrive alongside like-minded pioneers, allowing them the opportunity to live freely and collectively pursue their aspirations in a peaceful and supportive environment.

[6] The concept emerged in July 2015 with a small group of Afrikaners, who later became members of the first applicant. In October 2015, several farms were selected as viable options for the establishment of the community of the Afrikaner group, and after numerous visits to these farms, it was decided to put the options to a vote by individuals who were members of the group at the time. Pursuant thereto, the first applicant, a Co-operative was then officially registered on 4 March 2016 in terms of the Co-operatives Act. Its objectives are to purchase agricultural land and offer its Afrikaner members a self-sustaining community.

[7] Subsequent thereto, the first applicant's members decided that it should purchase Byneslaagte farm, which was registered in the first applicant's name on 1 August 2016. In October 2016, the first member of the first applicant took up permanent residence on the farm, followed soon by other members and their families. All members of the first applicant are subject to the Constitution and the first

applicant's internal rules and regulations. These relevant documents formed part of this application. In addition, members of the first applicant agreed to adhere to the first applicant's code of conduct, which is part of the applicant's governing documents.

[8] In terms of clause 25 of the first applicant's Constitution, the first applicant has three spheres of government, with the result that the directors' powers are split into the administrative (Gemeenskapraad), legislative (Kongres) and judicial powers (Heemraad). The President of the first applicant is the Head of the Co-operative and the Head of the Gemeenskapraad. Among other things, the President is responsible for assenting Bills, referring Bills to the Kongres for reconsideration of the Bill's constitutionality or referring Bills to the Heemraad for a decision on the Bill's constitutionality. The Kongres serve as the legislative body of the first applicant. The Kongres has the power to make laws and regulations provided they are not repugnant to the Constitution or any laws of the Republic of South Africa. The judicial authority of the first applicant vests in the Heemraad. The Heemraad is entrusted with the judicial function to interpret the laws and regulations made by the Kongres and must determine that they are not in breach of the first applicant's Constitution or any laws of the Republic of South Africa. The Heemraad also decides issues of discipline where the members violate the governing documents of the first applicant.

[9] The first applicant as a Co-operative has directors who are the Head and the deputy head of the Kongres as well as the Head and deputy head of the Heemraad. Each division within the institutional structure of the first applicant operates independently and functions separately from the others. In terms of the first applicant's constitution, the board of directors and members of the Co-operative must perform and adhere to the laws made by the Kongres, the legislative body of the first applicant.

[10] The first applicant's Constitution was duly registered with CIPC on 12 April 2018. By joining as members of the applicant, members of the Co-operative agree to comply with and are contractually bound by the Constitution of the first applicant, any amendments made to it, and any bylaws established by the Kongres. Members are bound to make financial contributions to the first applicant as determined by the

Kongres. The Constitution of the applicant provides that once a member's membership is terminated, the member's shares must be cancelled by resolution of the board. A member forfeits his shares in the first applicant upon such cancellation. Complaints against any member for violation of the Constitution of the applicant or any governing documents of the first applicant are dealt with by the judicial body of the applicant, the Heemraad. Against this backdrop, I turn to consider the respective parties' cases.

The Applicants' Case

[11] The applicants aver that Byneslaagte farm was purchased in October 2016, and many of the first applicant's members permanently reside on the farm. These residents rely on the first applicant for the provision of basic delivery service. According to the applicants, the first applicant is governed meticulously in alignment with the guidelines set forth by the Co-operatives Act, as well as the principles enshrined in its Constitution. The applicants posit that the first to fourth respondents registered the Constitution of the first applicant with CIPC on 12 April 2018. However, that happened without the member's oversight or approval.

[12] The applicants assert that during the past two years, the first applicant's members and the first to fourth respondents (the directors) were embroiled in constant disputes. According to the applicants, the respondents, as directors of the first applicant ruled the first applicant's affairs with complete autocracy. The applicants further averred that the respondents did not conduct the applicant's affairs in accordance with the Co-operatives Act or the first applicant's Constitution. The applicants stated that the respondents, particularly the first respondent, did not tolerate members questioning his leadership and summarily terminated their membership.

[13] Mr Eben Oosthuizen, the deponent of the applicants' founding affidavit, stated that on 13 June 2022, he was appointed as the first applicant's internal auditor. During his tenure as an internal auditor, he discovered irregular spending concerning a company, K2018234593 (South Africa) (Pty) Ltd t/a De Anker Boerdery. It became clear that the respondents' conduct and the lack of members' oversight was the root

of the problem with the management of the first applicant. Mr Oosthuizen stated further that the first applicant has not convened an annual general meeting since February 2023, allowing the respondents (the first applicant's directors) to rule with impunity. Furthermore, its auditors have not signed off on the first applicant's annual financial statements for the 2023 or 2024 financial years.

[14] Mr Oosthuizen mentioned that he then resolved to request the first to fourth respondents to call an annual general meeting to address these concerns. On 4 September 2024, he formally requested, in writing, that the respondents convene an annual general meeting as required by the first applicant's Constitution. That notice included a request to elect a new board of directors. According to Mr Oosthuizen, he and Mr Fourie, both members of the first applicant, signed the letter petitioning the directors to convene an annual general meeting. Accordingly, Mr Oosthuizen asserted that 17 of the first applicant's seventy-two members supported the request for an annual general meeting, constituting support in excess of 20%.

[15] According to Mr Oosthuizen, the respondents, as directors of the first applicant, did not accede to the request for an annual general meeting. Instead, the respondents issued an unsigned notice on 18 September 2024 informing Mr Oosthuizen that his membership was terminated immediately. The directors also issued Mr Fourie with a similar notice terminating his membership. Mr Oosthuizen asserted that the respondents adopted the tradition of meeting descent with expulsion. As a result of the respondent's failure to convene the general meeting as requested in the letter dated 4 September 2024, Mr Oosthuizen stated that he and Mr Fourie proceeded to issue two notices convening a special general meeting and with an agenda.

[16] This notice informed members that the respondents failed to convene a general meeting after a request from members holding 20% voting rights and that the special general meeting would be held on Saturday, 23 November 2024, at Stella Winery, Kys Halte, R362, Vredendal. The notice also informed members that they were welcome to attend the meeting virtually and that a link for that meeting would be provided to the members before the meeting.

[17] On 11 November 2024, Mr Oosthuizen emailed those notices to the first applicant's members including the first to fourth respondents as directors of the first applicant. The directors did not circulate these notices to the members on the first applicant's WhatsApp group platform. Accordingly, Mr Oosthuizen created a new WhatsApp group, invited the first applicant's members and the respondents, and circulated those notices on that WhatsApp platform. The request for a special general meeting did not find favour with the respondents. The respondents, through their legal representatives, addressed a correspondence to Mr Oosthuizen requesting an undertaking that members will not convene a special general meeting.

[18] In response, Mr Oosthuizen insisted that the notice for the special general meeting was validly issued. Furthermore, he indicated that the respondents' notice convening an annual general meeting on 28 November 2024 is ill-conceived as it does not accommodate the first applicant's members' needs, particularly in that it is only available online, excluding most of the first applicant's members. On 15 November 2024, the respondent's legal representative circulated a letter to the applicants' members urging them to disregard the special general meeting of 23 November 2024 and informing them that the respondents have convened an annual general meeting that will take place on 28 November 2024.

[19] In the letter, the respondents' legal representative informed members of the first applicant that the respondents did not authorise the meeting of 23 November 2024 and urged the members of the first applicant to disregard the special general meeting of 23 November 2024. The respondents proceeded to show their discontent with the dissenting members' intention to proceed with the special general meeting on Saturday, 23 November 2024, by issuing an urgent application under case number 24954/2024 on 21 November 2024 seeking to interdict the dissenting members from convening a special general meeting.

[20] On 22 November 2024, Slingers J dismissed the respondents' urgent application. In light of this court's dismissal of the respondents' application, the dissenting members proceeded to convene a special general meeting on 23 November 2024. The special general meeting was attended by 22 members and three proxies. According to Mr Oosthuizen, at the meeting, four members, namely

the second to the fourth applicant, were proposed and unanimously accepted to serve as the first applicants' directors.

[21] Subsequent thereto, the newly appointed directors addressed a letter dated 28 November 2024 to the former directors informing them of the business conducted at the special general meeting and that they are to vacate their offices. The former directors did not vacate their offices and convened an annual general meeting on 28 November 2024. On 5 February 2025, the newly elected directors submitted the change of directors to CIPC. On 7 February 2025, CIPC issued the certificate of registration confirming the adoption of the newly elected directors.

[22] The applicants asserted that the respondents refused to assist the new leadership with a peaceful leadership transition. Accordingly, the new directors cannot access strategic information, bank accounts, software systems, information system, keys, and other infrastructure vital to the directors' effective management of the first applicant's interests. On 10 February 2025, the new chair of the board of directors addressed a letter to the respondents (the alleged former directors) requesting them to hand over the keys for all office vehicles and tractors to the new directors. The new chair of the board also instructed the respondents to stop representing to third parties, that they represent the first applicant, or to conclude transactions on behalf of the first applicant or provide false information to members of the applicant. The respondents refused to comply with the new directors' request.

[23] On 11 February 2025, the respondents, particularly Mr Agenbag, the first respondent herein, addressed a letter to the members of the first applicant and informed them that the respondents do not regard the newly elected directors as legitimate. Instead, it is a hostile takeover of the first applicant. In the letter, Mr Agenbag pointed out that they (former directors) reported the matter to the South African Police Services (SAPS) and CIPC. He also mentioned that pending the investigation of SAPS, they will not provide any documents or minutes to any person until the finalisation of that investigation. Mr Agenbag stated that the respondents are not obliged to accept or cooperate with the newly elected directors. SAPS declined to investigate this matter as it alleged it does not fall within the domain of SAPS.

[24] Pursuant thereto, the applicants' attorneys addressed a letter to the respondents and urged them to cease to represent to third parties that they represent the first applicant or provide false information to members of the first applicant. Additionally, the applicant's attorney requested the respondents to comply with the request of the new chair of the board of directors contained in the letter dated 10 February 2025. The applicant's legal representative stated that legal actions would follow if the respondents failed to comply with the request. In response, Mr Agenbag maintained that Slingers J, in her order dismissing the respondents' application for interdict, ruled that the special general meeting of 23 November 2024 was null and void. Mr Agenbag also stated in the letter that he had lodged complaints concerning the newly elected directors with CIPC, SAPS and the National Prosecuting Authority.

[25] The applicants asserted that in February 2025, the new directors became aware that the respondents not only represented to third parties that they represent the first applicant but are also effecting payments from the first applicant's bank account. The applicants asserted that the new directors cannot effectively manage the applicant's affairs when the respondents refuses to vacate their offices and provide the new directors with access to the necessary infrastructure and information. On 7 February 2025, the new board of directors convened a meeting with FNB and explained the unusual circumstances in which the first applicant found itself. Since that meeting, the first applicant's bank accounts held with FNB have been frozen.

[26] In addition, the first applicant established a general store on the farm, providing its residents with all necessary household and agricultural supplies as the town is 60 km away from the farm. Many of the residents rely on the shop for all their household needs. The general store supplies agricultural needs that residents rely on for their family endeavours. According to the applicants, since the special general meeting, Mr Agenbag, one of the former directors, refused to open the shop. The applicants also mentioned other inconveniences caused by the respondents not handing over leadership to them, like not having access to the water scheme diagram to ensure sufficient water. The applicants implored this court to grant the

relief sought in the notice of application to enable them to manage the first applicant accordingly.

The Respondents' Case

[27] The respondents stated that members of the first applicant agreed to adhere to and are both contractually and by law bound by the Constitution of the first applicant as well as any amendments thereto and any by-laws made by the Kongres of the first applicant. The respondents stated that as with any governing body, the board of directors of the first applicant has experienced overtime dissatisfaction from members, both individually and in small splinter groups. According to the respondents, this is not uncommon, nor does it indicate that the first applicant is mismanaged or that the powers of the board of directors are being abused.

[28] The respondents asserted that for the past three years, the first applicant has faced recurring challenges from a splinter group of members led by Mr Oosthuizen. Mr Agenbag, the deponent of the answering affidavit and the director of the first applicant, asserted that these challenges include the refusal by the splinter group to pay for services, including membership fees, water charges, internet services, and growth fund levies relating to the provision of services. Mr Agenbag further propounded that since November 2022, members of the splinter group have engineered various frivolous disputes against the board of directors. These ongoing disputes have created tension between members, particularly since many of these disputes do not have any merit or foundation.

[29] According to Mr Agenbag, as a result of the disregard for the Constitution, the internal rules and regulations, and the code of conduct of the first applicant, one of the first applicant's members, Mr Stroebe, was on 15 December 2022, found guilty of all complaints lodged against him and was removed as a director by the first applicant's judicial sphere, the Heemraad. The member was instructed on 28 December 2022 to vacate the farm by 31 March 2023, which he failed or refused to do.

[30] In addition, Mr Agenbag stated that Mr Fourie, who, together with Mr Oosthuizen, called the special general meeting, was also expelled as a member of the first applicant by the Heemraad, following a full internal disciplinary hearing. Mr Fourie resigned as a director of the first applicant and as the chairperson of the Kongres on 21 December 2022. The Heemraad terminated his membership of the first applicant on 3 May 2023, when he was also officially removed as a director. Mr Agenbag further stated that Mr Oosthuizen who deposed to the founding affidavit in this application, is no longer a member of the first applicant and has not been one at any relevant time, contrary to what he claims in his founding affidavit.

[31] According to Mr Agenbag, Mr Oosthuizen has also been expelled by the Heemraad as a member of the first applicant. His membership was terminated on 18 September 2024 due to his repeated violations of the Constitution and the first applicant's code of conduct, *inter alia*, for disrespecting the first applicant's board of directors and leadership, publishing confidential details of disputes, spreading false information and failing to act in the first applicant's best interest. A copy of Mr Oosthuizen's termination letter was also attached to the answering affidavit supporting this averment.

[32] Mr Agenbag refuted Mr Oosthuizen's accusations of the autocratic leadership style of the board and asserted that he was not responsible for disciplining members. The Heemraad, of which Mr Agenbag was not a member, is responsible for matters of discipline, misconduct and contravention of the provisions of the first applicant's Constitution and other governing documents. In Mr Agenbag's view, the Heemraad followed the process of applying the principles of the *audi alteram partem* principle. When a complaint is received from a member, the Heemraad would consider the complaint and address communication with the accused person to inform him or her of the complaint and the allegations, giving that person the opportunity to reply to the allegations. The Heemraad will then consider the evidence and the versions of the parties before making any ruling or coming to any decision.

[33] The respondents asserted that the special general meeting convened by the applicants was null and void. The respondents stated that in terms of the first applicant's Constitution, a special general meeting can only be convened either by at

least two directors of the first applicant, alternatively, by five or more members of the first applicant, provided that the members in number constitute at least 20% of all members of the first applicant, having petitioned the directors to convene such meeting and the meeting is not convened within 21 days.

[34] According to the respondents, if consideration is given to Mr Oosthuizen's declaration under oath, he unilaterally resolved to call a special general meeting. Although Mr Oosthuizen may have subsequently canvassed the support of his fellow expelled members and a few other disgruntled members, the respondents asserted that the directors of the first applicant were not petitioned by two of the directors or by five or more members, alternatively, members in good standing, who, at the time, in numbers constituted 20% of the total members.

[35] In addition, the respondents pointed out that both Mr Oosthuizen and Mr Fourie's membership of the first applicant have been terminated. In addition, 2 other members who supported the petition to the directors to convene a special general meeting had been expelled. As such, of the remaining 13 people, only 7 were, at any relevant time, in good standing and in full compliance with the Constitution and other governing documents. Thus, the petition and request for a special general meeting were, in fact, supported by less than 10% of the members in number, falling short of the threshold set in the first applicant's Constitution.

[36] The respondents submitted that the obstructive and rebellious actions of Mr Oosthuizen and Mr Fourie, as well as the spreading of negative propaganda amongst the members, is driven by Mr Oosthuizen and, in all likelihood, Mr Fourie's personal vendettas and does not portray the general consensus or intention of the majority of the members that are in good standing. The respondents asserted that the notice sent by Mr Oosthuizen petitioning for a special general meeting was also conveniently signed by Mr Oosthuizen and Mr Fourie. None of the other members have at any stage confirmed their support for the call of a special general meeting in writing or otherwise, other than for Mr Oosthuizen's uncorroborated claim that they supported him.

[37] Furthermore, the respondents asserted that the notice was only distributed a mere 12 days before the said special general meeting was to be held. The respondents opined that having regard to the provisions of the first applicant's Constitution, at least 14 days' notice was required. The respondents contended that the notice and agenda disseminated to the members by Mr Oosthuizen and Mr Fourie in respect of this special general meeting are materially defective and did not comply with the terms of the first applicant's Constitution.

[38] The respondents further pointed out that the board of directors did not authorise the convening of the meeting and formally recorded their objection to it. They contended that at the time Mr Oosthuizen sent his notice of a special general meeting to members of the first applicant, the directors had already sent out a notice on 8 November 2024 that the annual general meeting would be held on 28 November 2024. Accordingly, the respondent stated that the special general meeting held on 23 November 2024 was not and under no circumstances can it be regarded as a proper and validly convened special meeting where any business of the first applicant could lawfully have been conducted.

[39] In the circumstances, the respondents prayed that the application be dismissed with costs on an attorney and client scale.

Principal Submissions by the parties

[40] Mr Nöthling, the counsel for the applicant, argued that the new directors (the second to the fifth applicants) were appointed following an election held on 23 November 2024. On 28 November 2024, the new directors informed the respondents (the former directors) of the business conducted at the special general meeting. However, the respondents failed to vacate their office. Counsel submitted that the applicants addressed a letter to the respondents requesting access to the assets and information to enable them to manage the first applicant's affairs. However, the respondents made it clear that they would not accede to the new directors' request.

[41] On the question of urgency, counsel submitted that the newly appointed directors cannot effectively manage the first applicant's affairs without the former

directors handing over control of the first applicant's affairs. Mr Nöthling submitted that the first applicant cannot pay its creditors and is running the risk of compromising service delivery to the members of the Co-Operative. Counsel pointed out that 39 of the first applicant's members, currently live on the first applicant's property with their families. The first applicant cannot operate the general store it established on the farm, which is a vital facility for its members' existence.

[42] Most concerningly, so the contention proceeded, the water infrastructure on the farm cannot be managed without access to the first applicant's water infrastructure diagram. The first applicant's farm, Bysneslaagte, is located in an arid region, and the first applicant's members are at risk of not having access to water and increasing the risk of fire damage. In counsel's view, the ongoing nature of the harm flowing from the respondents' conduct makes this matter deserving of this Court's urgent attention.

[43] On the merits of the matter, the applicants' counsel argued that the former directors had not convened an annual general meeting since February 2023. The first applicant's members have expressed their difficulty with the Co-Operative's management and resorted to other avenues in an attempt to resolve the matter. Ultimately, some of the first applicant's members addressed a letter to the former directors on 4 September 2024 requesting the directors to call a special general meeting.

[44] Counsel further submitted that following the former directors' failure to convene the Annual General Meeting, the members issued two notices on 11 November 2024 informing the members of the upcoming special general meeting. These notices were circulated by email and through the WhatsApp platform. Mr Nöthling submitted that members who attended the special general meeting compiled comprehensive minutes of the business conducted at the special general meeting. At that meeting, the members in attendance adopted a unanimous resolution, removing the former directors (the respondents) from their office and appointing the new directors. Mr Nöthling submitted that once removed from office, the former directors are duty-bound to hand over the affairs of the first applicant to the new directors.

[45] Counsel submitted that Mr Fourie and Mr Oosthuizen's membership were terminated on 18 September 2024. Accordingly, Mr Fourie and Oosthuizen were still members on 4 September 2024, the date of requesting the board of directors to convene a special general meeting. According to counsel, before convening their special general meeting, the petitioning members satisfied the 20% requirement contained in clause 50.2(b) of the Co-Operative's constitution.¹

[46] Mr Nöthling further asserted that the applicants have no other remedy to ensure the effective management of the first applicant's affairs, pending the final adjudication of the dispute. The harm caused by the former directors' conduct is significant. According to counsel, the former directors do not stand to suffer if the applicants' relief is granted. Counsel implored the court to grant the relief sought in the notice of motion.

[47] On the other hand, Mr Engela, the respondents' counsel, impugned the urgency with which this application was brought. Counsel submitted that the matter is not urgent. According to Mr Engela, even if the matter is urgent, the urgency is self-created, and the application was launched with a degree of urgency that is completely unwarranted. Mr Engela asserted that the matter is not urgent because it relates, in the first instance, to a meeting that took place more than four months ago, on 23 November 2024. Despite the applicants having been told unequivocally by the respondents since 23 November 2024 that they dispute the validity of the special general meeting, the applicants chose not to institute action at any time until 14 March 2025, when this application was eventually issued.

[48] Mr Engela contended that the respondents had, from the outset, stated, in no uncertain terms, that the appointment of the so-called "new directors" was disputed and that their authority to act as such was rejected. This was the situation more than

¹ Clause 50.2 provides as follows: 'A special general meeting shall be convened –
(a) By at least two Directors of the Co-operative; or (b) By five or more members of the Co-operative Constituting in number at least 20% (twenty percent) of all the members of the Co-operative: Provided that such members shall not be entitled to convene an special general meeting unless they have forehand in writing petitioned the Directors to convene such a meeting and the meeting is not convened within 21 (twenty one) days reckoned from the date the petition was lodged, or unless for any reason there are no Directors to whom such a petition can be addressed.'

four months ago. In all the circumstances, the disputes between the parties manifested themselves as early as November 2024, more than four months ago. Notwithstanding, the applicants gave the respondents a mere 24 hours to oppose and another 24 hours to prepare and file their opposing affidavit.

[49] Counsel further noted that, despite the passage of nearly four months since the special general meeting on 23 November 2024, and more than four weeks since their belated letter of demand issued on 10 February 2025, the respondents were requested to prepare and file their opposing affidavits within a very short timeframe. Mr Engela submitted that no case had been made out whatsoever of the extreme departure from the rules. Counsel prayed the court to strike this application off the roll.

[50] As far as the merits of the application are concerned, Mr Engela contended that the rule nisi, which the applicants are seeking, includes certain prayers for interdictory relief which are far-reaching. According to counsel, they are to the effect that the respondents must hand over to the applicants all the assets and/or information of the first applicant. In addition, they are to the effect that the respondents be restrained from interfering with the management of the first applicant's affairs, and of representing themselves as directors of the first applicant. Considering that once the interdict is granted, the matter may take time to resolve whilst the respondents are excluded in the administration of the first applicant, counsel submitted that it would be proper for this court to approach the application as one in which a final relief is being sought.

[51] Mr Engela challenged the validity of the meeting of 23 November 2024 and submitted that of the 22 members and the 3 proxies present at the meeting, 9 members were behind with their membership fees, and another 5 memberships had been suspended or terminated, and they were expelled as members of the first applicant. Counsel submitted that these members did not have the right to vote nor to be elected as the "new" directors of the first applicant. They were a splinter group, whose decisions do not bind the other members of the first applicant. According to Mr Engela, the special general meeting was a sham if regard is had to the way it was conducted. In all the circumstances, so the argument went, the matter should either

be struck from the roll with costs due to a lack of urgency or dismissed with costs due to the failure on the part of the applicants to make out a case for the relief sought in the notice of motion.

Issues to be decided

[52] From the above discussion, two primary issues arise for determination in this matter. The *first* issue is whether the applicants' application was brought with the requisite degree of urgency as envisaged in Rule 6(12) of the Uniform Rules or whether the urgency pleaded by the applicants is self-created. *Secondly*, whether the special general meeting that was called on 23 November 2024 was validly convened and constitutionally compliant with the governing documents of the first applicant including its Constitution.

Relevant legal principles and discussion

[53] As foreshadowed above, the respondents took issue with the urgency with which this application was brought. The respondents asserted that the urgency with which this application was brought is egregiously self-created. In the interest of diligence, I will address the two disputed issues *ad seriatim*.

Urgency

[54] The legal principles applicable to the question of urgency are well-established in our law. Urgency in applications involves mainly the abridgement of times prescribed by the rules and, secondarily, the departure from established filing and sitting times of the court.² Rule 6(12) of the Uniform Rules of Court confers courts with a wide discretion to decide whether an application justifies enrolment on the urgent court roll based on the facts and circumstances of each case.³ An application is urgent when an applicant cannot obtain substantial redress in due course.⁴ The

² See Rule 6(12) (a) and (b) of the Uniform Rules.

³ *Mogalakwena Local Municipality v Provincial Executive Council*, Limpopo [2014] 4 All 67 (GP) at para 63; *Caledon Street Restaurants CC v D' Aviera* 1998 JDR 0116 (SE) at 8.

⁴ *Dlamini v City Manager of the City of Ekurhuleni Metropolitan Municipality* [2023] ZAGPJHC 147 at para 27.

degree of departure from the modes of service and time frame in the Uniform Rules must be commensurate with the urgency in each case.⁵

[55] It is common cause in the present matter that the applicants brought this application with extreme urgency. The applicants gave the respondents a mere 24 hours to oppose and another 24 hours to prepare and file their opposing affidavit. The reasons advanced by the applicants for the said urgency is that the respondents are interfering and stifling the new directors' ability to manage the first applicant's affairs. The applicants asserted, among other things, that the new directors cannot manage the applicant's software systems, banking systems, and infrastructure. The members of the first applicant risk having no access to water due to the respondents' conduct.

[56] As further grounds of urgency, the applicants stated that the first applicant is precluded from managing the general store on which the residents rely and lastly that the first applicant's members risk having no access to water, which is a risk to property or life if fires cannot be adequately maintained.

[57] Rule 6(12)(b) requires two things of an applicant in an urgent application. *First*, the applicant must explicitly state the circumstances that he avers render the matter urgent and, *secondly*, why he claims that he would not be afforded substantial redress at a hearing in due course. Expressed differently, it is peremptory in Rule 6(12) that applicants set out explicitly the circumstances on which they rely to render the matter urgent and why they claim that they cannot be afforded substantial relief at a hearing in due course. If they do not do so, their application is fatally flawed. An applicant is not allowed to create its own urgency.⁶

[58] In the present matter, I have considered the grounds of urgency raised by the applicants, and, in my view, they are deficient of the threshold envisaged in Rule 6(12) of the Uniform Rules. It is important to remind ourselves that a matter is urgent because of the imminence and depth of harm the applicant will suffer if relief is not

⁵ Republikeinse Publikasie (Edms) Bpk v Afrikaanse Pers Publikasie (edms) Bpk 1972 (1) SA 773 (A) at 782A-G.

⁶ *Venter v Els* 2024 (4) SA 305 (WCC) para 19.

given. As pointed out by Mr Engela, the respondents told the applicants, unequivocally, since 23 November 2024, that the validity of the special general meeting convened by Mr Oosthuizen and Mr Fourie was disputed.

[59] The respondents made it clear that they would not hand over the leadership of the first applicant to the applicants at the end of 2024. Furthermore, the applicants knew that the respondents were not accepting the validity of the meeting on 23 November 2024. To that end, the respondents brought an application in this court to interdict the applicants to hold the meeting on 23 November 2024. However, that application was dismissed. Intelligibly, the applicants knew that the respondents did not vacate their office as directors of the first applicant and after the meeting of 23 November 2024, the respondents completely disregarded the special general meeting and convened an annual general meeting on 28 November 2024. The respondents unequivocally refused to hand over the leadership of the first applicant to the applicants and conveyed that stance to the applicants.

[60] In the founding affidavit, the applicants mentioned that Mr Agenbag refuses to assist the new leadership with a peaceful leadership transition. The applicants asserted that the new directors do not have access to strategic information, bank accounts, software systems, information system accounting systems, and other infrastructure vital to the director's effective management of the applicants' interests. Evidently, they knew about this in November 2024. The applicants waited and did nothing to compel the directors of the first applicant to hand over the necessary document for the management of the first applicant.

[61] Most importantly, on 5 February 2025, the alleged newly appointed directors submitted a change of directors to CIPC. On 7 February 2025, CIPC issued the certificate of registration confirming the adoption of the newly elected directors. On 10 February 2025, Mr Hanekom, the new board chair, addressed a letter to the respondents requesting, among other things, keys for all offices, store warehouse and other items for the effective management of the first applicant.

[62] On 11 February 2025, Mr Agenbag addressed a letter to the members of the first applicant and stated that the directors of the first applicant do not regard the

newly elected directors as legitimate. Instead, he noted that it was a hostile takeover of the applicant and that they reported the matter to the police. Among others, Mr Agenbag stated that the respondents will not provide any documents or minutes to any person until the investigation is finalised. From the chronology of these events, it is abundantly clear that the respondents were not going to hand over the leadership to the applicants from November 2024. The suggestion by the applicants that they intended to resolve the matter internally is implausible and unsustainable. At the very least, they knew in February 2024, when Mr Agenbag sent a letter to all members of the first applicant, that they did not recognise the newly appointed board.

[63] Notwithstanding all this information at their disposal, the applicants chose not to institute action at any time since then until 14 March 2025, when this application was eventually issued. Instead, they waited for a period of almost four months to bring this application. When they went ahead with the application, they did so with the utmost urgency, providing the respondents with a mere 24 hours to file an opposition and an additional 24 hours to prepare and submit their opposing affidavit.

[64] In summary, despite almost four months having lapsed since the special general meeting on 23 November 2024 was held, and more than four weeks since the letter of demand of 10 February 2025, the applicants failed to bring this application timeously. Belatedly, the respondents brought this application with extreme urgency and called upon the respondents to file their opposing affidavits within a matter of hours. In my view, no case has been made whatsoever for this extreme departure from the rules. The urgency asserted by the applicants, in my view, is entirely self-created.⁷ There is no justification for the applicants' failure to bring this application earlier after they were notified that the respondents are not recognising their leadership. Accordingly, the applicants' application must ordinarily fail due to their decision to wait almost four months to approach the urgent court.

[65] Generally, the above finding regarding urgency would lead to the applicants' application being struck off the roll. However, I am mindful that the disputed issues in this matter are critical and affect a number of families. I believe both parties need

⁷ *Big Blue Marketing CC v King Sabata Dalindyebo Local Municipality* 2017 JDR 0302 (ECM) at para 10; *Windsor Hotel (Pty) Ltd v New Windsor Properties (Pty) Ltd* 2013 JDR 1989 (ECM) at para 9.

certainty on the validity of the meeting held on 23 November 2024 when the new board of directors was appointed. Striking this matter from the roll without a determination on the validity of the meeting of 23 November 2024, may leave the parties uncertain about the leadership of the first applicant. For completeness, I will address the remaining issue regarding the validity of the meeting held on 23 November 2024.

Was the special general meeting held on 23 November 2024 validly convened?

[66] It is common cause that the first applicant is governed in terms of its Constitution and relevant rules that apply to all its members. The governing instruments of the applicant bind all the members of the first applicant. Members of the first applicant agreed to be bound contractually by the Constitution and any amendments thereto made by the Kongres, the legislative sphere of the first applicant. In terms of section 26 of the Constitution of the first applicant, the management of the first applicant vests with the board of directors. Clause 27 of that Constitution sets out the powers of and restrictions on the board of directors.

[67] From the affidavits and documents filed, the members of the current board have been expelled as members of the first applicant in terms of the Constitution of the first applicant. Mr Fourie and Mr Oosthuizen, who petitioned the directors and called the special general meeting, were expelled as members of the first applicant by the Heemraad, the judicial authority of the first applicant. Mr Fourie was expelled as a member of the first applicant by the Heemraad following a full internal disciplinary hearing. Notably, the Heemraad of the first applicant found Mr Fourie to have violated the code of conduct, the regulations and the Constitution of the first applicant. In a letter dated 18 September 2024, addressed by the Heemraad, Mr Fourie was informed that his membership was terminated with immediate effect.

[68] Mr Oosthuizen, the deponent of the founding affidavit of the applicants, has also been expelled as a member of the first applicant by the Heemraad. From the Heemraad decision filed in these proceedings, Mr Oosthuizen's membership was terminated on 18 September 2024 due to his repeated violations of the Constitution of the first applicant and the code of conduct. Mr Oosthuizen was expelled for

disrespecting the applicant's board and leadership, and for spreading false information and failing to act in the first applicant's best interest. At the time the meeting was held on 23 November 2024, Mr Fourie and Mr Oosthuizen were no longer members of the first applicant. In my view, they had no locus standi as directors of the first applicant or to attend and participate in the meeting of the first applicant.

[69] It must be stressed that Mr Oosthuizen and Mr Fourie were not forced to join or take membership with the first applicant. They voluntarily committed themselves to be loyal members of this Co-operative and are thus bound by the decisions that are taken by the established structures of this institution. There are remedies available at their disposal for any decision that goes against them or for any decision that they feel was arbitrary. In my view, Mr Oosthuizen does not have the locus standi to institute these proceedings on behalf of the first applicant because he is not a member of the first applicant. The Heemraad of the first applicant expelled him, and his membership was not reinstated. The decision made by the newly elected board of directors, which grants Mr Oosthuizen the authority to initiate these proceedings, holds no significance. This is due to the fact that Mr Oosthuizen is not a member of the first applicant, rendering the resolution moot and inconsequential.

[70] If the two members were aggrieved by the decision of the Heemraad, they should have exhausted internal remedies to challenge the validity of their expulsion as members of the first applicant. Alternatively, if the Mr Oosthuizen and Mr Fourie were not happy with their expulsion, they should and could have challenged or instituted review proceedings against the decision of the Heemraad to expel them as members of the first applicant. On that score alone, the applicant's application is bound to fail. Against this backdrop, I turn to consider the validity of the meeting that was held on 23 November 2024.

[71] I must emphasise that in terms of the first applicant's Constitution, the special general meeting could only be convened either by at least 2 directors of the first applicant, alternatively, by 5 or more members of the first applicant provided that the members in number constitute at least 20% of all members of the first applicant, having petitioned the directors to convene such a meeting and the meeting is not

convened within 21 days. In this case, Mr Oosthuizen called the meeting and was supported by Mr Fourie. The other members who supported the call to petition the directors did not constitute 20% as required by the Constitution of the first applicant. Conspicuously, the Constitution unequivocally requires not only that a special general meeting be petitioned by five or more members, constituting 20% of all the members, but that such members shall also convene the special general meeting.

[72] As correctly pointed out by Mr Engela, the notice convening the special general meeting was only signed by Mr Oosthuizen and Mr Fourie, who were no longer members of the first applicant. The notice was not signed or issued by any of the other members who allegedly supported the initial petition. This, in my view, offended the Constitution of the first applicant. These notices allegedly sent to members were therefore not issued by 5 or more members, constituting 20% of all the members, resulting in the special general meeting not being convened by such members.

[73] Significantly, the Constitution sets out the time frame that is required to convene a special general meeting. In fact, the Constitution of the first applicant requires a period of 14 days' notice to be given for the sitting of a special general meeting. Paragraph 51.1 of the applicant's Constitution provides that a general meeting shall be convened by at least 14 days' notice in writing to each member of the Co-operative. The notice issued by Mr Oosthuizen and Mr Fourie for the special general meeting of 23 November 2024 was only distributed a mere 12 days before the special general meeting was to be held contrary to the prescripts of the first applicant's Constitution.

[74] What I find very concerning, which, in my view, is fatal to the applicants' case, is that the board of directors of the first applicant did not authorise the convening of the meeting of 23 November 2024 and vociferously objected to it. Notwithstanding that the board of directors had already on 8 November 2024 called for a special general meeting to be held on 28 November 2024, Mr Oosthuizen and his splinter group still sent out a notice on 11 November 2024 that the annual general meeting shall be held on 23 November 2024.

[75] In other words, even though the board of directors of the first applicant had set a date for the annual general meeting for 28 November 2024, Mr Oosthuizen and his splinter group continued to call a meeting for 23 November 2024. In my opinion, the actions taken by Mr Oosthuizen and Mr Fourie proverbially bear resemblance to an attempted *coup d'état*. Their decision to convene a special general meeting, despite the prior scheduling of an Annual General Meeting, fundamentally compromised and invalidated the legitimacy of the purported meeting held on 23 November 2024.

[76] In my view, there was no need for another meeting as the board of directors had already called for the Annual General Meeting for which the applicants sought. Expressed differently, as from 8 November 2024, when the directors issued the notice for the meeting on 28 November 2024, the applicants did not have the right to proceed with convening a special general meeting of their own accord. The board of directors, an institutional structure of the applicant, had already set a date for the meeting. The applicant acted in defiance and intransigently to the decision of the board of directors that the members of the first applicant duly and legitimately appointed.

[77] To make matters worse, Mr Oosthuizen and Mr Fourie chose the date of the proposed special meeting to be 23 November 2024. In other words, they chose a date which was five days before the Annual General Meeting. Evidently, this lead me to an ineluctable conclusion that the special general meeting was convened purely to circumvent the proceedings of the Annual General Meeting, where the applicants would have been free to voice their concerns and to vote, in the normal fashion, for the appointment of new directors. I am mindful of the allegations of exclusion alluded to by the applicants in their application. However, I believe that such issues could be addressed by the Heemraad, their judicial body, which the members of the first applicant unanimously established to address such problems.

[78] To this end, I agree with the views expressed by the respondents' counsel that the way the special general meeting was convened and conducted shows that it was called to undermine the upcoming Annual General Meeting, which was held on 28 November 2024, a mere five days later. Indeed, the evidence shows that the

special general meeting was a complete sham. The applicants flagrantly flaunted the procedural requirement set out in the first applicant's Constitution. No proper process was followed with regard to the nomination and election of the proposed members as directors, and members' concerns were simply ignored.

[79] In my view, Mr Oosthuizen and Mr Fourie's conduct offended the Code of Conduct, the Regulations and the Constitution of the first applicant. Clause 11.2 of the applicant's Constitution sets out its members' obligations. Amongst other things, members must adhere to the Constitution, any amendment thereto, and any by-laws made by the Kongres. Furthermore, all members must conduct themselves in the values and ethical values of the Constitution and always act in the best interests of the Co-operative. The conduct of the respondents offended the governing documents of the first applicant and that cannot be countenanced.

[80] Thus, the applicants have failed to meet the first requirement for the relief they seek, namely, to prove the "clear right" on which they purport to rely. Furthermore, the deponent of the founding affidavit does not have the authority to bring this application on behalf of the first applicant.

[81] Pursuant to the view I take, I deem it unnecessary to deal with the other requirements of an interdict. The purported meeting of the 23 November 2024 was a sham. It is invalid and not binding. Any decisions taken at that meeting are null and void, and of no consequence. The respondents are the incumbent directors of the first applicant, and they are entitled to continue managing the first applicant's day-to-day operations until they are removed by a valid decision taken in terms of the first applicant's Constitution, or by order of Court.

Order

[82] Given all these considerations, the following order is granted:

82.1 The applicants' application is hereby dismissed with costs, including the costs of counsel on scale B.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicants: Mr Nöthling

Instructed by: Sune Van der Merwe Attorneys

For the Respondents: Mr Engela

Instructed by: Morne Binedell Attorney and Conveyancer