



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

Case number: 19605/2024

In the matter between:

TOM GELDERBLOM

First applicant

CHRISTOPHER SAULS

Second applicant

FRANCOIS MARAIS

Third applicant

And

THE SANDOWN BAY FISHING COMPANY (PTY) LTD

First respondent

PHILIPPUS MAY

Second respondent

RUDOLPH JANTJIES

Third respondent

ADELE BAADJIES

Fourth respondent

ELTON MAY

Fifth respondent

ERICA GILLION (née CARELSE)

Sixth respondent

REASONS DELIVERED ON 19 MAY 2025

VAN ZYL AJ:

1. On 17 January 2025 I granted the following order in the urgent court:
 - 1.1. The applicants' non-compliance with the forms and service provided for in the Uniform Rules of Court is condoned and this matter is heard as one of urgency in terms of Rule 6(12).
 - 1.2. The second to sixth respondents are interdicted and restrained from convening and proceeding with the shareholders meeting called for 20 January 2025 at 17h00, pending the final determination of the application brought in terms of section 163 of the Companies Act 71 of 2008¹ under case number 19605/2024.
 - 1.3. The second to sixth respondents shall pay the costs of the application, inclusive of counsel's fees taxed on Scale B.
2. These are, briefly, the reasons for the grant of the order.²

The main application

3. The parties to this urgent application are all directors and shareholders of the first respondent company. The company is a boat-based whale-watching business which operates in the Overstrand and Hermanus area. The first applicant and the second respondent founded the company, and were its initial directors.
4. On 6 September 2024 the applicants in this matter instituted an application

¹ "The Companies Act".

² Reasons having been requested on 7 February 2025.

("the main application")³ under section 163 of the Companies Act, seeking relief against the second to sixth respondents on the basis that the respondents were acting in a manner that was oppressive and unfairly prejudicial to the applicants' rights as directors and shareholders. The applicants claim, too, that the respondents are abusing the separate juristic personality of the first respondent.

5. That there are serious problems in the relationship between the parties is clear from the content of the main application. The problems are ongoing. The applicants say, for example, that even after the institution of the main application the respondents undertook to provide the applicants with information sought by the latter only if the applicants withdrew the main application. That the applicants as directors and shareholders will be given access to documentation to which they are legally entitled only under threat is, according to the applicants, further evidence of the oppressive manner in which the respondents conduct themselves.
6. There is a dispute between the parties as to whether the main application was brought against the respondents only in their capacities as directors of the first respondent, or whether it was also brought against them as shareholders. I shall return to this aspect below, but point out at this juncture that the parties in the main application are cited in their capacities as both shareholders and directors of the first respondent. The applicants rely on both capacities as a basis for their *locus standi* in that application. Section 163 of the Companies Act are, in terms, available to both directors and shareholders who feel aggrieved by oppressive or prejudicial conduct, or by abuse of the separate juristic personality of a company:⁴

"(1) A shareholder or a director of a company may apply to a court for relief if-

- (a) *any act or omission of the company, or a related person, has had a result that is oppressive or unfairly prejudicial to, or that*

³ Under case number 19605/2024.
⁴ Emphasis supplied.

unfairly disregards the interests of, the applicant;

- (b) the business of the company, or a related person, is being or has been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant; or*
- (c) the powers of a director or prescribed officer of the company, or a person related to the company, are being or have been exercised in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant.”*

7. The relief sought in the main application include orders to the effect that respondents are to be restrained from acting in a manner which unfairly prejudices the company and the applicants’ “*rights as both shareholders and directors*” in the company. The applicants also seek access to certain company documents, as well as an order that the first respondent’s memorandum of incorporation be amended to provide for proper and adequate notice of directors’ meetings.
8. At the time of the hearing of the urgent application, the main application was pending, it having been opposed by the respondents.

The urgent application

9. On 20 December 2024, and thus while the main application was pending, the second to sixth respondents called for a shareholders’ meeting to be held on 20 January 2025. The purpose of the meeting was to vote for the removal of the applicants as directors of the first respondent. The applicants – unsurprisingly – considered the proposed meeting to be prejudicial to their rights, and a further example of the oppressive conduct to which they had been subjected.
10. The applicants accordingly requested the respondents to postpone the meeting to a date after the determination of the main application. The applicants explain that both sides’ legal representatives were already on leave

by 20 December 2024, and the matter could not be dealt with immediately. It seems from whatsapp correspondence attached to the answering papers that the applicants nevertheless informed their attorney of the notice on receipt thereof, on 20 December 2024.

11. Correspondence was addressed to the respondents' attorney on 7 January 2025, requesting a response by 10 January 2025. The respondent's attorney only reverted on 13 January 2025. On 14 January 2025 the applicants' attorney sent another letter seeking a postponement of the meeting. The attempt at staving off the meeting was unsuccessful, the respondents being steadfast in their resolve to proceed with the meeting on 20 January 2025.
12. The applicants therefore launched this urgent application on 15 January 2025, seeking an interim interdict preventing the holding of the shareholders' meeting pending the finalisation of the main application.
13. The respondents argued that the application was not of sufficient urgency to be entertained on the date of set-down. I was, however, of the view that the timing of the notice of the meeting should be taken into account: it was sent five days before Christmas, during the court recess period, and while both parties' attorneys were already on holiday. I think that it was reasonable for the applicants to attempt to come to an agreement early in the new year, and to institute this application when their attempt was rebuffed.
14. Urgency is a question of degree.⁵ Urgent applications must be brought in accordance with the provisions of Rule 6(12), with due regard to the guidelines set out in cases such as *Luna Meubelvervaardigers (Edms) Bpk v Makin and another*.⁶ In *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others*⁷ it was held as follows:

“[6] ... An applicant has to set forth explicitly the circumstances which he

⁵ *In re: Several Matters on the Urgent Roll 18 September 2012* 2013 (1) SA 549 (GSJ) para 18.

⁶ 1977 (4) SA 135 (W).

⁷ [2011] ZAGPJHC 196 (23 September 2011) paras 6-8. Emphasis added.

avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. ...

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. ...

[8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. “

15. I did not think that, given the circumstances in the present case, the applicants would receive substantive redress in due course. The applicants explained the prevailing situation in their founding papers. I was satisfied that the matter should be dealt with as an urgent application under Rule 6(12).
16. The respondents complained, too, of the fact that the urgent application was brought under the same case number as the main application. They caused a notice under Rule 30 to be issued calling upon the applicants to remedy this “irregularity” prior to the hearing of the urgent application. The basis for this complaint is the respondents’ contention that the main application was brought against them in their capacities as directors of the first respondent, whereas the urgent application is aimed at them in their capacities as shareholders. I do not think that such a stark distinction is warranted for the purposes of the interim relief sought. I have already pointed out that the parties have been cited in both capacities in the main application, and that the applicants seeks relief pertaining to both capacities.

17. I was in any event not inclined to entertain this overly technical objection. The matters are inextricably linked, and the urgent application was incidental to a pending proceeding, namely the main application. The exercise of the respondents' votes at the proposed meeting had a direct bearing on the subject matter of the main application. It appeared to me that the Rule 30 notice was an attempt to delay the hearing of the urgent application to the point where it would be impossible to prevent the holding of the proposed meeting. I therefore allowed argument of the urgent application to continue.

The proposed meeting

18. The requirements for the grant of an interim interdict are the following:⁸
- 18.1. a *prima facie* right – this need not be shown on a balance of probabilities, but is sufficiently proved if *prima facie* established though open to some doubt. The stronger the right is, the less need there is for the balance of convenience to be considered;
 - 18.2. a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted – this is a harm that a reasonable person might entertain on being faced with certain facts, and is an objective test;
 - 18.3. a balance of convenience favouring the grant of the interim relief – the Court must weigh the prejudice the applicant will suffer if the interim interdict is not granted against the prejudice to the respondent if it is; and
 - 18.4. the absence of any other satisfactory remedy in the circumstances.
19. I have mentioned earlier that there is a dispute as to whether the main application concerns the respondents as directors or as shareholders. The

⁸ See Prest *Interlocutory Interdicts* (1993) at 54-86.

respondents contend that the main application is aimed at them in their capacities as directors, and that there should thus be no problem with the calling by the respondents of a shareholders' meeting as proposed. The respondents therefore argue that the applicants are not entitled to interdict the holding of a properly called shareholders' meeting.

20. The argument is misplaced. The focus, in my view, should be on the applicants in the main application rather than on the respondents. The applicants clearly rely on their twin capacities – directors and shareholders – for their *locus standi* in the main application, and they seek relief on the basis of conduct aimed at them in both capacities. The proposed shareholders' meeting intended to seek the applicants' removal as directors, and thus to deprive them of *locus standi* in that respect, or otherwise to frustrate them in the conduct of the litigation and in the conduct of the first respondent's business. All of the relevant parties were duly cited in both the main and the urgent application as being shareholders and directors of the first respondent.
21. It is correct, as the respondents argued, that the applicants did not necessarily have a legal right to remain in office as directors. It is, however, not an answer to the urgent application simply to say: "*You have nothing to complain about, because you will remain shareholders even if we remove you as directors*". This was the gist of the respondents' answering affidavit. The point in the present matter is however that the applicants have a right not to be treated in a manner of the sort contemplated in section 163 of the Companies Act, both in their capacities as shareholders and directors. That is the *prima facie* right they relied upon in the urgent application, not an alleged right to remain directors at all costs. The respondents' conduct in calling the meeting sought to frustrate the applicants' rights as directors in the main application. Tellingly, the respondents had not, by the time they had called for the meeting, launch a counter-application for the removal of the applicants as directors.
22. Given the strained relationship between the parties, it seemed inevitable – on these papers at least – that the applicants would in fact be removed as

directors should the meeting be allowed to proceed. Reinstatement would be difficult, if not near impossible. The notice of the meeting itself, with the proposed resolution to be taken attached to it, indicated how each of the respondents intended to vote, and specified the 62,5% majority that they collectively held. The spectre of a *fait accompli*, with none of the respondents exercising their minds independently as they were statutorily bound to do, loomed large. This constituted irreparable harm in the circumstances. It matters not that the applicants would retain their status as shareholders in the first respondent.

23. The balance of convenience favoured the applicants. There was no prejudice to the respondents in postponing the meeting until the parties' difficulties as set out in the main application had been addressed.
24. The respondents argued that the applicants had an alternative remedy because they would remain shareholders of the first respondent, and would thus continue to have the powers of shareholders. It seemed to me, however, that one of the core issues in the main application was the respondents' alleged conduct in curtailing the exercise of the applicants' powers either as directors or shareholders. The fact that they would remain shareholders after the meeting was cold comfort in the circumstances.

Conclusion

25. It may well be so that the respondents were entitled to call a shareholders' meeting. The applicants do not contend that the respondents were not entitled to do so. The circumstances in which such meeting was called and the particular purpose behind it, however, indicated an attempt to frustrate the applicants in the conduct of the main application. The proposed meeting and the call for the applicants' removal as directors were directly linked to the main application. In the circumstances, I was satisfied that the applicants had met the requirements for the grant of the interim interdictory relief sought.

Costs

26. There was no reason why costs should not follow the result.
27. Each of the parties sought costs on the scale as between attorney and client (the applicants essentially because they had attempted, unsuccessfully, to negotiate with the respondents prior to the institution of this application, and the respondents because they regarded the urgent application as being without merit), but I did not regard the matter as justifying punitive costs. In the exercise of my discretion under Rule 67A I was of the view that the respondents should pay the applicants' costs on a party and party scale, with counsel's fees taxed on Scale B.

Order

28. For these reasons, I granted the order referred to at the outset.

P. S. VAN ZYL
Acting judge of the High Court

Appearances:

For the applicants: Ms M-A McChesney, instructed by Vorster & Steyn Inc.
Attorneys

For the respondents: Mr S. Moolla, instructed by TSP Inc Attorneys