



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

JUDGMENT

Not Reportable

Case no: 18728/2024

In the matter between:

CHARLENE JUANITA BAYER

APPLICANT

and

POLKADRAAI NURSERY PROPRIETARY LIMITED

RESPONDENT

Neutral citation: *Bayer v Polkadraai Nursery (Pty) Ltd* (Case no 18728/2024) [2025]
ZAWCHC 232 (02 June 2025)

Coram: **NUKU J**

Heard: 22 April 2025

Delivered: 02 June 2025

Summary: **Interdict** – proposed sale of respondent's business enterprise as a going concern not posing any threat to the applicant's shares – no prima facie right established – application dismissed

ORDER

The application is dismissed with costs including the (a) costs of counsel on scale B, and (b) costs occasioned by the postponement of the matter on 28 August 2024 and 11 November 2024.

JUDGMENT

Nuku J

[1] The applicant, who describes herself as a business woman and a shareholder of the respondent, applies for an order, the effect of which is to prohibit the respondent's body of shareholders from considering an offer to purchase the respondent's business (sale of business agreement) until the finalisation of the legal proceedings she has instituted in this Court, under case number 21620/2014 against her ex-husband Mr Warwick Bruce Bayer (Mr Bayer), the Bayer Trust, the respondent and the former business rescue practitioners of the respondent's predecessor (action proceedings).

[2] The application was precipitated by a notice issued by the respondent on 13 August 2024, convening a general meeting of its shareholders which was to be held on 28 August 2024. The notice proposed resolutions for, *inter alia*:

2.1 approving the sale of business agreement as tabled;

2.2 approving the transfer of shares, being the whole or greater part of the assets of the company.

[3] On 22 August 2024, the applicant's attorneys of record addressed a letter to the respondent's board of directors recording the applicant's objection to the sale of the

respondent's business. The letter acknowledged that neither the applicant nor Mr Bayer has any right to unilaterally prevent the sale of the respondent's business. That notwithstanding the letter went on to formally record the applicant's objection to the proposed sale of the respondent's business which objection was said to be rooted '*in the fact that the settlement agreement, which dictates the rightful ownership of the business, has been disregarded.*' At subparagraph 6.3, the letter recorded that:

'It is our client's (applicant's) position that the sale of business should not proceed until the shares are transferred in accordance with the settlement agreement, and the action under case number 21620/2014 relating to the legitimacy of the appropriation of our client's (applicant's) shares/members interest has been finalised. Furthermore, it is our client's understanding that she is not the only shareholder who objects to the sale.'

[4] It is not clear from the papers whether the applicant's attorneys received any response to the letter referred to in the preceding paragraph. In any event, the applicant launched the application on 27 August 2024 for hearing the following day. On 28 August 2024, the matter came before Ndita J who postponed it to the semi-urgent roll for hearing on 11 November 2024 with costs standing over for later determination. The application was further postponed for hearing on 22 April 2025 with costs, again, standing over for later determination.

[5] The applicant, in her rather terse founding affidavit, explained the basis of her approach to the Court as follows:

- '8. The proposed sale involves the transfer of 80% of the shares held by the Trustees for the time being of the Bayer Trust and 20% of the shares held by myself in Shadowlands Wholesale Nursery (Pty) Ltd.
9. I have a clear right to prevent the alienation of the shares which form the subject matter of the main action, pending its final determination.

10. The proposed sale, if implemented, will cause me to suffer irreparable harm as it will effectively render the main action moot and deprive me of my rights should I succeed in that action.
11. I have no alternative remedy. Once the shares are transferred, it will be extremely difficult, if not impossible, to reverse the transaction.
12. The balance of convenience favours the granting of the interdict. While the Company may suffer some inconvenience in delaying the proposed sale, this inconvenience is outweighed by the potential prejudice I will suffer if the sale proceeds before the main action is resolved.'

[6] It is clear from the above that the applicant's entire case is based on the notion that the sale of business agreement would result in the transfer of the shares she holds in the respondent, and which are still subject of a dispute in the action proceedings. The notion that the sale of business agreement would result in the transfer of the applicant's shares in the respondent is, however, untenable for a number of reasons.

[7] Firstly, a copy of the sale of business agreement had been made available to the applicant prior to the issuing of the notice convening the shareholders' meeting. The sale of business agreement recorded that the respondent intended to sell its business enterprise as a going concern, including the business assets as outlined in clause 1.2.2 thereof. The sale of business agreement did not, however, refer to any sale of shares.

[8] Secondly, although the notice and proxy form, which accompanied the notice, made reference to a request for approval to '*transfer shares*' as it constituted '*whole or greater part of the assets*' of the respondent, this was clearly an error because there was only one transaction that was to be considered by the shareholders, namely, the sale of business agreement which made no reference to any transfer of shares.

[9] Thirdly, the letter by the applicant's attorneys dated 22 August 2024 makes it clear that the applicant understands that neither she nor Mr Bayer have a right to unilaterally prevent the sale of business. Importantly, although this letter was in response to the notice convening the meeting, it made no reference to a possible transfer of the applicant's shares and the only explanation for this must be that it is clear from the reading of the sale of business agreement, that what was intended to be sold was the first respondent's business enterprise as a going concern, and that does not involve any transfer of shares.

[10] The application was, in my view, entirely misconceived and should not have been instituted in the first place. Counsel for the applicant, however, sought to justify the institution of the application on the fact that the notice convening the meeting referred to, as one of the proposed resolutions, the transfer of shares.

[11] As stated already, whilst there is referred to a resolution relating to the transfer of shares, on any reasonable reading of the documents, there was only one issue to be considered, namely, the sale of business agreement. In addition to that, this aspect was explained in the respondent's answering affidavit and from that point onwards, the continuation of the application bordered on being reckless.

[12] The simple point is that sale of the respondent's business enterprise as a going concern has no bearing on the applicant's shares in the respondent. The respondent will continue to exist with the shareholders unchanged, even if the proposed sale of its business is approved. As the sale of the respondent's business does not threaten the applicant's shares in the respondent, it follows that the applicant can assert no right, clear or *prima facie*, that requires protection by the intervention of this Court. In the circumstances of this case, the issue of irreparable harm as well as the balance of convenience do not even arise because the applicant will continue to exercise her right *qua* shareholder of the respondent whether the sale of business goes through or not.

[13] The result is that the application must fail, and the costs should follow the result.

Order

[14] In the result I make the following order:

The application is dismissed with costs including the (a) costs of counsel on scale B, and (b) costs occasioned by the postponement of the matter on 28 August 2024 and 11 November 2024.

L G NUKU
JUDGE OF THE HIGH COURT

Appearances

For applicant: C Van Zyl
Instructed by: K J Bredenkamp Attorneys, Cape Town

For respondent: H Beviss-Challinor
Instructed by: Beviss-Challinor Attorneys, Cape Town