



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

CASE NO: 2025-069955

In the matter between:

VALHALLA FISHING ENTERPRISES (PTY) LTD

Applicant

and

BLUEFIN HOLDINGS (PTY) LTD

First Respondent

**MINISTER OF FORESTRY, FISHERIES
AND THE ENVIRONMENT**

Second Respondent

Hearing date: 10 July 2025

Judgment Delivered: 16 July 2025

JUDGMENT

O'Brien AJ

Introduction

1. The applicant, a diversified commercial and seafood enterprise, instituted urgent proceedings for the enforcement of a sale of shares and a shareholder's agreement ("*the agreements*") concluded, with the first respondent on 29 March 2020. Central to the dispute is the applicant's entitlement to utilize the first respondent's 2025 annual fishing permit allocation on its vessel, the MFV Valhalla. The agreement purportedly precludes the first respondent from unilaterally terminating the agreement without a 12-month written, notice supported by a majority shareholder resolution and prohibits it from assigning its fishing right to third parties. The second respondent did not take part in these proceedings.

2. According to the applicant, the agreement requires the first respondent to make its 2025 annual fishing permit available to the applicant for allocation on the MFV Valhalla, which the applicant owns. To withdraw from the shareholders' agreement, the first respondent must give 12 months' written notice as a resolution supported by a majority of its members. The first respondent should not make its longline fishing rights available to any third party.

3. In order for the applicant to apply for its annual fishing permit in terms of Section 13 of the Marine Living Resources Act, 18 of 1998 ("*the MLRA*"), the first respondent must make available to the applicant a tax clearance certificate or a tax clearance authorisation; its levy clearance certificate; its current Companies and Intellectual Property Commission disclosure form; a duly signed and issued board resolution on the first respondent's company letterhead authorising the applicant to apply for the first respondent's 2025 hake longline fishing permit and any other document or certificate that may be required by the second respondent or his officials for applying for any permit under Section 13 of the MLRA.

Factual background

4. On 28 February 2022, the first respondent was granted a 15-year hake longline commercial fishing right in terms of Section 18 of the MLRA. The allocation was premised on the understanding that harvesting would be conducted using the MFV Valhalla. Pursuant to the agreements, the first respondent acquired a 10% equity stake in the applicant in exchange for long term access to the vessel. The first

respondent undertook to pay R160,000.00 consideration payable over 5 years with annual interest of 12.5%.

5. Notwithstanding the agreements, the first respondent alleges several breaches by the applicant: (i) failure to give timeous notice upon docking and uploading, (ii) mismanagement of kingklip bycatch accounting and (iii) delayed payment for fish sold. Furthermore, the applicant allegedly reneged on its undertaking to allow the first respondent to acquire equity in a second vessel, the MFV Jaqueline.

6. In an email dated 17 December 2024, Darin Weitsz ("Weitsz"), the deponent in the founding affidavit of the applicant, stated that he was aware that Shantaal Meter ("Meter"), the deponent in the answering affidavit, the first respondent wished to cancel the shareholders' agreement.

7. Disputes escalated when the first respondent failed to receive financials and benefits associated with its shareholding. The first respondent ultimately gave notice of cancellation on 26 November 2024, citing non-performance and a lack of financial benefit. The applicant, disputing the cancellations' validity, launched urgent proceedings on 14 May 2025.

8. Notwithstanding the cancellation of the agreements, Meter enquired from Weitsz why she was never appointed as a director of the MFV Valhalla, given the first respondent's shareholding in the company. Weitsz replied with a message, stating, "*Because you got shares for Frap.*"

9. According to the first respondent's understanding, the message, in no uncertain terms, makes a clear statement that the first respondent was not a shareholder and never intended to be one since the sole purpose of the agreements was to improve the first respondent's prospects of being awarded a fishing right.

10. The first respondent refused to grant the applicant consent and authority to get the hake longline fishing permit for the 2025 season after the first week of January 2025. The applicant then indicated that it would proceed with urgent legal

action by sending emails on 7 January 2025, 17 January 2025, and 29 January 2025.

11. On 20 January 2025 and 30 January 2025, respectively, the first respondent requested financial information and certain company details. The reply the first respondent sought came on 30 January 2025, wherein the applicant stated that the first respondent had failed to pay for the shares in accordance with the sale of shares agreement. Accordingly, none of the rights, obligations and/or benefits attaching to those shares has vested or passed to the first respondent. It concludes that the first respondent is not entitled to access the requested records.

12. On 28 February 2025, strangely, Mr Moolla, who appeared for the applicant in these proceedings, wrote an email to the first respondent advising that should the latter not comply with its obligations by 5 March 2025, the applicant will approach this court for urgent relief against the first respondent.

13. On 4 March 2025, the first respondent wrote a letter to the applicant stating that it had no contractual obligations towards the applicant and was not obliged to contract with the latter. There was no response to this letter.

The answering affidavit

14. Rule 6(1) determines that an affidavit must support every application brought on notice of motion. Rule 6(d)(ii) states that a respondent must file an answering affidavit if he opposes the relief sought by an applicant.

15. The regulations issued under the Justice of the Peace and Commissioner of Oaths Act, 16 of 1963, require an oath or affirmation to be administered by a commissioner of oaths. Regulation 2(1) states that the commissioner of oaths must ask the following questions: (a) whether he/she knows and understands the contents of the declaration; (b) whether he/she has any objection to taking the prescribed oath; and (c) whether he considers the prescribed oath to be binding on his conscience. The deponent, if he answers the questions positively, must sign the statement in the commissioner's presence. Regulation 4(1) requires the

commissioner of oaths to certify that the deponent has acknowledged that he or she knows and understands the contents of the declaration. Thereafter, the commissioner of oaths must sign the declaration, print his full name and business address and state his designation and the area for which he holds his appointment or his office. Mr. Moolla submitted that the answering affidavit of Meter, who describes herself as an adult female, while the commissioning refers to a "he," therefore the answering affidavit suffers a fatal defect, constituting a nullity and having no force or effect in law. For this proposition, he relies on **Absa Bank Ltd v Botha NO & Others 2013 (5) SA 563 (GNP)** and **Phumelela Local Municipality v Telkom SA SOC Ltd (5327/2022) [2023] ZAFSHC (31 May 2023)**.

16. In **Absa Bank**, the court stated that if a deponent is a female, the commissioner of oaths must use the pronoun "*she*"; if the deponent is a male, the commissioner of oaths must use the pronoun "*he*". The court stated that, in that case, no reliance could be placed on the commissioner of oaths' certification because, *ex facie*, the affidavit would be unclear as to whether the deponent is a male or a female. The court could not give effect to the presumption of regularity to assume that the declaration was sworn to and signed in the commissioner's presence.

17. In **Phumelela**, the court referred to the judgment of **Parys-Aan-Vaal Woonstelle (Pty) Ltd & Another v Plexiphon 115 CC (3489/2021) [2022] ZAFSHC 2 (20 January 2022)**. In **Phumelela**, the court held that the commissioner's failure to delete the appropriate gender justified an inference that the deponent did not appear before the commissioner.

18. Mr Van der Schyff, acting for the first respondent, sought to distinguish the **Absa** decision, arguing that in **Absa**, the court faced a summary judgment application where the bank sought to deprive the homeowner of his property. Due to the importance of the matter and the dire consequences it held for the homeowner, the court required strict compliance with the law regarding the commissioning of an affidavit. He also referred to the case of **Knuttel NO and Others v Bhana and Others (38683/2020) [2021] ZAGPJH (26 August 2021)**, where the court followed the decision of **S v Munn 1973 (3) SA 734 (NC) at 737 H–738 A** where it held that

the regulations relating to the commissioning of an affidavit was directory and not peremptory and that an affidavit will be accepted as long as there has been substantial compliance.

19. In this matter, the commissioner of oaths, in his declaration, refers to the deponent as a "he"; therefore, there was no strict compliance with the regulations. The question is whether the answering affidavit should be regarded as a nullity for failing to comply with the regulation. The deponent of the answering affidavit describes herself as a female. She initialled every page of the answering affidavit, and on the last page, her full signature appears. Mr Van der Schyff also submitted that if there is a problem with the commissioning, he would call the commissioner of oaths and the deponent to the answering affidavit to testify. I deem it not necessary.

20. The answering affidavit shows substantial regulatory compliance. In **S v Msibi 1974 (4) SA 821 (T)**, the full court of the Transvaal Provincial Division found that the requirements in Regulations 1, 2, 3 and 4 are not peremptory but merely directory. In a suitable case where the requirements have not been complied with, the court may refuse to accept the affidavit concerned as such or give it no effect. The question should be whether there has been substantial compliance with the requirements in each case. Following the principle of *stare decisis*, the **Absa Bank** court should have upheld the full court's ruling in **Msibi**. Moreover, in the Absa Bank case, the court did not refer to **Msibi**. The court in **Phumelela**, although referring to the case of **Nkondo v Minister of Police & Another (1980) 2 SA 362 (O)**, respectfully failed to apply the dictum in that case, where the court found substantial compliance.

21. The deponent to the first respondent's affidavit initialled every page of her affidavit and signed the last page. Warrant Officer D Smit, a South African Police Service officer stationed at Brackenfell, commissioned the affidavit on June 27, 2025, as per the regulations. The only omission is that instead of referring to the deponent's gender as "she", it refers to "he". The fault is not that of the commissioner of oaths. This is the fault of the person who typed the affidavit. I therefore find that there has been substantial compliance with the regulations.

Urgency

22. Rule 6(12)(a) determines that a court may dispense with the forms and service provided for in the rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit. An applicant must set out explicitly the circumstances that render the matter urgent and the reasons the applicant claims the applicant could not be afforded substantial redress at the hearing in due course.

23. There are degrees of urgency. See **Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W); IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd; Aroma Inn (Pty) Ltd v Hypermarkets (Pty) Ltd and Another 1981 (4) SA 108 (4).**

24. In **East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd [2011] JDR 1832 (GSJ)** at para 6 to 7, the court stated:

"[6] The import thereof is that the procedure set out in Rule 12 is not there for taking. An applicant has to set forth explicitly the circumstances which he 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. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[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 to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his case in that regard."

25. The applicant also referred me to the case of **Tom Gelderbloem & Others v The Sandown Bay Fishing Company (Pty) Ltd & Others, Case No: 19605/2024**, where the court granted an urgent order on 17 January 2025 but delivered the reasons for it only on 19 May 2025. On the facts of that case, the court was of the view that the applicants would not receive substantial redress in the due course of justice.

26. In this matter, the applicant asserts it sought relief from this court only after months of trying to persuade the first respondent to fulfil its obligations under the shareholders' agreement. The applicant further contends that if this matter is not heard as an urgent matter, it will have to be enrolled on the normal roll, which would render the relief sought by the applicant moot because the 2025 fishing season ends on 31 December 2025.

27. The applicant is the author of its urgency. I say so because:

27.1. The first respondent informed the applicant on November 26, 2024, that they would not comply with the previously signed shareholders' and catching agreement.

27.2. On 2 December 2024, the applicant, through its director, informed the first respondent that it got its shares for "*frap*", whatever that might mean;

27.3. In an email to the first respondent on 17 January 2025, the applicant stated that if their emails continued to be ignored, legal action would begin the following Monday.

27.4. On 30 January 2025, the applicant, in no uncertain terms, on a request from the first respondent for records, informs that the latter is not entitled to access any records it requested;

27.5. Adv. Moolla, managing director of Feike National Resource Management Advisors, notified the first respondent on 28 February 2025 that non-compliance with its obligations before 5 March 2025 would lead to an urgent application to the Western Cape High Court.

28. The above timeline shows that, since November 2024, the applicant was aware that the first respondent would not comply with the agreements entered into by the parties. Yet, this application was only issued by this court on 14 May 2025. No explanation is given for the period between March and April 2025, nor is it clear why the applicant did not approach this court for urgent relief. Adv Moolla, in writing the email on 28 February 2025 as the legal advisor to the applicant, would have been aware of the requirements for urgency.

29. The applicant has thus created its own urgency. The applicant's contention that it could not obtain substantial redress, the applicant only has itself to blame.

30. The application lacks urgency and should be struck from the roll.

31. The first respondent, at the hearing for the first time invoked the dispute resolution clause contained in the agreements which mandates arbitration for legal disputes.

Dispute resolution and arbitration

32. Clause 12 of the agreement stipulates that any dispute or difference between the parties shall first be resolved by dispute resolution, and the parties shall agree in writing to the appointment of a practising advocate of no less than 15 years of experience regarding a question of law dispute. In a financial matter, a practising auditor with no less than 15 years of experience practising in Cape Town shall be approached. Should the parties to the dispute not agree on whether the dispute is primarily of a legal or financial nature, the matter will be deemed to be of a legal nature. In that event, the parties agreed to resolve the dispute through arbitration.

33. Mr Moolla takes issue with the first respondent because it is irregular for the first respondent's counsel, on the morning of the hearing, to raise a point *in limine* that was not raised in the answering affidavit. He further contends that the matter cannot be arbitrated because the Minister could not be a party to those arbitration proceedings. Furthermore, clause 15 of the shareholder's agreement permits the applicant to approach a court of law for the relief it seeks in the notice of motion.

34. Clause 15 of the shareholder's agreement does not assist the applicant. Clause 11 of the shareholder's agreement provides that any dispute or difference between the parties shall be resolved by arbitration. The share sale agreement, in clause 12, similarly stipulates that parties should first attempt to resolve any disputes or differences through dispute resolution.

35. A reading of the documents in a businesslike manner unequivocally reflects a dispute resolution mechanism, specifically an arbitration mechanism, to which the parties must adhere before approaching a court of law. Therefore, the applicant has an alternative remedy. The applicant has failed to comply with these provisions; on this basis, the application should also be struck from the roll with costs.

Clear right

36. Mr Van der Schyff contended that in the agreements, there is nothing in the founding affidavit that unequivocally states that the agreement is still in force. Accordingly, the applicant has failed to establish a clear right, and their application should be dismissed. There is much to be said about this argument but I do not address it further.

37. Regarding costs, both counsels were of the view that the Scale C cost is the applicable scale.

38. I make the following order:

The application is struck from the roll, with costs on Scale C.

S C O'BRIEN
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Applicant: Adv S Moolla

Instructed by: TSP Inc

For the First Respondent: Adv J van der Schyff

Instructed by: Stratford Lembo Inc