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

JUDGMENT

Not Reportable

Case no: 19438/2024

21657/2024

7107/2023

In the matter between:

ILSE JOUBERT

APPLICANT

and

JOHANNES STEPHANUS SPAMER

FIRST RESPONDENT

CARINA MYBURGH (née SPAMER)

SECOND RESPONDENT

MAGARETHA SWANEPOEL (née SPAMER)

THIRD RESPONDENT

ELITHA VAN DYK (née SPAMER)

FOURTH RESPONDENT

JOHANNES STEPHANUS SPAMER N.O.

**(in his capacity as trustee for the time being in
THE SPAMER FAMILY TRUST)**

FIFTH RESPONDENT

CARINA MYBURGH (née SPAMER)

**(in her capacity as trustee for the time being in
THE SPAMER FAMILY TRUST)**

SIXTH RESPONDENT

MAGARETHA SWANEPOEL (née SPAMER)

**(in her capacity as trustee for the time being in
THE SPAMER FAMILY TRUST)**

SEVENTH RESPONDENT

ELITHA VAN DYK (née SPAMER)

**(in her capacity as trustee for the time being in
THE SPAMER FAMILY TRUST)**

EIGHTH RESPONDENT

LINDISTAR (PTY) LTD

NINTH RESPONDENT

**THE COMMISSION OF THE COMPANIES
AND INTELLECTUAL PROPERTY
COMMISSION**

TENTH RESPONDENT

**INT. COMPANY AND SECRETARIAL
SERVICES (PTY) LTD**

ELEVENTH RESPONDENT

KIM-LIZA GIBBS

TWELFTH RESPONDENT

Neutral citation: *Joubert v Spamer and Others* (Case no 19438/2024, 21653/2024, 7107/2023) [2025] ZAWCHC 356 (19/08/2025)

Coram: NUKU J

Heard: 28 May 2025

Delivered: 19 August 2025

Summary: Company Law – applications for declaratory orders relating to shareholding and directorship of a company – relief abandoned in favour of relief regarding the partition of a property owned by the company when such relief was neither pleaded nor supported by evidence.

ORDER

- 1 The application titled 'FIRST AND SECOND RESPONDENT'S NOTICE OF MOTION IN THE APPLICATION FOR DECLARATORY RELIEF IN THE RULE 7 PROCEEDINGS' under case number 7107/2023 is dismissed, and Ms Joubert is ordered to pay costs on an attorney and client scale, including costs for two counsels.
- 2 The application under case number 19438/2024 is dismissed, and Ms Joubert is ordered to pay costs on an attorney and client scale, including the costs of two counsel.
- 3 The application under case number 21653/2024 is dismissed, and the first to ninth respondents are ordered to pay costs, jointly and severally, with the one paying the others to be absolved, including the costs of two counsel to be taxed or agreed on scale C.

JUDGMENT

Nuku J

[1] There are currently three applications before this court, all mainly involving Ms Ilse Joubert (Ms Joubert) and Mr Johannes Stephanus Spamer (Mr Spamer). The primary issue in each application is to identify the true shareholders and the board of directors of Lindistar Proprietary Limited (Lindistar). Lindistar is a property holding company with its only asset being an immovable property at 1[...] O[...] Drive, Boggomsbaai, Western Cape (the Property). The Property was intended to serve as a holiday home for Ms Joubert and Mr Spamer.

[2] The initial application was initiated by Mr. Spamer on 4 May 2023 under case number 7107/2023 against Ms. Joubert and Lindistar. In that application, Mr. Spamer sought the reinstatement of his undisturbed possession, control, and enjoyment of the Property, including all movable property situated thereon. For ease of reference, I refer to this application as the Spoliation Application.

[3] Ms Joubert and Lindistar opposed the Spoliation Application. Mr Spamer delivered a notice under rule 7 of the Uniform Rules of Court disputing the authority of the attorneys representing Lindistar.

[4] In response, Ms Joubert and Lindistar, as the first and second respondents respectively, filed an application for substantial relief that included a declaration that Ms Joubert is the sole shareholder and director of Lindistar. This application was submitted under the same case number as the Spoliation Application and was titled 'FIRST AND SECOND RESPONDENT'S NOTICE OF MOTION IN THE APPLICATION FOR DECLARATORY RELIEF IN THE RULE 7 PROCEEDINGS'.

[5] The issue of the authority of the attorneys representing Lindistar in the Spoliation Application was not pursued, and the Spoliation Application was also finalised in favour of Mr Spamer. The matter of the substantive relief, however, was not resolved and, according to Mr Spamer, remains one of the issues that require determination by this Court.

[6] The second application was initiated by Ms Joubert in September 2023 under case number 19438/2024. In this application, Ms Joubert primarily seeks orders declaring her as the sole shareholder and director of Lindistar, along with certain ancillary relief. Alternatively, Ms Joubert seeks, among other things, orders (a) declaring her to hold a 50% share in Lindistar, and (b) permitting her to acquire the rights, title, and interest in the shareholding and any loan accounts in Lindistar held by other shareholders, based on a value to be determined by an independent valuer (who would not act as an arbitrator), with the decision being binding on Lindistar's shareholders. For convenience, I refer to this application as the Main Application.

[7] Ms Joubert filed a further application in October 2024 under case number 21657/2024. In this application, Ms Joubert mainly sought immediate reinstatement of her joint possession of the Property. She also sought an interdict, inter alia (a) to prevent the sale of the Property and (b) to authorise her to act as the sole director of Lindistar, pending the final determination of the Main Application. For ease of reference, I refer to this as the Counter-Spoliation Application.

[8] The Counter-Spoliation Application was scheduled for a hearing on 29 October 2024. On that date, the parties agreed to postpone the Counter-Spoliation Application to 19 February 2025. They also agreed that the remaining issues in the Spoliation Application, as well as the Main Application, would be heard by a single judge on 19 February 2025.

[9] No judge was assigned to hear the applications on 19 February 2025, resulting in the hearing being postponed to 28 and 29 May 2025.

[10] When the matter came before me, the legal representatives for the main parties held different views on how the applications should be decided. According to Ms Joubert's legal representatives, the applications must be determined based on an open

tender that Mr Spamer made on 2 December 2024, which tender has since been accepted by Ms Joubert, albeit subject to certain conditions.

[11] According to Mr Spamer's legal representatives, the applications must be decided based on the evidence provided by the parties in their respective affidavits because Mr Spamer's tender was no longer open for acceptance when Ms Joubert purported to accept it. Furthermore, her purported acceptance is merely a counter-offer, as it was subject to conditions. In other words, there was no acceptance of the tender, and it is not within this Court's power to make a contract for the parties.

[12] Ms Joubert is the applicant concerning all issues to be determined by this Court. She is the applicant regarding (a) the remaining issues in the Spoliation Application, (b) the Main Application, and (c) the Counter-Spoliation Application. For that reason, I am inclined to consider the applications in line with her wishes.

[13] Mr Van Der Reit, SC, who appeared alongside Mr De Wet, argued that the dispute between the parties is quite simple despite the lengthy papers filed, and it concerns the ownership and control of the Property. He further submitted that Mr Spamer and Ms Joubert agree that it is not possible for them to continue with any form of co-ownership, possession, or arrangement (whatever that may be) in relation to the Property. Given this, and assuming that Ms Joubert and Mr Spamer (through the Spamer Family Trust) each own 50% of the shares in Lindistar, the argument went, it is clear that there are only three possibilities, namely:

13.1 The Property should be sold to a third party;

13.2 Ms Joubert should buy-out Mr Spamer or the shares held by the Spamer Family Trust in Lindistar;

13.3 Mr Spamer or the Spamer Family Trust should buy-out the shares held by Ms Joubert in Lindistar.

[14] It was submitted that the parties have, in effect, agreed that the option in subparagraph 13.1 above will not be exercised. Reference was then made to the open tender made by Mr Spamer, whereby Ms Joubert may buy out his 50% shareholding, but on terms that were not acceptable to her, and it was stated that Ms Joubert, in turn, now offers to buy out the 50% shareholding by either Mr Spamer or the Spamer Family Trust in Lindistar subject to the following terms, namely:

14.1 Ms Joubert is to acquire Mr Spamer's or the Spamer Family Trust's half shareholding and loan account, and assume the directorship in the process, which will then become irrelevant.

14.2 The purchase price will be determined based on the valuation that 100% of Lindistar's shares equal Lindistar's net asset value, and therefore, 50% of the shares' value will correspond to 50% of the net asset value.

14.3 The net asset value of Lindistar should be determined as follows:

14.3.1 The current market value of the Property (to be determined by a valuer);

14.3.2 Less the current balance owing under the mortgage bond;

14.3.3 Less the contributions made by Mr Spamer towards the Property for (inter alia) maintenance, rates and taxes, deposit, etc from the date of the purchase of the Property to the date of the order. These contributions would represent Mr Spamer's loan account in Lindistar;

14.3.4 Less the contributions made by Ms Joubert towards the Property for (inter alia) mortgage bond repayments, maintenance, rates and

taxes, expenses, deposit, etc from the date of the purchase of the Property to the date of the order. These contributions would represent Ms Joubert's loan account in Lindistar;

[15] Regarding the determination of the parties' contributions or loan accounts, the Court was asked to instruct the parties to, within 7 days, produce proof such as relevant bank statements and/or source documents of the contributions made. These contributions will exclude payments for the maintenance of the parties' minor child. After establishing the contributions mentioned above, Ms Joubert would then pay Mr Spamer half of the net asset value plus the total amount of his loan account, which is recognised as a debt of Lindistar owing to him.

[16] It was submitted that the claim involves the partition of co-ownership and that the only dispute pertains to the terms of the buy-out. It was suggested that if the Court approves the tender, the only remaining issue would be regarding costs. Furthermore, it was proposed that the tender aligns with the principles established in *Robson v Theron*¹ (Robson).

[17] Ms Joubert's counsel emphasised that the Court has wide equitable discretion when dividing joint property. For this proposition, he relied on what Joubert JA stated in *Robson*² that 'The Court has a wide equitable discretion in making a division of the joint property, having regard, inter alia, to the particular circumstances, what is most to the advantage to all the co-owners and what they prefer.'

[18] During the argument, Ms Joubert's counsel contended that the relief now sought by Ms Joubert was foreshadowed in paragraph [12] of the Notice of Motion in the Main Application, which reads:

¹ 1978 (1) SA 841 (A).

² At 855C-D.

‘In the yet further alternative, and only in the event that this honourable court find that the Trust is a shareholder in Lindistar, an order declaring Ilse Joubert to be a 50% shareholder in Lindistar, in which case the applicant seeks an order allowing Ilse Joubert to purchase the rights, title, and interest in the shareholding and any loan accounts in Lindistar held by any other shareholder, the value to be determined by an independent valuer (who will not act as arbitrator) whose determination will be binding on the shareholders.’

[19] As evidence supporting the relief now sought, Ms Joubert’s counsel relied on the evidence presented by Mr Spamer in the following paragraphs:

‘28.29 Our conduct then, and since then, and at all material times, also clearly shows that we jointly owned and used the Property, in that each of us was to pay 50% of the expenses of Lindistar in terms of the Agreement.

96. Noteworthy is that Acting Justice Parker in her judgment made a finding that “the property was in joint, peaceful and undisturbed possession of both parties...” being reference to Ms Joubert and myself in respect of our joint possession of the Boggomsbaai Holiday Home.

97. In so doing, this finding of the court confirmed my factual version that:

97.1 Firstly, “the property was acquired as a beach house for recreational use, jointly, of Ms Joubert and myself, and of course, for the use of our son, J[...] J[...], after he was born on the 4th of September 2015.”

216. I have always been, and remain more than willing, to transfer 50% of the shares in Lindistar to Ms Joubert if she settles 50% of the outstanding mortgage bond; and I will then settle the other and tender this. The truth is that Ms Joubert is not in a financial position to do so.
- 250.2 secondly, there is no prospect that Ms Joubert and I, going forward, can have any joint involvement in Lindistar, and the Boggomsbaai Holiday Home; and
- 250.3 thirdly, the options left available to me were to either buy out Ms Joubert' interests; sell her my interest; sell the Property and/ or liquidate Lindistar and sell its only asset, the Boggomsbaai Holiday Home in the open market, and then deal with the proceeds of that sale between Ms Joubert and I.
875. In the absence of one buying the other one out, the Property has to be sold.'

[20] Having regard to all the above, it was submitted that Ms Joubert is entitled to an order that she purchase Mr Spamer's half share in the property on the terms specified in her tender.

[21] Mr Walters, SC, who appeared alongside Mr Brouwer, argued that the case presented on behalf of Ms Joubert is inconsistent with her pleaded case. He pointed out that the evidence she provided in all her affidavits shows she is the sole shareholder of Lindistar. Moreover, her alternative claim that she is a 50% shareholder in Lindistar was not supported by any evidence. Additionally, even if she had demonstrated that she holds 50% of the shares in Lindistar, that would not entitle her to a half share of a property owned by Lindistar.

[22] It was further argued on behalf of Mr. Spamer that, in any case, a claim based on the division of joint property does not apply here because there is only one owner of the Property, namely Lindistar. Additionally, a dispute concerning the shareholding and directorship in Lindistar, as we have in this case, cannot be resolved by applying the principles related to the partition of joint property.

[23] It was finally submitted on behalf of Mr Spamer that the remaining issues in the Spoliation Application should be decided in favour of Mr Spamer. The same applies to the Main application as well as the Counter-Spoliation Application. Furthermore, it was argued that the costs should follow the result, which should include the costs of two counsel where employed, with such costs to be taxed on scale C.

[24] My impression was that Ms Joubert abandoned all the relief she sought in the three applications in favour of an order concerning the partition of the property. This was evident when her counsel urged the Court to ignore all the evidence presented and to concentrate solely on the parties' respective tenders.

[25] Ms Joubert's approach is quite exceptional and unconventional. I say this because the role of a court is to resolve disputes by applying the law to the facts as presented by the parties. This is because it is from the facts that the court can understand the true nature of the dispute between the parties, and after doing so, to apply the relevant legal principles in resolving the dispute.

[26] In the present case, Mr Spamer submitted an open tender that was not accepted promptly. Meanwhile, Ms Joubert either states she is accepting Mr Spamer's open tender subject to certain conditions, or she is making an open tender to Mr Spamer. In either scenario, she aims for her counter-offer to Mr Spamer's open tender or her open tender itself to be approved by the Court.

[27] Where does this Court derive the authority to sanction an open tender that has not been accepted? Mr Van Der Reit, SC, suggested that the wide discretion of the court referred to in Robson grants this Court such authority.

[28] I have some reservations about the correctness of the proposition that the court's broad discretion referenced in Robson allows this Court, in the current circumstances involving a shareholder and directorship dispute, to apply principles related to the partitioning of joint property. Mr Spamer, in his affidavit, suggests that this court does not possess such power when he states that 'While I would favour Ms Joubert being ordered to sell her interest in Lindistar to me, the Court does not have that power; just as the Court cannot order that Ms Joubert purchase the Trust's shares.'

[29] What Mr Spamer states above follows almost immediately after one of the passages Ms Joubert relies on to support her claim for the relief she now seeks. This is the passage where Mr Spamer stated that 'In the absence of one of us buying out the other, the Property has to be sold.'

[30] But as it has sometimes been said, context is everything. Upon close examination of the papers, it is clear that Mr Spamer said this in response to Ms Joubert's claim that the sale of the Property is unfairly prejudicial to her and clearly disregards her interests in Lindistar and the Property. It can thus not be seriously suggested that Mr Spamer's position is that the Property is jointly owned by him and Ms Joubert, such that it would be competent for this Court to order partition.

[31] Reverting to the authority that Ms Joubert relies on, Robson addressed a claim for dividing the partnership property, but this is not such a case. As previously stated, this case concerns a dispute over the ownership of shares in Lindistar and the board of directors of Lindistar. If there is a remedy for such a dispute, I believe it would be found in the Companies Act 71 of 2008 (Companies Act). In fact, Ms Joubert's statement regarding the sale of the Property being unfairly prejudicial and unfairly disregarding her

rights in Lindistar sounds like the sort of relief provided for in section 163 of the Companies Act.

[32] The wide discretion of a Court referred to in Robson is not a remedy available for any dispute. It applies to disputes concerning jointly owned property, provided such a claim is properly pleaded and supported by evidence.

[33] In paragraph [18] above, I outlined the prayer relied upon by Ms Joubert for the relief she now seeks. As argued on behalf of Mr Spamer, the relief Ms Joubert seeks is inconsistent with her pleaded case. On any reading of the prayer, as outlined in paragraph [18], the relief contemplated therein has nothing to do with the division of jointly owned property and everything to do with a shareholding dispute. And this is the kind of relief that Mr Spamer says, rightfully so, I may add, this court has no power to grant.

[34] The attempt by Ms Joubert to rely on what Mr Spamer said in sub-paragraph 28.29 again amounts to taking one paragraph out of its proper context. In the sub-paragraph immediately preceding sub-paragraph 28.29, Mr Spamer emphasises that 'Ms Joubert did not believe, then or thereafter, that we agreed that the Trust which held shares already at that time would transfer the shares to Ms Joubert; and that she would be 100% shareholder. This is reflected by her email of 24 August 2021 where she records that she and I are co-shareholders of Lindistar; except that she overlooks that the shares were held in the Trust for us both in terms of the Agreement.'

[35] Explaining the agreement mentioned in the previous paragraph, Mr. Spamer states that Lindistar's sole purpose was to hold the property; all of Lindistar's shareholding would be held by the Spamer Family Trust, with 50% on his behalf and 50% on behalf of Ms. Joubert. When considered in context, the suggestion that Mr. Spamer believes the property is jointly owned by him and Ms. Joubert is unsustainable.

[36] Paragraphs 96 and 97 of Mr Spamer's affidavit, referred to in paragraph [19] above, are equally unhelpful because they only address the joint possession of the Property in relation to the Spoliation Application. These paragraphs do not mention the joint ownership of the property at all. The same applies to paragraph 216, which discusses the shareholding in Lindistar rather than the joint ownership of the property.

[37] To conclude, none of the passages referred to by Ms Joubert supports her claim for the relief she seeks. She could not point to any of her evidence in support of her claim because there is none. It follows that her claim cannot succeed.

[38] As has been stated, Ms Joubert is the applicant in the Main Application and the Counter-Spoliation Application. She is also the applicant regarding the remaining issues in the Spoliation Application. Essentially, she has abandoned all the relief she previously sought in these applications in favour of an order sanctioning her open tender. Ms Joubert is in no different position than a litigant who has withdrawn his or her application, and this has implications for costs.

[39] The application submitted by Ms Joubert in response to the rule 7 notice is unusual. All that was required to respond to a rule 7 notice was to produce a resolution from Lindistar authorising the legal representatives to act for it in the Spoliation Application. Lodging an application seeking a substantive remedy like the one Ms Joubert pursued is difficult to understand. The institution of that application caused Mr Spamer to incur legal expenses that he did not have to incur, and in my view, he is entitled to be indemnified for them. Mr Spamer should not be out of pocket regarding the remaining issues in the Spoliation Application. In my opinion, costs on an attorney and client basis are justified and will be awarded. These costs exclude the costs that were awarded to Mr Spamer in respect of the Spoliation Application.

[40] The Main Application was initiated after Ms Joubert received Mr Spamer's version regarding the ownership of the shares in Lindistar. Nonetheless, she proceeded to file the Main Application seeking relief similar to that she sought in the Spoliation

Application. She was aware that her claim to a 100% shareholding in Lindistar was contested on substantial grounds, including the fact that the Spamer Family Trust has always held the shares.

[41] As a matter of fact, she must have been alive at the time of the dispute of fact, even when she filed her application in response to the rule 7 notice. This is clear if one considers one of the prayers that:

‘Should this honourable court not find that the version crafted by or on behalf of the respondents is so obviously untrue that it can be rejected out of hand, an order referring the following issues to oral evidence:

8.1 Who is the true shareholder of the shares in Lindistar?...

[42] Proceeding with the Main Application, given Ms Joubert's prior recognition and the fact that Mr Spamer's version disputing her claim had already been sworn under oath, was reckless. Furthermore, the relief sought in the Main Application was largely the same as in the Spoliation Application. This led to Mr Spamer being needlessly confronted with two proceedings seeking similar relief, which is clearly unjust and warrants this Court's censure. And after all of that, to abandon the claim to 100% shareholding in Lindistar, the impression one gives of this is that this is not litigation that was instituted with upright motives. As a mark of this Court's displeasure at Ms Joubert's conduct, an order of costs on an attorney and client scale shall be made in respect of the main application.

[43] The costs related to the Counter-Spoliation Application are on a different footing. This application was triggered by a resolution aimed at sidelining Ms Joubert from Lindistar's affairs and selling the Property. She was compelled to institute this application and achieved some success, as it led to an arrangement allowing her access to the Property and a moratorium on its sale until the finalisation of the Main

Application. She is entitled to costs, including those incurred for employing two counsels where applicable, and these costs shall be taxed on scale C.

Order

[44] As a result, I make the following order:

- 44.1 The application titled 'FIRST AND SECOND RESPONDENT'S NOTICE OF MOTION IN THE APPLICATION FOR DECLARATORY RELIEF IN THE RULE 7 PROCEEDINGS' under case number 7107/2023 is dismissed, and Ms Joubert is ordered to pay costs on an attorney and client scale, including costs for two counsels.
- 44.2 The application under case number 19438/2024 is dismissed, and Ms Joubert is ordered to pay costs on an attorney and client scale, including the costs of two counsels.
- 44.3 The application under case number 21653/2024 is dismissed, and the first to ninth respondents are ordered to pay costs, jointly and severally, with the one paying the others to be absolved, including the costs of two counsel to be taxed or agreed on scale C.

L G NUKU
JUDGE OF THE HIGH COURT

Appearances

For applicant:

RS Van Der Reit, SC and HN De Wet

Instructed by:

Berhard van der Hoven Attorneys, Pretoria

C/O:

Bisset Boehmke McBlain Attorneys, Cape Town

For respondents:

G Walters SC and A Brouwer

Instructed by:

Spamer Triebel Inc, Bellville

C/O:

Norman, Wink Stephens Cape Town