

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 194363/2025

DATE: 2025-11-04

In the matter between

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DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

SIGNATURE

DATE: 4 November 2025

NARAHSIMA KALLA

First Applicant

SUN INTERNATIONAL
RESOURCES (PTY) LTD

Second Applicant

and

WAKEFIELD COLLIERY (PTY) LTD & OTHERS Respondents

J U D G M E N T *EX TEMPORE*

20 **WILSON, J:** The first applicant, Mr. Kalla, was until recently a director of the first respondent, Wakefield Colliery. He was removed from that position at a meeting held on 15 September 2025. It is the validity of that removal and of the meeting at which it took place that both applicants now challenge.

Their principal basis for doing so is that the meeting took place as if the second applicant, Sun International

Resources (Pty) Ltd, was not a shareholder of Wakefield Colliery at the time the meeting took place.

The case for the applicants is quite simple. It is that because Sun International was entitled to be treated as if it was a shareholder of Wakefield Colliery and because the meeting of 15 September proceeded as if Sun International was not a shareholder, the outcome of the meeting, the meeting itself and the removal of Mr Kalla as a director of Wakefield Colliery were all invalid.

10 Sun International's rights to be treated as a shareholder arise from a sale of shares agreement which was entered into at least a year ago. For reasons I need not enumerate, Sun International was not happy with the way the agreement was being performed upon, and after paying R10 million of the purchase price under the sale of shares agreement, wrote a letter to the seller of the shares on 20 November 2024. In paragraph 6 of that letter, Sun International made the election to cancel the sale agreement and seek immediate restitution.

20 Counsel for the applicants accepted that immediate restitution would have been, from Sun International's perspective, the refund of what it had paid under the sale of shares agreement, which at that stage was R10 million.

It was submitted that until that restitution has actually taken place, the second applicant was entitled to be treated

as if it were a shareholder as provided for in clause 4 of the sale of shares agreement.

I do not think that follows. Once the agreement was cancelled in the letter of 20 November 2024, the parties' rights were determined. Those rights were the rights they had on the termination of the agreement, not the rights enumerated in the agreement itself. The relevant part of clause 4 of the agreement says that Sun International is entitled to be treated as if it is the owner of the shares
10 notwithstanding that the full purchase price had not been paid at the point of signature. It does not provide for Sun International to be treated as the owner of the shares even if the agreement is cancelled. In other words, at best for Sun International, it was entitled on cancellation of the agreement to be treated as if the agreement was never struck.

The consequence was that Sun International was, as at the date of cancellation, no longer entitled to be treated as a shareholder of Wakefield, and was in theory entitled to
20 restitution of its payments. The claim for restitution was met by the seller in this case with an allegation that they had suffered damage as a consequence of the failure of the agreement, which they were entitled to claim from the Sun International. Whether or not that is true, on electing to cancel the agreement, Sun International had no more than

the claim for restitution it said it would pursue in the letter of 20 November 2024.

It follows that Sun International was not entitled to be treated at the 15 September 2025 meeting as if it were a shareholder of Wakefield Colliery, and that the outcome of the meeting cannot be impugned on that basis.

It is not suggested that the meeting was invalid for any other reason. It was conceded that Mr. Kalla, in his capacity as a director of Wakefield Colliery, was given
10 notice of the meeting and what would be discussed there. Such other criticisms as are advanced by the applicants in their papers do not seem to me to rise to the level of materiality necessary to invalidate 15 September 2025 meeting.

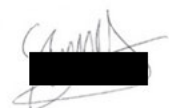
It follows from all this that there has been no case made out on the papers on which the outcome of the meeting can be impugned. Sun International's rights are those that flow from its decision to cancel the sale agreement. They are not those that would have accrued to
20 it had the contract still been in place.

That being the legal position, strictly speaking, this matter should never have been brought to the urgent court, since a claim for restitution under a sale agreement, even one of R10 million, can seldom be urgent, and was plainly not urgent in these circumstances.

However, as counsel for the respondents pointed out, my conclusion as to a lack of urgency in this case entails a conclusion on the merits. There is therefore little wisdom in striking the application from the roll, since that would keep alive an application I have decided lacks any merit at all. I agree with counsel for the respondent that the application should simply be dismissed.

For all the reasons I have given, I make the following order –

- 10 1. The application is dismissed.
2. The applicants jointly and severally, the one paying the other to be absolved, will pay the costs of this application, including the costs of two counsel. Counsel's costs may be taxed on the Scale B.



WILSON, J
JUDGE OF THE HIGH COURT
4 November 2025