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**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case No: **029852/2024**

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED:

12 November 2025

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**SIGNATURE** **DATE**

In the matter between:

**PAUL JACOBUS COETZEE**

First Applicant

**MARIUS JOHANNES MARITZ N.O**

## Second Applicant

(In his capacity as duly appointed and lawful agent acting on behalf of JOHAN WILLEM HORN N.O in his capacity as the duly appointed executor of Estate Late THOMAS DANIEL RAVENSCROFT)

and

**DWARS BELEGGINGS (PTY) LTD**

### First Respondent

**JAN ERASMUS N.O**

Second Respondent

**SIEBERT JACOBUS BRIEDENHANN N.O**

**MARIA DORATHEA JOUBERT N.O**

(In their joint capacities as Trustees for the time of the  
FRITZ ROOS TRUST, reference I[...])

*This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 12 November 2025.*

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## **JUDGMENT**

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**RETIEF J**

### **INTRODUCTION**

[1] In this matter the Court is called to sanction a shareholder buy-out agreement as a result of alleged oppressive or unfairly prejudicial conduct [collectively unfair conduct] which has causes deadlock between two equipollent shareholders of the first respondent company, Dwars Beleggings (Pty) Ltd [the company]. The first applicant, Mr Paul Jacobus Coetzee [Mr Coetzee], a shareholder and sole director of the company acquired 50% shareholding in the company from the executor of the estate late TD Ravenscroft [the deceased]. The executor of the deceased estate, is duly represented by its agent, the second applicant [the estate]. Mr Coetzee now, together with the estate in the main application, approaches this Court in terms of section 163 of the Companies Act, 71 of 2008 [the Companies Act] seeking to compel the second respondents

[collectively the trustees] of the Fritz Roos Trust I[...]Trust] in terms of section 163(2) of the Companies Act to buy his shares in the company [163 buy-out relief].

[2] The trustees oppose the 163 buy-out relief and, in a counter-application seeks to attack Mr Coetzee's standing, *inter alia*, as a shareholder of the company in an attempt to disturb his ability to bring the main application [preliminary relief]. The trustees further seek declaratory relief flowing from the preliminary issue of standing and, in terms of section 163 they seek to amend the number of directors managing the company going forward [director relief]. Mr Coetzee and the estate oppose the counter application.

[3] It is common cause that the relationship between Mr Coetzee and the trustees is strained. The trigger event appears to concern how Mr Coetzee attained his 50% ownership and sole control of the company. In consequence, although this leaves the warring parties equipollent on shareholder level, the same cannot be said on management level. Therefore, the distinguishing feature in this application is the contention of alleged unfair conduct wielded against a person who is not a minority shareholder and who is the sole director of the company.

[4] The nub of the relief sought by Mr Coetzee is to ensure his exit whilst the trustees, who threaten the winding-up of the company, appear to seek the reverse. Although the trustees seek Mr Coetzee's exit they require it without a buy-out and they seek representation on management level.

[5] Before dealing with the merits of both applications the preliminary issue of standing, as raised by the trustees, is to be considered. If the trustees standing argument succeeds then their declaratory relief should be upheld. The necessity then to deal with the Mr Coetzee's 163 buy-out relief becomes unnecessary.

[6] Before unpacking the argument of standing, this Court sets out the applicable legal framework relied on in argument by both parties.

### **APPLICABLE FRAMEWORK**

[7] The trustees rely on and attached a copy of unamended articles of association in terms of the Companies Act of 1923 [articles]. This they do when it is common cause that at a general meeting on the 26 September 2022 reference is made to the replacement of the company's memorandum of association [MOI] as provided for in the Companies Act.<sup>1</sup> No amended MOI formed part of the trustees papers.

[8] Notwithstanding, the trustees rely on Mr Coetzee's failure to comply with clause 21 and 78 of the articles as the basis for their argument for the lack of his standing as a shareholder and proper appointment as a director of the company.

[9] Section 21 of the articles states that no shareholder is entitled to transfer his or her shares to another who is not a shareholder of the company without the written permission of the director.

[10] In terms of clause 78 of the articles states that a director has the power to appoint an additional director.

[11] Reference to the following sections of the Companies Act relied upon bears repeating:

11.1. Section 1, the meaning of "*Shareholder*" is defined in relevant part as, "*the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case maybe*";

11.2. Section 1, the meaning of "*related*", when used in respect of two persons, is defined in section 1 as "*persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c)*";

11.3. In section 2, the relevant parts are as follows:

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<sup>1</sup> See section 15(1) of the Companies Act of 2008 read with item 4(4) of Schedule 5.

*“(1) For all purposes of this Act –*

- (c) a juristic person<sup>2</sup> is related to another juristic person if –*
  - (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2)...*”

11.4. In subsection (2):

*“(2) For the purpose of subsection (1), a person controls a juristic person, or its business, if –*

- (a) in the case of a juristic person that is a company -*
  - (ii) that first person together with any related or inter-related person, is –*
    - (aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or*
    - (bb) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board;... or*
- (d) that the juristic person has the ability to materially influence the policy of the juristic person (own emphasis) in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c).”*

11.5. Mr Coetzee's bases his 163 buy-out relief on sub-section 163(1)(a) and (2). The relevant portions are:

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<sup>2</sup> See section 1 of the Companies Act of 2008 where, a juristic person includes a trust.

*“(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 (own emphasis), has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant;*

*(2) Upon considering an application in terms of subsection (1), the court may make any interim or final order it considers fit (own emphasis), including –*

[12] In applying the legal framework, in particular section 163 the Counsel for Mr Coetzee reminds this Court that the provisions and reach of section 163 is wider than section 252 of the 1973 Companies Act in that, it refers to the disregard of interests and not only the infringement of rights. In so doing, the notions of reasonableness, fairness, good corporate governance and legitimate understanding is the prism through which the enquiry is to be considered instead of the narrow approach of the infringement of rights<sup>3</sup>.

[13] To apply the legal framework relied on to the facts calls for a consideration of the facts.

### **CONSIDERATION AND DISCUSSION OF THE FACTS**

[14] The company was incorporated and registered in 1973 and its principal business is to invest and develop fixed property. It does not trade. Presently, it is the owner of a number of undeveloped fixed properties of which one property, stand 1[...], Safarituine, Extension 12, Rustenburg [erf 1[...]] possess development prospects.

[15] On the 2 April 1998, at a recorded general meeting of shareholders and directors of the company, the company's shareholding was amended. The persons

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<sup>3</sup> MWRK Accountants and Consultants (Pty) Ltd v HLB International SA (Pty) Ltd (72514/2018) [2019] ZAGPPHC 630 para [32].

present at the meeting were the deceased, Mr F Roos [Mr Roos Snr] in his personal capacity and in his capacity on behalf of the Roos Trust and Mr FM Roos [Mr Roos Jnr] as trustee of the Fritz Roos Trust [the Trust]. It was resolved that two shares were to be held by the deceased and two shares by the Fritz Roos Trust. The content and outcome of the minutes of this meeting is common cause. Flowing from the documentary evidence it is clear that although the Trust is recorded as holding shares, it factually could not have in 1998 without explanation. This is so as according to the Trust's registration number: I[...], it was registered some 3 (three) years after it allegedly held the shares.

[16] According to the company search Mr Roos Snr resigned as the director on the 1 November 2001 before he passed away in 2002. On the 11 October 2004 Mr Roos Jnr, a trustee of the Trust was appointed as a director of the company. He together with the deceased were co-directors until 2018.

[17] On the 7 September 2018 the deceased passed away leaving Mr Roos Jnr as the sole director. Some 2 (two) years later on the 1 February 2020 the executor was appointed as a director. The trustees contend that they were not aware of the executor's appointment as a director at that time but do not take issue with such appointment and reference clause 77 of the articles in support thereof. The executor resigned shortly thereafter on the 31 December 2020.

[18] During the executor's tenure as a shareholder on behalf of the estate and, as a co-director he, on the 15 June 2020 sold the estate's shares held in the company to Mr Coetzee. The concluded transaction was in writing embodied in a written purchase agreement. Logically then, at that material time, the executor as a shareholder and, as a co-director had knowledge of and consented to the transfer of the shares.

[19] Mr Coetzee, the deceased's son in law, acquired his 50% in the company for R 162 500,00 [purchase price]. The purchase price ostensibly being an amount equivalent to a shortfall in the estate. No reference to an article regulating the manner in which the value of a share/s is to be determined when sold.

[20] Mr Roos Jnr under oath confirmed that during his tenure as a shareholder and as a director, he had knowledge of the transfer of shares to Mr Coetzee's and of his appointment as a director. He too, recorded having no objection to the transfer of the shares to Mr Coetzee.

[21] According to the signed minutes, on the 31 August 2020, Mr Coetzee was appointed as a co-director of the company. Mr Roos Jnr resigned as a director of the company on the 25 May 2022.

[22] During September 2022, and with the assistance of the deceased's daughter, L Ravenscroft from Remax [the agent], a written offer to purchase in respect of erf 1[...] was made. According to the terms of the written offer it was an irrevocable cash offer of R6.5 million [purchase price] which, if not accepted would lapse by 12h00 on the 14 September 2022. According to the agent, erf 1[...] has been on the market for 8 (eight) years.

[23] The agent, after the offer had expired on the 15 September 2022 addressed a letter to the directors and shareholders of the company enclosing the offer and expressing an opinion that the offer enclosed is a fair market value for erf 1[...]. The agent's opinion of a fair price was substantiated. The trustees reject the agent's valuation and the fact that she was independent. The agent is a Ravenscroft, forming part of the deceased's family.

[24] On the 26 September 2022, a general meeting of shareholders of the company was held, the Trust was represented by Jan Erasmus by proxy signed by Jan Erasmus [Mr Erasmus] , S.J. Briedenhann and Mr F.M. Roos Jnr. Mr Maritz chaired the meeting without objection.

[25] During the meeting an ordinary resolution, *inter alia*, was tabled for Mr Maritz and/or Mr Erasmus to be elected as co-director/directors of the company. Due to deadlock, no ordinary resolution was passed and the *status quo* remained without further objection.



[26] However, the two special resolutions that were tabled were passed unanimously by all the shareholders. Of particular the first special resolution was to replace the companies articles with a proposed MOI. No discussion was tabled regarding the offer to purchase of erf 1[...] and nor was Mr Cotzee's right to vote as a shareholder or Mr Maritz participation in the meeting a recorded concern for the trustees .

[27] On the 17 October 2022 the Master of the High Court issues letters of authority to Mr S.J. Briedenhann, Ms M.D. Joubert, and Mr Erasmus as the duly appointed trustees of the Trust.

[28] Only on the 10 November 2022 was notice of a general meeting in terms of section 112 and 115 of the Companies Act to, *inter alia*, approve, by way of special resolution, the disposal and to approve the offer to purchase in respect of erf 1[...]. Other than notice of the special resolution there was notice of two ordinary resolutions, in the alternative. Namely that if the special resolution was not passed, the buy-out of Mr Coetzee based on 50% of the equity value determined by the accounting officer premised on the purchase price value of erf 1[...]. Further in the alternative and if such special resolution and ordinary resolution 1 was not passed Mr Coetzee gave notice of his intention to bring the 163 buy-out relief based on the unreasonable withholding of trustee consent to pass the special resolution, the destruction of shareholder value and forcing him to remain a shareholder in the company in circumstances when the relationship between the shareholders and himself is becoming unreconcilable.

[29] On the 30 November 2022, the notice was met by a letter from Dyason Attorneys acting for the trustees. At this material time the trustees did not possess a valuation of their own for erf 1[...] to make any informed decision regarding the special resolution to be tabled.

[30] In this correspondence Mr Coetzee is informed that the special resolution and the ordinary resolution 1 pertaining to Mr Coetzee's buy-out relief would not receive a favourable vote from the Trust and to give notice that the trustees now

raise an objection of Mr Coetzee's right to vote as a shareholder by stating the following on behalf of their client, the Trust:

- “5. *It is our further instructions to place on record that our client disputes the right of Mr Paul Jacobus Coetzee to vote as Shareholder at the abovementioned meeting as our client has no knowledge of the Shareholding of Mr Paul Jacobus Coetzee in Dwars Beleggings (Pty) Ltd nor did our client ever receive a copy of the relevant share certificate(s).*
6. *Further to the above, kindly be advised that our client will consider the disposal of all or the greater part of the Assets of Dwars Beleggings (Pty) Ltd in terms of section 112 of the Companies Act, Act No. 71 of 2008, if said Assets of (sic) fairly valued, as contemplated in section 112(4).”*

[31] This is the first time after Mr Coetzee's appointment as a shareholder that his right to vote is objected to and it is the first time the offer to purchase was tabled. To assist the trustees to determine a fair market value for erf 1[...] before the meeting, and on the 1 December 2022 Mr Coetzee's attorney authored a letter to Dyason Attorneys in reply which, *inter alia*, refers the trustees to the fair market valuation done by Remax Platinum and states that the trustees, at their own cost, can appoint a further independent valuator to compile a comparative valuation report.

[32] Interestingly enough, Mr Coetzee's attorney in this letter, indicates that the written offer to purchase in respect of erf 1[...] still remains open for acceptance. By the 8 December 2022 the day of the meeting and having knowledge of how the value of the erf was determined, the trustees did not obtain a further valuation of their own to ensure that they were in a position to cast an informed vote. They simply voted against all the proposed resolutions and again recorded their objection to Mr Coetzee's shareholding in the company. Mr Maritz challenged the Trusts shareholding which Mr Erasmus contended is vexatious. No resolutions

were passed and the status *quo* remained. The trustees took objection to the fact that the status *quo* was recorded as an outcome of the meeting in the minutes.

[33] The trustees approximately 5 (five) months later and at the annual general meeting on the 3 May 2023 simply recorded their objection once again and informed Mr Coetzee that the Trust is in the process of obtaining confirmation of the appointment of Mr Coetzee as the director and a shareholder of the company.

[34] At this meeting the annual financial statements for the year ending 28 February 2022 were discussed. The period in question pertains to a time when Mr Roos Jnr was still the co- director of the company. Mr Erasmus points out a number of issues with the 2022 financials, certain issues were with regard to the independent review report, regarding steps taken or not taken by the director and enquiries regarding certain recorded liabilities (municipal debt). The latter transactions were to be rectified in the 2023 financial year.

[35] The only reason why financial statements were tabled, at that stage, was because Mr Coetzee ensured they were drafted. The company books were in disarray under the directorship of Mr Roos Jnr. The lack of company compliance was a concern confirmed by Mr Erasmus. Notwithstanding, Mr Erasmus wished to record that further written objections to the financial statements would follow.

[36] On the 19 May 2023 Dyason Attorneys provides two evaluation certificates in respect of erf 1[...], one certificate authored by Mr Johannes Jacobus Van Wyk dated 21 December 2022 and the other by Dignus dated 20 January 2023. Such valuations indicate a valuation of erf 1[...] being R 8.5 million and the other R12.3 million respectively. Over and above the valuation reports, Dyason's confirmed that they will be sending a list of objections to the financial statements year ending 28 February 2022 and that they wished to enquire whether Mr Coetzee would buy the 50% shareholding held by the Trust.

[37] The list of objections, *inter alia*, deal with the management actions/ inaction during the tenure of Mr Roos Jnr, this includes the non-payment of dividend tax to SARS in the amount of R 29 960.98 which arose long before Mr Coetzee's

appointment and which still remains unpaid due to the inability of Mr Coetzee to FICA the company Standard Bank account to effect the payment.

[38] The trustees refused to attend the annual general meeting called for on the 5 February 2024 to accept the financial statements and to appoint the company accountants and to pass a resolution for the liquidation of the company.

[39] The application was launched shortly thereafter in March 2024. Deadlock a constant reality resulting in an inability for the company to move forward and for a director to manage a company.

### **PRELIMINARY ISSUE**

#### **Does Mr Coetzee lack standing?**

[40] According to the trustees answer which serves as their founding affidavit in the counter application, Mr Erasmus states at paragraph 19 and 20 that:

*“19.4 Clause 21 of the statutes provides that no shareholder may transfer any of his shares to anybody who is not already a shareholder in Dwars Beleggings, unless the directors approve such transfer in writing.*

*19.5 Roos Jnr as director of Dwars Beleggings, did not approve the transfer of the shares in Dwars Beleggings to Coetzee as required under clause 21 of the statutes.*

*19.6 Given the above, I deny that the shares in Dwars Beleggings were validly transferred to Coetzee. I accordingly dispute that Coetzee is a shareholder of Dwars Beleggings.”*

[41] Then, at paragraph 20.3:

*“20.3 Under clause 78 of the statutes, the directors have the power to appoint an additional director.*

*20.4 However, Roos Jnr as director, did not resolve to appoint Coetzee as an additional director of Dwars Beleggings.*

*20.5 Given the above I dispute that Coetzee was duly appointed as a director of Dwars Beleggings.”*

[42] It is common cause that at the material time, that on the date of the conclusion of the written agreement to purchase, both the executor and Mr Roos Jnr were co-directors of the company and that the trust and the estate were recorded as holding equal shareholding. No basis with reference to clause 21 and 78 of the articles is placed in issue regarding the executor as a director or shareholder. In consequence compliance of the articles, as relied upon, in respect of the executor in such capacities is not placed in issue.

[43] Furthermore, Mr Roos Jnr signed an affidavit confirming that he had knowledge of and had no objection to the transfer of the shares to Mr Coetzee at the material time. Due to the fact that Mr Roos Jnr did not refer to consent in writing, Mr Coetzee’s Counsel invited the Court to consider the matter of Gohlke and Schneider v Westies Minerale (Edms) Bpk<sup>4</sup> and Alpha Bank Beperk v Registrateur van Banke<sup>5</sup> relying on unanimous assent where valid company resolutions can be adopted if all the directors are aware of what is being done despite the fact that the procedures in terms of the articles of association have not been observed.

[44] Against this backdrop, Mr Coetzee provided documentary evidence in support of the facts relied on. The trustees now faced with the documentary evidence in their reply in the counter-application now deny the authenticity of the

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<sup>4</sup> 1970 (2) SA 685 (A) at 692D-694E.

<sup>5</sup> 1996 (1) SA 330 (A) at 348F-H.

documentary evidence. The denial of standing based on Mr Roos Jnr's lack of consent and knowledge has now morphed into an authenticity challenge.

[45] Such challenge must be considered against the undisputed compliance of clause 21 and 78 of the articles as it applies to the executor and that the executor signed certain of the documentary evidence now challenged. In consequence, this Court finds that the dispute of authenticity is not a *bona fide* challenge under the circumstances resulting in a real dispute of fact raised on motion.

[46] In amplification, this finding must be considered against the evidence which demonstrates that:

- 46.1. It is common cause that Mr Coetzee purchased the 50% of the shareholding in the company from Mr Horn as the executor of the deceased estate on the 15 June 2020;
- 46.2. The executor delivered a proper instrument of transfer to the company as provided for in section 51(6)(a) of the Companies Act;
- 46.3. The company issued a certificate to the first applicant, evidencing that Mr Coetzee's shareholding as provided in terms of section 51(1); and
- 46.4. The transfer of Mr Coetzee's shareholding was entered in the company's securities register, as provided for in section 51(5).

[47] Furthermore, clause 21 of the articles does not regulate what form the directors written consent should take nor was any raised by the trustees. *Ex facie* the documentary evidence and the written purchase agreement, as signed by co-directors and shareholders at the material time, demonstrates written consent of a director to the transfer of shares to Mr Coetzee, alternatively it is sufficient evidence to advance unanimous assent. Therefore, on the objective facts and evidence, the validity of the transfer of shares to Mr Coetzee and his appointment as a director has been demonstrated. In consequence, the trustees attack on this

basis must fail. This surely must bring an end to the trustees declaratory relief which seeks to invalidate the transfer of the shares to Mr Coetzee, to declare that the trustees hold Mr Coetzee's 50%, the call for the rectification of the securities as a result thereof and that to declare that Mr Coetzee's directorship terminated on the 23 May 2023. In any event according to the common cause facts, it was never the intention as recorded in the 1998 minutes that the Trust should automatically hold 100% of the shares. The declaratory relief in the counter-application fails.

[48] This Court having found that Mr Coetzee has standing to launch the 163 buy-out relief, means that an enquiry into the estates standing as raised, may also be unnecessary. However, it must be noted that if the trustees' declaratory relief was successful, the 50% shares 'purportedly' then held by Mr Coetzee, would in all likelihood have reverted back to the estate, the second applicant. The reason and purpose for it being cited as an applicant surely then triggered by the trustees objection of Mr Coetzee being a shareholder and director of the company as raised in the general meeting in May 2023. The deadlock of the company is still a live issue notwithstanding.

[49] Now to consider the basis of the 163 buy-out relief.

### **THE 163 BUY-OUT RELIEF**

[50] It is common cause that Mr Coetzee's relief is based on 163(1)(a). On this basis, Mr Coetzee alleges that the Trust is a related person within the meaning of section 2(2)(d) of the Companies Act which states that:

#### ***"2. Related and inter-related persons and control***

*(1) For all purposes of this Act -*

*(a) ....*

*(b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with subsection (2); and*

*(c) ...*

- (2) *For the purpose of subsection (1), a person controls a juristic person, or its business, if –*
- (a)-(c) ...
- (d) *that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c)."*

[51] Subsection (2)(d) is identical to section 12(2)(g) of the Competition Act, 89 of 1998 and takes “*control*” beyond the ordinary corporate law principles of voting control. Therefore, whether a person has “*control*” under section 2(2)(d), will depend on the circumstances.<sup>6</sup> In other words, it caters for circumstances where the controlling person does not have majority voting powers but has an element of control comparable to a person who would have such voting rights. Whether a person has control will depend on the circumstances and such is a factual inquiry.<sup>7</sup>

[52] The question therefore is whether the Trust is a person related to the company for the purpose of the 163 buy-out relief and the relevance of that question will become clearer after reviewing the evidence of the conduct of the various role-players. The resolution of the issue depends on whether the Trust directly or indirectly controls the company or the company’s business, i.e., the investment and development of fixed property as contemplated in terms of section 2(1)(c)(i) read with section 2(2)(d) of the Companies Act.

[53] Section 163 of the Companies Act confers a wide discretion on a Court to compel, *inter alia*, the transfer of shares in order to deal with prejudicial, oppressive, unjust and inequitable conduct by a company or a related person. It too unlike section 252 of the 1973 Companies Act envisages the amendment of a company’s MOI, if necessary<sup>8</sup>.

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<sup>6</sup> Henochsberg on the Companies Act, 71 of 2008, Vol 1, 32(5).

<sup>7</sup> **De Klerk v Ferreira and Others** 2017 (3) SA 502 (GP), par 80.

<sup>8</sup> Section 163(3) of the Companies Act 71 of 2008.



[54] In short, and to recap, if the Trust as advanced by Mr Coetzee, has the ability to materially influence the policy of the company in a manner similar to a controlling shareholder, despite not being a controlling shareholder then the basis of his 163 buy-out relief has been demonstrated.

[55] Murphy J in the De Klerk matter stated that “*the relevant word was the ability to materially influence the policy of the juristic person*” which is not defined in the Companies Act it should then be given its ordinary meaning. The “*policy*” of a company is the general plan of course of action it adopts and it follows that “*to materially influence denotes the capacity or power to effect the development or execution of the policy substantially or in an important degree.*”<sup>9</sup>

[56] The general plan of course of action of the company in this application is to invest and develop fixed property. This translates into the acquisition, disposal, giving effect to the disposal of and, the development of fixed property where applicable, to the benefit of the company as a whole. In this application, as demonstrated, because the company does not trade and special resolutions are required concerning the disposal of certain assets, shareholder participation is foreseeable and occurs. Furthermore deadlock influences the company on management level too which can materially influence the course of the company. In these circumstances, the general plan of the company does not only require shareholder level participation but, it is influenced by shareholders participation.

[57] The trustees argument then that because the Trust is not a member of the board of directors, it does not have the ability to materially influence the policy of the company is not correct and too narrow. Furthermore, it is difficult to place weight on the advancement of this argument by them if one it to consider the basis upon which the trustees bring their own section 163 relief in the counter application.

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<sup>9</sup> *Ibid*, par 82.

[58] This Court finds that Mr Coetzee has demonstrated that the Trust is a related person and that it has an element of control, thus a basis for his 163 buy-out relief established. The merits of the relief itself now requires consideration.

[59] It is common cause that Mr Roos Jnr was a director of the company from 11 October 2004 to the 25 May 2022. Considering this period, he managed the company for approximately 18 (eighteen) years. Mr Erasmus under oath states that in recent years he has become concerned about the management of the company whilst under the directorship of Mr Coetzee. During such recent years, allegations and complaints of, *inter alia*, Mr Coetzee not being transparent and mismanagement of the company by Mr Coetzee have been raised by Mr Erasmus. These concerns ostensibly justification for the representation of the Trust on management level and, in consequence validating the trustees objections, justifying the manner in which they voted and reason for not attending annual general meetings of the company and calling for it to be wound-up.

[60] However, Mr Erasmus's concern of mismanagement of the company in recent years is not borne out on the facts. He in paragraph 53 of the replying affidavit states under oath that:

“53.2     *The director/s of a company is/are responsible to conduct the company's affairs.*

53.3     *Roos Jnr has no experience in conducting the financial affairs*  
*(own emphasis) of a company. In any event he resigned as a director of Dwars Beleggings in May 2022.*

53.4     *I, being a qualified chartered accountant,**(own emphasis) have*  
*serious concerns**(own emphasis) about the correctness of Dwars*  
*Beleggings' financial statements. In particular, (own emphasis)I*  
*am concerned that the liabilities of Dwars Beleggings to SARS and*  
*to the local municipality for property tax are not correctly reported.*

53.5     *The Fritz Roos Trust is not prepared to become the sole shareholder of Dwars Beleggings in circumstances where its affairs are not in order and its liabilities, particularly to SARS (own emphasis) have not been verified.”*

[61]     No concerns of the past mismanagement of Mr Roos Jnr even though it is stated under oath that he possess “*no experience in conducting the financial affairs of a company*”, has ever been expressed by the trustees, including Mr Erasmus, a qualified chartered accountant. Unlike the position taken by the trustees regarding Mr Coetzee.

[62]     On the common cause facts, the liability of SARS raised by Mr Erasmus as a serious and particular concern, is a dividend tax raised by SARS during the tenure of Mr Roos Jnr. It is a storm in a teacup as against Mr Coetzee and compounded by the further actions and inactions of the trustees who, have failed to assist Mr Coetzee to FICA the company Standard Bank account to enable the company to pay its tax liability. According to the 2023 financial statements, the company has funds to pay this debt to SARS. The weight of the allegations of mismanagement against Mr Coetzee as raised by Mr Erasmus on behalf of the trustees stand to be rejected.

[63]     Concerns raised as to the “*validity*” of Mr Coetzee’s shareholding is the trustees complaint relating to transparency. In this regard other than this Court’s finding in this regard, Mr Maritz, an agent for the estate in these papers, raised the necessity for the Trust too, in the general meeting on the 8 December 2022, to produce proof of its shareholding. Considering this Courts observations, as previously raised, about the shares held by the Trust, such request is not vexatious. Although not persisted with in this application and not in dispute, in law, *ex facie* the ability of the Trust to hold shares before it was lawfully registered remains unclear without further explanation. This is not a finding on the papers but raised to demonstrate the need for perspective and balance. One is constantly reminded in this matter that when one points a finger a number of fingers are pointing back at you.

[64] Be that as it may, the mismanagement and transparency concerns as raised by Mr Erasmus, do not support the justification of the trustees calling for Mr Coetzee's resignation nor the threat of winding-up the company. According to the 2023 financial statements the company is solvent. This such unfair conduct.

[65] For further consideration, from the history of this company, as set out in the papers, it is unclear what initial investment the deceased or the Trust made or were required to make when they acquired their shares. What is known is that Mr Coetzee paid R162 500.00 for his 50% in circumstances when the estate was willing to sell it to him at that price. No prohibition on what the estate as a shareholder should or was obliged to sell the shares for is raised by the trustee with reference to the articles. Furthermore, there is no call from the trustees to set this *inter partes* commercial purchase agreement aside.

[66] Having regard to the above then logically resolving to have Mr Erasmus as a co-director with Mr Coetzee, as tabled in a previous general meeting, would only have perpetuated yet further deadlock regarding the constant day to day management of the company. This would not be in the interest of the company and this is probably why a third director is considered in the director relief by the trustees in their counter application.

[67] Mr Coetzee in support of his 163 buy out relief, relies on the trustees failure to use their voting power "*bona fide for the benefit of the company as a whole*", "*to co-operate in the proper severance of [the] commercial relationship [between himself and the trustees] on fair and equitable terms*" constituting an omission to unfairly disregard his interests and, that the conduct of the trustees as a whole and their insistence "*that the status quo should remain intact*" with no buy-out renders him unable to benefit from his capital investment which is unfairly prejudicial to him.

[68] Relying on the aforesaid contentions, Mr Coetzee's Counsel refers this Court to the matter Van Der Watt v Schoeman<sup>10</sup> [Van Der Watt matter] arguing

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<sup>10</sup> 2024 (1) SA 531.

that notwithstanding the voting power of shareholders being equally divided, the unfairly conduct relied on is sufficient in support of his 163 buy-out relief when there is deadlock voting power, with no reasonable prospect of reconciliation. The trustees conversely rely on the matter of De Sousa<sup>11</sup> in which the Supreme Court of Appeal [SCA], considered a buy-out applying section 252 of the 1973 Companies Act. In other words dealing with the affairs of the company that is being conduct in a manner that is unfairly prejudicial to the buy-out rights of the dissident minority. The SCA held the view that the fact that a reasonable offer is not forthcoming does not mean that a shareholder's rights will be unfairly prejudiced. There must be unfairly prejudicial conduct to attract the relief.

[69] In the De Sousa matter the SCA was concerned with infringement of rights of a shareholder and accepted the argument that if a shareholder was not possess a right of such a buy-out in a MOI or any other agreement, the shareholder's entitled to a buy-out because of being locked in is not prejudicially unfair. This was not the same enquiry in the Van Der Watt matter where the Court considered the wide interpretation of section 163 of the Companies Act and held on the facts that if the conduct translated into an unfair recognition of a shareholder's interests (not necessarily rights), such was sufficient to trigger the Court's wide discretion in terms of section 163.

[70] In this matter this Court finds that Mr Coetzee has demonstrated unfair conduct which appears to be triggered because of the trustees unwillingness to recognise him as a shareholder and as a director. Such is not just an unfair recognition of his interests as a shareholder but, it is no recognition as a shareholder at all, which has obstructed his ability on management level too. As a result of this unfair conduct Mr Coetzee in both capacities is locked-into the company. No reconciliation is possible and a buy-out therefore appears to be the only just solution. The basis of Mr Coetzee's 163 buy-out relief must succeed. The terms of the relief however requires further consideration in terms of section 163(2) of the Companies Act.

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<sup>11</sup> **Technology Corporate Management (Pty) Ltd and Others v De Sousa and Another** 2024 (5) SA 57 (SCA).

[71] In consequence then, what of the trustees counter application? The trustees founding papers which also served as their answering affidavit appeared more centred around the attack of Mr Coetzee's shortcomings and the basis of his relief that a proper basis and foundation rooted in their own 163 relief which is wholly inadequate without a factual and legal basis. Nor did the trustees explain the relief they sought and why, after threatening to wind the company up they now call for Mr Coetzee to purchase the Trust's share. The trustees 163 relief appears to be an afterthought. Reliance in argument of a factual basis is that Mr Coetzee has ensured that a Trust representative is kept out of management level, that he has failed to substantiate his claims to holding 50% shares and appointment as a director and in general terms reliance is made of 'general prejudicial conduct'.

[72] Conversely what is clear is no matter what substantiation Mr Coetzee provides or has already provided to the trustees to substantiate his claims as a shareholder and director has been refuted by the trustees. Their unfair conduct will persist and Mr Coetzee not voting in favour of a representative of the Trust to serve as a director at the general meeting now comes into focus. Deadlock would not have been resolved and deadlock still persists. The trustees have demonstrated in February 2024 that they simply won't attend general meetings. Company compliance is being prejudiced and the general prejudicial conduct referred to inflicted by Mr Coetzee is not demonstrated.

[73] Having regard to all the facts and circumstances the trustees 163 relief brought by way of a counter-application fails. There is therefore no need to deal with their proposed section 163(2) remedy.

[74] In the exercise of the Court's wide discretion in terms of the 163 buy out relief, this Court considers all the facts in an attempt to balance the interests including that of the company. This is done, without having the benefit of the amended replaced MOI filed with the Registrar of Companies referred to in September of 2022.

[75] The solution of Coetzee's buy-out will secure his exit and it will be a means to secure that the trustees regain dominance on management and ownership

level. The Court also considers the fact that the trustees state that they do not have the means to pay the amount claimed by Mr Coetzee even if based on the value of R3.25 million let alone an amount based on their own higher valuations.

[76] It is common cause that there is equity in erf 1[...] and relying on the optimism of the trustees of its higher market valuations, the amount sought by Mr Coetzee appears more than reasonable. Furthermore, the trustees have confirmed in writing that they are not adverse to the disposal of erf 1[...]2 provided it is sold for a fair market value.

[77] Lastly, the expunged relief of the estates loan account is not properly supported in the founding papers. In any event if a loan is to be called up and paid or expunged, the same should not be confined to the estate but must include the Trust's loan. Sadly, the trustees still insisted that the estate loan be called up without tendering payment of the amount they concede the Trust loaned. Nothing on the papers demonstrates that the estate can pay the loan even if it was to be called up. Nor has the Trust confirmed that it can repay its loan. Both the trust and the estates appear to be on the same footing as far as the loans are concerned.

[78] The 163 relief in an amended form applying section 163(2) based on the application of section 163(1) to secure the First Applicant's exit should he require it succeeds.

[79] As far as costs are concerned, there is no reason why the costs should not follow the result and none was argued.

[80] The following order:

1. The Second Respondent's counterclaim is dismissed.
2. The Second Respondent is ordered to within I (one) month from date of this order to confirm an amount representing a fair market value for stand 1[...], Safarituine, Extension 12 Rustenburg [the property]. In the event that the Second Respondents fails to provide a fair

market value as ordered, the First Applicant is entitled to confirm an amount representing a fair market value of the property.

3. Upon compliance of prayer 2, the First Applicant and Second Respondent are ordered to pass a resolution to dispose of the property and to place it on the market for a period of 9 (nine) months. Each party is entitled to mandate an estate agent. The property is to be placed on the market seeking offers based on the fair market value determined in terms of prayer 1. In the event that a written offer is received which is accepted by both the First Applicant and the Second Respondent and, thereafter, upon transfer of and payment for the property, the First Respondent is ordered to conclude a written share buy-back agreement with the First Applicant in order to acquire the First Applicant's shares. The First Respondent is to pay the First Applicant an amount equal to 50% of the amount recoverable from the sale of the property.
4. In the event that no acceptable written or any written offer is made or, if no resolution is passed accepting any written offer in the 9 (nine) month period referred to in prayer 3 hereof or, if the First Respondent is unable for any valid reason, to enter into a share buy-back agreement on the terms as ordered in prayer 3, the First Applicant will have the option to purchase the trustees' shareholding in the company for an amount equal to 50% of the amount recoverable from the sale of the property and pay the Trust within 20 (twenty) days of exercising the option. In the event that the First Applicant indicates his unwillingness to exercise the option, the Second Respondents are ordered to purchase and make payment to the First Applicant's shareholding for that same value being 50% of the amount recoverable from the sale of the property within 20 (twenty) days of such notice from the First Applicant.
5. The First Applicant and the Second Respondent are directed to amend the First Respondent's memorandum of association or



articles of association, as the case maybe, in terms of section 163(3) of the Companies Act 71 of 2008, if applicable, as a result of this order.

6. The Second Respondent is to pay the First Applicant's costs, including the costs associated with the counter application and, the costs of Senior Counsel so employed, taxed on scale C.

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**L.A. RETIEF**

Judge of the High Court

Gauteng Division

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Date of hearing:

15 August 2025

Date of judgment:

12 November 2025