**IN THE HIGH COURT OF SOUTH AFRICA**
**KWAZULU NATAL DIVISION PIETERMARITZBURG**

CASE NO**: 17289/23P**

**Before: Honourable Ncube J**
**Heard on: 23 May 2025**
**Delivered on: 05 December 2025**

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| DELETE WHICHEVER IS NOT APPLICABLE<br>(1) REPORTABLE: YES / NO<br>(2) OF INTEREST TO OTHER JUDGES: YES / NO<br>(3) REVISED: YES / NO<br>………………… ……………………….<br>DATE SIGNATURE |

In the matter between:

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| **MAKHOSAZANA NOMCEBO NGCOBO** | First Applicant |
| **LINDELANI PERCIVAL MKHIZE** | Second Applicant |
| **SIYABONGA DUNCAN MNGOMA** | Third Applicant |
| **KZN STUDIOS PTY LTD** | Fourth Applicant |

and

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| **KZN STUDIOS PTY LTD** | First Respondent |
| **COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION** | Second Respondent |
| **FIRST RAND BANK LIMITED** | Third Respondent |

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| **KWAZULU-NATAL FILM COMMISSION** | Fourth Respondent |
| **CONTENTO PTY LTD** | Fifth Respondent |
| **BHEKWAYINKOSI THEMBANI MBUYAZI** | Sixth Respondent |
| **MUZI STANLEY NKAMBULE** | Seventh Respondent |
| **JACQUELINE MOEPENG MOTSEPE** | Eighth Respondent |
| **VICTOR SENNA** | Nineth Respondent |
| **SIBONAKALISO MTHIYANE** | Tenth Respondent |

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**ORDER**

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1. The Application for relief sought in terms of paragraphs 5,6 and 7 of the Notice of Motion dated 27 November 2023 is dismissed with costs.

2. The Counter- Application by 4th, 8th and 9th Respondents is dismissed with costs.

3. The *Rule Nisi* dated 30 November 2023 is discharged.

4. Parties are ordered to, within thirty (30) days from the date of this order, jointly prepare a Memorandum Of Understanding("MOU"), clearly indicating how the parties intend administering the funds of the KZN Studios (Pty) Ltd in account numbers:7[...] and 6[...] kept by the third respondent ("FNB").

5. Pending the submission and acceptance by this court, on a date to be arranged with the Registrar, of this court, the MOU mentioned in paragraph 4 above, the third respondent (FNB) is ordered to retain its hold on the banking accounts (7[...] and 6[...]) of the KZN Studios (Pty) Ltd till the third respondent gets further instructions from this Court.

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## JUDGMENT

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**NCUBE J**

**Introduction**

[1] This is opposed application in which the applicants seek relief which will effectively give the applicants powers to use and spend monies that are kept in the first respondents ("KZN Studios") bank account with the third respondent ("FNB"). If granted, the relief will also deprive the fourth respondent the KZN Film Commission("KZNFC") of access to information concerning monies and will further deprive the KZNFC of access to information about the applicants use of those monies. The application is opposed by the fourth, eighth and ninth respondents who in turn filed a counter- application in which they seek an order referring this matter to dispute resolution in terms of the agreement previously entered into between the KZNFC and the fifth respondent, Contento (Pty) Ltd ("Contento"). The said agreement is referred to by the parties to these proceedings as "the Framework Agreement", ("the Agreement").

**Parties**

[2] The first applicant, is Makhosazane Nomcebo Ngcobo who is a businesswoman employed at the first respondent's registered address ("Makhosazane"). The second applicant is Lindelani Percival Mkhize ("Mr Mkhize") who is also employed at the registered address of the first respondent. The third applicant is Siyabonga Duncan Mngoma ("Mr Mgoma") also a businessman employed at the registered address of the first respondent. The position of the fourth applicant, KZN studios, is somehow

confusing as KZN Studios is cited both as the fourth applicant and the first respondent.

[3] The first respondent is KZN Studios (Pty) Ltd ("KZN Studios"), a registered company. The second respondent is the Companies and Intellectual Property Commission ("CIPC"). No relief is sought against it. The third respondent is First Rand Bank Limited ("FNB") where the bank account of the KZN Studios is kept. The fourth respondent is Kwazulu-Natal Film Commission ("KZNFC"). The KZNFC is a Provincial Public entity as defined in the Public Finance Management Act[1]("PFMA"). The KZNFC has management rights in respect of the KZN Studio's account kept at FNB. The fifth respondent is Contento (Pty) Ltd ("Contento"). The sixth respondent is Bhekwayinkosi Mbuyazi ("Mr Mbuyazi") residing in Soweto. The seventh respondent is Muzi Stanley Nkambule ("Mr Nkambule") residing in Soweto. The eighth respondent is Jacqueline Moepeng Motsepe ("Miss Motsepe"). She is the employee and the representative of the KZNFC. The tenth respondent is Sibonakaliso Mthiyane ("Mr Mthiyane").

[4] Mr Mbuyazi, Nkambule and Mr Mthiyane are alleged on the papers to have committed fraud at CIPU by removing the names of Makhosazane , Mr Mkhize and Mr Mngoma as directors of the KZN Studio's and replaced them with their own names. They are not participating in these proceedings. The dispute relating to fraud was finalised in the urgent application on 30 November 2023.

**Factual Background**

[5] On 09 November 2018, Contento was awarded a bid by the KZNFC. In terms of the letter of appointment, KZNFC had accepted Contento's proposal to "*partner and invest in KwaZulu-Natal Film Commission in development and operating of KZN Studio's*". Further terms and conditions of that partnership were going to be detailed on the relevant agreement which was still to be signed. The aim of the bid was to achieve economic transformation through the establishment and operation of a Black African owned Film Studio in Kwazulu-Natal in order to stimulate the film sector and to provide infrastructure for sustainable growth and job creation.

[1] Act no 1 of 1999

[6] On 11 February 2019, Carol Coetzee,CEO of KZNFC at the time, signed the Agreement. Makhosazana, being the representative of Contento signed the same agreement on 12 February 2019. The Agreement came to be known as the Framework Agreement as mentioned earlier in this judgment. In terms of paragraph 3 of the agreement, a new company was going to be established, and it was going to be the vehicle which would carry out the intended project. Contento would have 90% and KZNFC 10% shareholding in the new company. The KZN Studios (Pty)Ltd was then established. In terms of clause 5.4 of the Agreement, KZN Studios was to open an account on which Contento and KZNFC representatives would be co-signatories. Such account was duly opened. On 27 February 2019, KZNFC transferred an amount of R15 million into the account of the KZN Studios held at FNB.

[7] In terms of a resolution taken by the Directors of KZN Studios on 19 March 2020, Mr Sibusiso Derrick Ndebele, Makhosazane, Ms Motsepe and Mr Mkhize were appointed as administrators with signing arrangement on KZN studios account kept at FNB. FNB was also informed accordingly. The appointment resolution indicates that Makhosazane, Mr Ndebele and Mr Mkhize are Directors of the KZN Studios, whilst Ms Motsepe is shown as being a '*non-executive director*'. On 10 august 2021, Ms Motsepe resigned as a director of KZN studios representing KZNFC.

[8] FNB has placed a "hold" on KZN Studios account. The reason for such a hold, as provided by FNB, is the letter which FNB received from the Lawyers of Ms Motsepe stating that Ms Motsepe was not aware of change of signatories and movement of funds from the account.

[9] In November 2023, the compliance officer of Contento discovered that the applicants were no longer reflected on CIPC records as directors of KZN studios. The CIPC records showed that the applicants had resigned as KZN Studios directors, and were substituted by totally unknown individuals in the person of Mr Mbuyazi, Mr Nkambule and Mr Mthiyane. The applicants have been reinstated in

the records of CIPC as directors of KZN Studios, in terms of the urgent application brought in this court on 30 November 2023.

**Issues**

[10] There are three issues for determination by this court.

The first issue is whether the applicants have a clear and exclusive right to transact on the Bank account of KZN studios to the exclusion of KZNFC or its representatives.

The second issue which is somehow connected to the first issue, is whether Ms Motsepe has authority to be a co-signatory on KZN Studios Bank account held at FNB.

The third and final issue is whether KZNFC or its nominated representatives have a right to access Bank statements of KZN Studios.

**Do the applicants have a clear and exclusive right to transact on KZN Studios account to the exclusion of KZNFC or its representatives**

[11] Applicants seek a final relief in this application. Therefore, the applicants must prove that they have a clear right to transact on the KZN Studio's account to the exclusion of the KZNFC or its representatives. The KZNFC is a Provincial Public entity and as such, in its dealings with public funds, it must ensure that the funds are used for a public purpose. Those funds must be controlled in accordance with the provisions and objectives of the PFMA. The primary objective of the PFMA is to enhance accountability in the utilisation of government resources and reform budgeting and financial management.

[12] The long title of PFMA indicates that the purpose of this particular Act is "***to regulate financial management in the national government and provincial government, to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively, to provide for the responsibilities of persons entrusted with financial management in those governments, and to provide for matters connected therewith".***

[13] The KZN Studios was created in terms of clause 3 of the Framework Agreement which makes provision for the establishment of a new company which will be a vehicle which will be responsible for carrying out the project. The word "*project*" is defined in the Agreement as meaning " *the establishment and operation of a film studio in Kwazulu-Natal*". In terms of clause 3.2 KZNFC is a 10%shareholder in KZN Studios (Pty)Ltd. In terms of sub-clause 5.4 the new company is required to set up a new bank account in which the KZNFC and Contento are co-signatories.

[14] The applicants contend that there is no agreement between KZNFC and KZN Studio's and that the Agreement is only between Contento and KZNFC. That contention misplaced. The KZN Studios is the child of the Agreement, without the Agreement, KZN Studios would not have come into existence. KZNFC is a public entity which has 10% shareholding in KZN studios and as such KZNFC has a right to protect its interest in KZN Studios for the benefit of the public. Therefore, the applicants do not have the right to exclusively deal with the affairs of the KZN Studios without the involvement of the KZNFC.

**Does Ms Motsepe have Authority to be a co-signatory on KZN Studio Account held at FNB**

15] Ms Motsepe is cited as the eighth respondent in these proceedings. She is employed by KZNFC, which is a party to the Agreement which creates the KZN Studios. On 19 March 2020, the Board of Directors of KZN Studios took a resolution to appoint Ms Motsepe as an Administrator with "*Joint General Authority*" Her title on the appointment certificate, annexed to the papers as FA20, is shown as being administrator with signing arrangements and she was one of online Banking Administrators.

[16] On 10 August 2021, Miss Motsepe addressed a letter to the Chairperson of the Board of Directors of KZN studios, resigning from the Board. The letter states:

> "I would like to formally tender my resignation from the KZN studio board. My role at the KZN Film Commission is to manage the operation of the organization. I

would like to give my undivided focus to and prioritise my deliverables in the area of operations at the KZNFC. The Covid 19 pandemic, the 3rd wave as well as the recent unrest in the province has had a significant impact on operations. In addition, there are always a range of minor ancillary programmes that I get involved in that are industry related and require my attention, in summary I would like to ensure that my area of focus is on service delivery to the film and television industry in the province………"

[17 There is no indication in the above letter that Ms Motsepe is resigning from her position as Administrator and a co-signatory on the Bank account of the KZN Studios. The letter only shows that Ms Motsepe was resigning from her position as the director of the KZN Studios. There has been no change in the signing arrangement. The only signing authority is FA20. There is no indication on FA20 that the signing authority is dependent on Ms Motsepe's directorship and that when she ceases to be a director, the signing authority will lapse. Although the applicants contend that there was change of signing arrangement in 2022, there is no proof of such change before court. The only signing authority before court is FA20, in terms of which Ms Motsepe is a co-signatory on the bank account of the KZN Studios. Therefore, Ms Motsepe still has authority to co- sign on the bank account of KZN studios (Pty) Ltd.

**Does KZNFC or its nominated representatives have a right to access KZN Studios Bank Statements**

[18] As mentioned earlier in this judgment, KZNFC is a provincial public entity. It has responsibility to see to it that public funds are well managed and used for a public purpose to the best interest of the public. As mentioned earlier, applicants do not have a right to willy nilly deal with the affairs of KZN Studios to the exclusion of KZNFC. Ms Motsepe is the representative of KZNFC and a co-signatory on the bank account of KZN Studios held at FNB. In terms of FA20, Ms Motsepe is one of the two persons who must co-sign and approve an instruction, before FNB can act on that instruction. As such, Ms Motsepe is entitled to access the KZN Studios bank accounts.

[19] Mr Senna is the Chief Executive Officer ("CEO") of KZNFC and as such, he is the accounting officer in terms of section 36(2)(b) of PFMA. As accounting officer, he has a responsibility to ensure that public funds in KZN Studios' Bank account are used efficiently and for the purpose for which they are intended to be used.

[20] In terms of Clause 5.1 of the Agreement, KZNFC must commit a seed capital of R15 000 000.00 to KZN Studio Pty Ltd to cater for the first phase of the project. Those are public funds.

[21] Pursuant to Clause 5.1 of the Agreement, on 27 February 2019. The KZNFC transferred R15 000 000.00 into the KZN Studios Bank account held at FNB. The CEO of KZNFC at the time was Mr Kea Bogatsu ("Mr Bogatsu") and as such Mr Bogatsu had a right to transact on the KZN Studios Bank account. The present CEO is Mr Senna. Therefore, Mr Senna has a right to transact on KZN Studios Bank Account at FNB. Mr Senna is entitled to access the Bank statements of KZN Studios held at FNB. Mr Senna and Ms Motsepe are also entitled to keep and use the Bank statements they obtained from FNB.

**Counter Application**

[22] The 4,8 and 9 Respondents have filed a counter-application, which Contento opposes and aligns itself with the first to third applicants.

**Relief Sought**

[23] In their counter application, the respondents seek the following relief:

> " A *rule nisi* is hereby issued calling upon all parties to show cause before this Honourable Court on the ------ day of -------- 2023 at 09h30 or as soon thereafter as the matter may be heard, as to why an order should not be granted in the following terms:
>
> (a) It is declared that there is a dispute between Fourth Respondent and Fifth Respondent arising from or in connection with the framework agreement ("the framework agreement") that was signed by such parties on 11 and 12 February 2019.

(b) Fourth Respondent is directed, within ten court days of this order to deliver a statement of claim in which it states its case in relation to such dispute.

(c) Thereafter, fourth and fifth respondents are directed to perform all steps reasonably required to refer the said disputes including any additional disputes that may be formulated by fifth respondent to dispute resolution in terms of clause 9 of the framework agreement.

(d) Pending the final determination of such disputes:

  (i) Third respondent is ordered to retain its hold on the banking accounts of first respondent

  (ii) Applicants and first, fifth, sixth, seventh and tenth respondents are interdicted from spending, using and/or causing the use and expenditure of the monies, including any part and/or fruits thereof, that were transferred to first respondent by fourth respondent during February 2019.

(e) Applicants are ordered to pay, jointly and severally, the costs of this counter- application, provided that if any party opposes the counter application, it will be requested that such party also be ordered to pay such costs jointly and severally.

(f) Further and/or alternative relief may also be sought.

Pending the final determination of this application an interim order will be sought in terms of paragraph 1 (d) above.

[24] On 30 November 2023, an interim relief was granted calling upon FNB to retain the hold on KZN Studios bank account and interdicting the applicants from transacting on that bank account pending the final determination of this matter. In terms of the very same order, the first to third applicants who had been fraudulently removed as directors of the KZN studios, were declared to be the lawfully appointed directors of the KZN studios. The CIPC was ordered to amend its records accordingly. Therefore, the directorship dispute between the applicants, sixth, seventh and tenth respondents has been resolved.

[25] The 4$^{th}$, 8$^{th}$ and 9$^{th}$ respondents, in their counter-application, rely on the rights

which they derive from the Framework Agreement. That is the source from which they can base their right. Apart from that agreement, they have no right to claim participation in the affairs of the KZN studios. Therefore the respondents cannot now be heard to say that the source from which they derive their rights has not come into operation. If that is the case, the respondents have no right to interfere in the affairs of the KZN Studios.

[26] Clause 2 of the Agreement deals with the commencement thereof. Sub-clause 2.1 provides that the Agreement shall commence on the signature date of and shall continue for the duration of the project or unless terminated earlier by the parties by written agreement. The KZNFC representative signed the agreement on 11 February 2019. The Contento representative signed it on 12 February 2019. Therefore, in terms of Clause 2.1 the commencement date is the 12$^{th}$ of February 2019, and it is still in operation. In terms of Clause 8, if there is a breach of the Agreement, the aggrieved party may give the defaulting party eight days written notice to remedy the breach. In case of a material breach, the aggrieved party may cancel the Agreement upon written notice to the defaulting party. In terms of clause 8.2, there are circumstances which will justify a summary cancellation of the Agreement. In all the circumstances mentioned in the breach clause, the aggrieved party must give a written notice of such cancellation to the defaulting party.

[27] In *Casu*, at least on two occasions, the KZNFC has unsuccessfully attempted to cancel the agreement. An attempt by the applicants to remove Ms Motsepe as a signatory on KZN studios' account and deal with such account on their own and without KZNFC representatives, constitutes a material breach, however there has been no effective cancellation of the Agreement. The respondents cannot now, after commencement of litigation, claim to have cancelled the Agreement without giving written notice as required in terms of the breach clause.

[28] The respondents, in their assertion, that there is a dispute between the parties which must be referred to arbitration, are relying on clause 9 of the Agreement. Clause 9 states:

> " 9.1 Unless otherwise specified in this Agreement, any dispute arising from or in connection with this Agreement must be finally resolved in accordance with the commercial rules of the Arbitration Foundation of South Africa, or its successor body (AFSA)"

[29] There is no dispute arising from or in connection with this Framework Agreement. The dispute referred to in clause 9, is the dispute which arises from the Framework Agreement. If it does not arise from the Framework Agreement, it must be in connection with it. Clearly, there is no dispute arising from the Framework Agreement. The dispute mentioned by the respondents in their papers is not the sort of a dispute stipulated in clause 9, but a self-created dispute. Even if it is found that there is a dispute which requires the matter to, be referred to arbitration, the jurisdiction of the High Court is not ousted thereby in terms of clause 15 of the Agreement. Clause 15 provides that the parties "*unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Kwazulu-Natal Local Division, Durban in regard to all matters arising from this Agreement"*

**Finding**

[30] I find that no case is made out in both the main and counter application

**Order**

[31] I asked the parties to favour me with draft orders and I thank them for the detailed draft orders which they submitted. Unfortunately, and because of the view I have formed of this matter, I cannot rely on any of those draft orders. In the result, I make the following orders:

1. The Application for relief sought in terms of paragraphs 5,6 and 7 of the Notice of Motion dated 27 November 2023 is dismissed with costs.

2. The Counter- Application by 4th, 8th and 9th Respondents is dismissed with costs.
3. The *Rule Nisi* dated 30 November 2023 is discharged.
4. Parties are ordered to, within thirty (30) days from the date of this order jointly prepare a Memorandum Of Understanding("MOU"), clearly indicating how the parties intend administering the funds of the KZN Studios (Pty) Ltd in account numbers:7[...] and 6[...] kept by the third respondent("FNB")
5. Pending the submission and acceptance by this court, on a date to be arranged with the Registrar of this court, the MOU mentioned in paragraph 4 above, the third respondent (FNB) is ordered to retain its hold on the banking accounts (7[...] and 6[...]) of the KZN Studios (Pty) Ltd till the third Respondent gets further instructions from this Court.

**NCUBE J**
**Judge of the High Court of South Africa**
**Kwazulu-Natal Division**
**Pietermaritzburg**

**Appearances:**
**For the Applicant and**
**Fifth Respondent** **:** Adv Mahabeer SC
Adv Jacob
Instructed by: WJ ROGERS &ASSOCIATES
183 Problem Mkhize
Morningside

**For the 4,8 & 9th Respondents:** Adv Crompton

Instructed by : HP INCORPORATED
18 Bute Road
Windermere
Durban

**Heard: 23 May 2025**

**Delivered on: 5 December 2025**