IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 6680/2025

In the matter between:

JAMES GEORGE JOUBERT	**APPLICANT**
and	
J D ELEKTRIESE INGENIEURSWESE (PTY) LTD	**FIRST RESPONDENT**
DANIeL WYNAND DE JAGER	**SECOND RESPONDENT**
JOHANNES MARTHINUS PRINSLOO	**THIRD RESPONDENT**

Neutral citation: *Joubert v J D Elektriese Ingenieurswese (Pty) Ltd and Others* (6680/2025 [2025] ZAFSHC 341 (06 November 2025)

Coram: LEKOKOTLA AJ

Heard: 4 September 2025

Delivered: 06 November 2025

Summary: Company law – right of access to company records by former director and shareholder – right to inspect and copy documents and information – beneficial interest in a company – right of access to company documents and information.

ORDER

1 The first, second and third respondents are directed to make the following documents available to the applicant, within fourteen (14) days from date of this order:

1.1 The first respondent's memorandum of incorporation and any amendments to it;

1.2 A record of the directors of the first respondent, including details of any person who has served as a director of the first respondent;

1.3 Copies of all reports presented at the annual general meetings of the first respondent;

1.4 Annual financial statements of the first respondent, as contemplated in the Companies Act 71 of 2008 (Companies Act);

1.5 Accounting records of the first respondent as contemplated in the Companies Act;

1.6 Notice and minutes of all shareholder meetings, including all resolutions adopted by the shareholders and any document that was made available by the first respondent to the holders of the securities in relation to each resolution adopted;

1.7 Copies of all written communication sent generally by the first respondent to all holders of any class of the first respondent's securities;

1.8 Minutes of all meetings and resolutions of directors or directors' committees, or the audit committee of the first respondent; and

1.9 The security register of the first respondent.

2 The abovementioned documents should be in relation to a period of 19 years from 1995 when the applicant became a director and shareholder of the first respondent (together with the second respondent) until when he sold his shares to the third respondent on 28 September 2023;

3 The first, second and third respondents are directed to pay the costs of the application, including the cost of counsel on scale B.

JUDGMENT

Lekokotla AJ

[1] The applicant seeks access to certain information and records of the first respondent for the time period in which he (the applicant) was a director and shareholder of the first

respondent. This is a period of 19 years from 1995 until when he sold his shares to the third respondent on 28 September 2023.

[2] The specific documents that the applicant seeks are the company documents of the first respondent. They include:
(a) the first respondent's memorandum of incorporation (MOI) and any amendments to it;
(b) a record of the directors of the first respondent, including details of any person who has served as a director of the first respondent;
(c) copies of all reports presented at the annual general meetings of the first respondent;
(d) annual financial statements of the first respondent, as contemplated in the Companies Act 71 of 2008 (the Companies Act);
(e) accounting records of the first respondent, as contemplated in the Companies Act;
(f) notice and minutes of all shareholder meetings, including all resolutions adopted by the shareholders and any document that was made available by the first respondent to the holders of the securities in relation to each resolution adopted;
(g) copies of all written communication sent generally by the first respondent to all holders of any class of the first respondent's securities;
(h) minutes of all meetings and resolutions of directors or directors' committees, or the audit committee of the first respondent; and
(i) the security register of the first respondent.

[3] The documents that the applicant requests are listed in s 26(1) and s 24(3) and (4) of the Companies Act, and, it is common cause that the applicant was both the director and shareholder of the first respondent and held a beneficial interest in the first respondent during the relevant period.

[4] The applicant's basis for seeking these documents is to ascertain if there is a damages claim that it can institute against the respondents. It intends to first appoint a forensic auditor who will conduct an investigation and upon his or her findings, the applicant will decide whether or not to institute a damages claim against the respondents.

[5] The respondents raised a point *in limine* of misjoinder of the second and third respondents, whom they contend have been cited in their personal capacities. The respondents' contention is that the documents that the applicant seeks belong to the first

respondent. As a company, the first respondent has separate legal personality and does not need to be instructed on how it should produce the relevant documents, should it be directed to do so by this court.

[6] The applicant contended that it specifically stated in paragraph 7.3 in respect of the first respondent and in paragraph 8.1 against the third respondent that it has 'cited both respondents in their respective capacities as directors of the first respondents insofar as it is necessary to give effect to the order the court makes in these proceedings'. In respect of the second respondent, the applicant also states that he has cited him in his capacity as a shareholder during (at least) the relevant time. He only sought costs against them in the event of opposition.

[7] During oral argument, counsel for the applicant pointed out that he has made factual allegations against the second and third respondents, respectively, that require responses from each of them. Furthermore, the applicant seeks substantive relief from both the first and second respondents in prayers 1 and 2 of the notice of motion. Therefore, their being cited as parties in these proceedings was necessary as they have a direct and substantial interest in this application.

[8] The applicant expressly stated that he joined the second and third respondents in their respective capacities as directors of the first respondent and not in their personal capacities as contended by the second and third respondents. The applicant further contended that he cited the second and third respondents as parties who would be responsible for executing any order that this court may make.

[9] The respondents pointed out the provisions of s 19 of the Companies Act, which deals with the separate legal personality of companies. In particular, s 19(2) states that a person is not, solely by reason of being an incorporator, shareholder or director of a company, liable for any liabilities or obligations of the company, except to the extent that the act or the company's Memorandum of Incorporation provides otherwise. The applicant pointed out that it is precisely for this reason that he cited the second and third respondents as they are the parties that would be responsible for executing any order that the court may make.

[10] Furthermore, the applicant made very specific factual allegations against the second and third respondents that only they could respond to in relation to the events that transpired during the period in question, leading to him selling his shares to the third respondent. Even though the affidavit on behalf of the respondents was deposed to by the third respondent and the second respondent only filed a confirmatory affidavit, the lion's share of the allegations made by the applicant relate to the 19 years when only him and the second respondent were directors and shareholders of the first respondent. The allegations that the third respondent could personally respond to are those relating to the negotiations leading to him concluding the sale of shares agreement and what the contents of those discussion was.

[11] In any event, the first respondent acts through the second and third respondents as they are the current directors. Insofar as substantive relief that is sought by the applicant is concerned, the second and third respondent would have to effect the order. Therefore, the second and third respondents have a direct and substantial interest in the order that would be granted by this court. The point *in limine* of misjoinder should therefore fail.

[12] The applicant contends that he was a director and 50% shareholder of the first respondent until he concluded a sale of shares agreement with the third respondent in respect of 50% of the shares available within the first respondent. The unsigned sale of shares agreement that is attached to the founding affidavit indicates that the applicant is the owner of 24.5% of the issued ordinary shares in the first respondent and 50% of the preference shares issued in the first respondent with a redeemable value of at least R2 850 000.

[13] The respondents dispute that the applicant held 50% shareholding in the first respondent or that the amount that he was paid by the third respondent in respect of his shares was equivalent to 50% shareholding. The issue of what percentage holding each of the applicant and the second respondent held in the first respondent and what percentage of that shareholding he sold to the third respondent is not an issue before me, I do not have to decide this issue. Therefore, I make no finding in respect of it. However, I point out that it is one of the issues that the applicant seeks to explore and canvass in future once he is in possession of the first respondent's documents that he suspects might shed light on it. He seeks transparency from the respondents.

The need for transparency

[14] Section 7*(a)* of the Companies Act provides that the purposes of the act are to promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law.

[15] Section 7*(b)*(iii) provides that a purpose of the act is to '[encourage] transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation'.

[16] In *Bernstein and Others v Bester and Others NNO*,[1] the Constitutional court held that the very use and establishment of a company is a public affair, which imposes on those running it certain statutory responsibilities associated with running it. They include, among others, statutory obligations of proper disclosure and accountability to shareholders. Therefore, any information pertaining to participation in such a public sphere cannot rightly be held to be inhering in the person, and it cannot consequently be said that in relation to such information a reasonable expectation of privacy exists. Nor would such an expectation be recognised by society as objectively reasonable.[2]

[17] In *Nova Property Group Holdings Ltd and Others v Cobbett and Another* (*Nova Property*),[3] the Supreme Court of Appeal (SCA) held that s 26 of the Companies Act is enacted with precisely the objectives of openness and transparency as embodied in s 7*(b)*(iii) of the Act in mind. It held:

'It recognizes that the establishment of a company is not purely a private matter and may impact the public in several ways. It therefore seeks to impose strong rights of access in respect of very specific but ultimately limited types of information held by companies. Section 26 must, therefore, be interpreted in accordance with this purpose.'[4]

[18] In *Company Secretary, Arcelormittal South Africa Ltd and Another v Vaal Environmental Justice Alliance* (*Arcelormittal*),[5] the dispute arose from the refusal by

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[1] *Bernstein and Others v Bester NO and Others* [1996] ZACC 2; 1996 (4) BCLR 449; 1996 (2) SA 751 (CC).
[2] Ibid para 85.
[3] *Nova Property Group Holdings v Cobbett* [2016] ZASCA 63; [2016] 3 All SA 32 (SCA); 2016 (4) SA 317 (SCA).
[4] Ibid para 18.
[5] *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* [2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) (*Arcelormittal*).

Arcelormittal South Africa Limited of two PAIA requests made by the respondent, the Vaal Environmental Justice Alliance (VEJA), a non-profit voluntary association (characterising themselves as advocates for environmental justice), for information relating to Arcelormittal's past and present activities, including the latter's documented historical operational and strategic approach to the protection of the environment in the Vanderbijlpark and Vereeniging areas, in each of which they operate a major steel plant.

[19] The SCA, in *Arcelormittal*, conceded that it was mindful of the caveat in *Clutchco v Davis* (*Clutchco)*,[6] that one must guard against forcing corporates to throw open their books on claims of alleged minor errors or irregularities. It concluded that the basis provided by VEJA for its application does not fall into the category of trivial or frivolous. It concerns us all. The SCA held that it is clear that VEJA supplied an adequate basis for its requests and is entitled to the information sought; it is entitled as an advocate for environmental justice to monitor the operations of AM and its effects on the environment. The SCA found that the additional obstacle raised by *Arcelormittal* that it is a private entity that does not have the same responsibility as the State to make available its company documents to third parties was found by the SCA to be without any merit.

[20] The SCA further held, in *Arcelormittal*, that local or international corporations operating within our borders, must be left in no doubt that in relation to the environment in circumstances such as those under discussion, there is no room for secrecy and that constitutional values will be enforced.[7]

[21] In *Goosen-Joubert v Women4Women NPC* (*Goosen-Joubert*),[8] the court held that the right to access information is imperative in cultivating a culture of transparency and accountability. I now turn to the relevant legislative framework

Legislative regime

[22] The starting point is the Constitution, which is the superior law of the land. Section 32(1)*(b)* of the Constitution provides that everyone has the right of access to any information that is held by another person and that is required for the exercise or protection

[6] *Clutchco (Pty) Ltd v Davis* [2005] ZASCA 16; [2005] 2 All SA 225 (SCA); 2005 (3) SA 486 (SCA) (*Clutchco*).
[7] *Arcelormittal* para 82.
[8] *Goosen-Joubert v Women4Women NPC* [2022] ZAWCHC 82 (*Goosen-Joubert*) para 69.

of any rights. Section 32(2) provided for national legislation to be enacted to give effect to this right. The Promotion of Access to Information Act 2 of 2000 (PAIA) is the national legislation contemplated in s 32(2) of the Constitution. Part 3 of that statute regulates the rights of access to the records of private bodies. The first respondent, a private company, is such body.

[23] Section 50 of PAIA provides for access to information of private bodies. One of the threshold requirements for a requester to obtain access to information held by a private entity under s 50(1)*(a)* of PAIA is that the requester must prove that that information requested is necessary for the 'exercise or protection of any rights'.

[24] Section 53 of PAIA sets out the process to be followed in seeking documents from a private person. Section 53(1) states that a requester must be given access to any record of a private body if: (a) that record is required for the exercise or protection of any rights (b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and (c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part. In terms of s 53(3), a request contemplated in subsec (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made.

[25] Section 26(1) of the Companies Act provides as follows:

'26 Access to company records

(1) A person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the company:

(a) The company's Memorandum of Incorporation and any amendments to it, and any rules made by the company, as mentioned in section 24 (3) (a);

(b) the records in respect of the company's directors, as mentioned in section 24(3)(b);

(c) the reports to annual meetings, and annual financial statements, as mentioned in section 24 (3) *(c)*(i) and (ii);

(d) the notices and minutes of annual meetings, and communications mentioned in section 24 (3) *(d)* and (e), but the reference in section 24 (3) (d) to shareholders meetings, and the reference in section 24 (3) (e) to communications sent to holders of a company's securities, must be regarded

in the case of a non-profit company as referring to a meeting of members, or communication to members, respectively; and

(e) the securities register of a profit company, or the members register of a non-profit company that has members, as mentioned in section 24(4).'

[26] Section 26 of the Companies Act provides for access to company records specifically. Section 26(1) states that a person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the documents listed under that section. Those documents are listed in ss 24(3) and (4), respectively. Those are precisely the documents that the applicant seeks access to in this application.

[27] A beneficial interest, when used in relation to a company's securities, is defined as the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to – (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 45 of 2002.

[28] From the above, it is quite evident that both PAIA and the Companies Act give effect to the constitutional right of access to information contemplated in s 32 of the Constitution, in various ways.

[29] Section 26 of the Companies Act has been amended through the Companies Amendment Act 16 of 2024 (Amendment Act). Even though the Amendment Act has been passed into law, it was assented to on 27 December 2024. However, it will only come into operation on a date to be fixed by the President by proclamation in the Government Gazette. This has not happened. The effect is that only certain sections of the Amendment Act are already operational while others will come into effect in future. I will deal with this

aspect below.

Section 26 of the Companies Act

[30] Section 26(1), read with s 24 of the Companies Act, grants shareholders of a company the right to inspect the company's Memorandum of Incorporation (as well as any amendments, alterations or rules thereto), the directors' records, the securities register of the company, the annual financial statements of the company, any reports presented at an annual general meeting of the company, the notices and minutes of all shareholders meetings, including all resolutions adopted by the shareholders and any document that was made available by the company to the shareholders in relation to each such resolution, and copies of any written communications sent generally by the company to all shareholders.

[31] In terms of s 26(2) of the Companies Act, any other person (including a potential third-party purchaser) only has a right to inspect the company's securities register and the company's register of directors.

[32] Section 26(3) of the Companies Act expressly allows for a company's MOI to establish additional information rights (with respect to company information) for any person or categories of person as long as such additional rights do not negate or diminish the mandatory protection of any record as afforded by PAIA.

[33] Section 68 of PAIA stipulates that a request for company information may be refused by the company if the information requested includes: (a) trade secrets of the company; (b) financial, commercial, scientific or technical information, other than trade secrets, of the company, the disclosure of which would be likely to cause harm to the commercial or financial interests of the company; and (c) information, the disclosure of which could reasonably be expected to put the company at a disadvantage in contractual or other negotiations and/or prejudice the company in commercial competition.

[34] The applicant contends that they fall under s 26(1) in that, for the relevant period, he was the holder of the beneficial interest.

[35] In respect of the process to be followed in exercising the rights, s 26(4) allows a person exercising the rights set out in subsection (1) or (2), or contemplated in subsection

(3) to do so: (a) for a reasonable period during business hours; (b) by direct request made to a company in the prescribed manner, either in person or through an attorney or other personal representative designated in writing; or (c) in accordance with the PAIA. It is noteworthy that the request under PAIA is an alternative to the exercise of the rights under s 26(4)*(a)* and *(b)*.

[36] Section 26(5) goes further to provide expressly, and in unqualified terms, that where a company receives a request in the prescribed form, the company 'must within 14 business days comply with the request'.

[37] Section 26(7) makes clear that the right conferred by s 26(1) are in addition to, and not in substitution for, any rights a person may have to access information in terms of (a) s 32 of the Constitution; (b) PAIA; or (c) any other public regulation. There is, in addition, no requirement in s 26 of the Companies Act that a request for access to a company's securities register must only be exercised in accordance with PAIA.

[38] Section 26(9) makes it an offence to fail to accommodate any reasonable request for access, or to unreasonably refuse access, to any record that a person has a right to inspect or copy in terms of this section or s 31; or (b) to otherwise impede, interfere with, or attempt to frustrate, the reasonable exercise by any person of the rights set out in this section or s 31.

[39] Counsel for both parties referred to *Nova Property*, where the SCA considered whether s 26(2) of the Companies Act, which allows public access to a company's securities (shareholder) register – conferred an unqualified right of public access.

[40] The SCA held that s 26(2) conferred an unqualified right of access to a company's securities register, and the motive of the person seeking access was irrelevant.[9] Any other construction, such as that the right was subject to the requirements of PAIA or a discretionary override — would clash with the Act's stated objective of transparency,[10] the wording of s 26(2) and s 26(4),[11] and the right to freedom of expression.[12] Furthermore,

[9] *Nova Property Group* para 47-48.
[10] Ibid para 18.
[11] Ibid paras 20, 23– 32 and 35.
[12] Ibid para 37.

that unqualified access to companies' securities registers was essential for effective journalism and an informed citizenry,[13] and there was, in the absence of an express statutory limitation on this right, no basis for the court to limit it.[14]

[41] This is the applicable legislation whose provisions the applicant has to prove that he has met.

The motive behind the request

[42] The applicant stated that, during the relevant period, he was a director who oversaw all operations in the warehouse as he is an artisan, while the second respondent managed the day-to-day operations of the first respondent in respect of all financial and operational duties based on his qualifications as a T5 technician. This, according to the applicant, explains why he is not in possession of the documents that he seeks access to in this application. This is also because, on the applicant's version, he did not have insight into the financials daily or monthly, even though he was an active director at a time.

[43] The applicant argued that he suspects that, during the relevant period, there may have been financial misconduct committed by the second respondent in respect of the first respondent. Therefore, he seeks access to the company documents to establish if this is indeed the case. He also he seeks access to the relevant documents because subsequent to signing the sale of shares agreement with the third respondent in September 2023, he became aware of discrepancies, particularly of a financial nature, which he was unaware of at the time that he held a beneficial interest. He also suspects that the amount that he was paid in respect of the shares may have not been the true value of the 50/% shareholding that held when he was a shareholder in the first respondent. If any of these suspicions are true, it is no surprise why the respondents are opposed to him being granted access to the relevant documents.

[44] The criticism that was levelled by the respondents was that the applicant did not state that he sought the documents for the protection of rights.

[45] In light of what the SCA stated in *Clutchco* (which I discuss in more detail below), that

[13] Ibid para 38.
[14] Ibid para 42.

'required' does not mean necessary, but merely 'reasonably required', this contention must fail because the applicant specifically and expressly stated the following in paragraph 30 of the founding affidavit:

'The information requested is reasonably required to exercise the protection of my rights as a shareholder and director of the first respondent. The right I am attempting to protect in terms of the application is my right to share in the profits of the first respondent and to be reasonably compensated for my shares within the company.'

[46] The exact wording of what the applicant stated, is what s 32 of the Constitution protects, which is his right to access information that he requires for the exercise or protection of any rights. Therefore, this argument by the respondents ought to fail since the applicant satisfied the test set out in *Clutchco* for requesting the relevant documents.

[47] The respondent also criticises the applicant's request for access to the first respondent's information and documents that relate to the relevant period on the basis that this is in effect a fishing expedition as the applicant is not certain that he will institute legal proceedings or not and merely seeks access to information to consider his options. The respondents contend that this is impermissible. In this regard, they rely on the SCA authority in *Mahaeeane and Another v Anglogold Ashanti Limited* (*Anglogold*),[15] which I discuss in detail below.

[48] In *Nova Property,*[16] the SCA held that PAIA cannot be used to frustrate a person's rights to company information and records. The technical arguments that the respondents have raised in relation to the applicant's PAIA request for documents, which was over and above his request under s 26 of the Companies Act appears precisely to achieve this purpose.

[49] In *Nova Property*, the SCA held that when the media reports on matters, it must do so accurately, and the accuracy of the reporting depends on the ability to exercise its right to access records and information.[17] When the right to access information is hindered, the right to freedom of expression is restricted. The violation of the right to freedom of

[15] *Mahaeeane and Another v Anglogold Ashanti Limited* [2017] ZASCA 90; [2017] 3 All SA 458 (SCA); 2017 (6) SA 382 (SCA).
[16] *Nova Property* para 21–23.
[17] *Nova Property* para 37.

expression is not only a violation of the rights of the journalists involved but extends to those who rely on the media for information. The court, in *Nova Property*, held that the rights under s 26 of the Companies Act are additional to any rights to access information provided for in PAIA. PAIA is, therefore, an alternative method to access the share register of a company.

[50] In *Goosen-Joubert*, the high court considered the rights of an applicant who was not a member of the non-profit company (NPC) to such company's financial information. The court considered the fact that the respondent was an NPC with the object of empowering and supporting married women. Also, the applicant had invested considerable time and effort in the activities of the respondent and assisted it to raise funds.[18]

[51] In *Goosen-Joubert*, the applicant argued that the information and documents were required to protect or exercise her right to just administrative action, the promotion of public interest, and her right to equality before the law.[19] In her request, the applicant also indicated that she required the documents and information to lay a charge of theft. In dealing with the legal aspects of the application, the court had to determine whether she has met the requirements for access to the company documents that he sought. The court, under PAIA, granted the applicant access to all the company's general ledgers and other documentation used in the preparation of the company's financial statements.

Fiduciary duties of directors

[52] In terms of s 76(3) read with s 76(4) of the Companies Act, every director has a duty to participate in the management and affairs of a company and must do so by exercising the required duty of care, skill, and diligence, and by acting in the best interests of the company. A director is entitled, at common law, to receive all the records and information reasonably necessary to exercise an informed and independent judgment to enable them to participate meaningfully in the business and affairs of a company and to properly execute their duties.

[53] Some of the directors' fiduciary duties outlive the directors' presence in the company. This means that, to this day, the applicant could be held liable for any conduct that took

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[18] *Goosen-Joubert* para 57.
[19] Ibid para 45.

place during his tenure at the first respondent. This is how fiduciary duties work.

[54] The bench posed a question to counsel for both parties on what their respective attitudes would be if there was a query or even legal proceedings instituted against the first respondent for alleged misconduct or financial or other impropriety, by for example SARS, the Reserve Bank or maybe a supplier that they dealt with during the relevant period. If the applicant were to make the same request that he has made to the respondents on the basis that he needs the documents in question in order to respond to that query or defend himself in the legal proceedings and the first respondents maintained the same attitude that he has maintained in these proceedings, would the respondents then absolve the applicant from any wrongdoing because it is essentially prohibiting him from exercising his right to access to information required for the exercise or protection of any rights, as set out in set out in s 32 of the Constitution.

[55] There was no direct response from counsel for the respondents. This is instructive because it is highly unlikely that the second respondent would have absolved the applicant from liability in those scenarios. He would most likely have invoked the applicant's fiduciary duties during the relevant period and argued that to the extent that the applicant may have failed to exercise his fiduciary duties during the relevant period, then he should be held liable.

[56] The question then remains how else the applicant would have been expected to exercise or protect any of his rights as contemplated in s 32(1)*(b)* of the Constitution. This is the question that remains unanswered by the respondents.

[57] However, the respondents provided a hint to a response to this question. In response to the applicant's contention that he was not involved in the financial and day-to-day running of the respondent during the relevant period since his involvement was limited to managing the workshop, counsel for the respondents stated that the applicant cannot raise those arguments because as a co-director of the first respondent during the relevant period, he had fiduciary duties that he simply cannot wish away or denounce now that he is no longer part of the first respondent. This response demonstrates precisely what is wrong with the respondents denying the applicant a right of access to the documents that he requires because at the very least he needs to protect his right as director (and

shareholder) during the relevant period. This demonstrates why he ought to be granted access to the documents.

[58] The nature of fiduciary duties is such that some of them outlive the director's involvement in a company. Any party can hold that director liable after the event for any conduct that occurred while he was a director of the company. In light of that, it simply cannot follow that he ought to be refused documents in the hope that no one holds him liable for that. The protection of the right that the applicant seeks to exercise is to know that everything was done above board during the relevant period.

[59] What was also puzzling is that the applicant attached to his founding affidavit, the unsigned sale of shares agreement and required the signed version from the respondents. The respondents' response was not to simply attach it but instead they stated that he should be in possession of it. This is a non-useful response, especially for a party, who has taken time and effort to approach court to seek access to these documents.

[60] A related question is whether the resignation of the director of the company terminates his fiduciary duties. This question arose in *Big Catch Fishing Tackle Proprietary Limited and Others v Kemp and Others*,[20] where the court held that an executive director may not carry on business activities within the company's scope of business during such time as he/she is a director, but may change upon resignation, in the absence of a restraint of trade or the limitation on use of confidential information agreements, *et cetera*. In case of post-resignation, and in the absence of aforementioned agreements, a director does not commit a breach of fiduciary duties by starting a similar business or joining a competitor, however a breach could very well be committed if the company's confidential information is used or if such use violates the company's interest, which is worthy of protection. The latter finding by the court is the flip side of the argument presented by the applicant before this court.

No benefit from the *Turquand* rule

[61] The applicant cannot even assume that during the relevant period the first respondent conducted itself appropriately and complied with its guiding documents, including the memorandum of incorporation. The applicant is prohibited from deriving a benefit from the

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[20] *Big Catch Fishing Tackle Proprietary Limited and Others v Kemp and Others* 2019 ZAWCHC 20.

codification of the *Turquand* rule in s 20(7) of the Companies Act. This is because s 20(7) provides that a person dealing with a company in good faith, other than a director, prescribed officer or shareholder of the company, is entitled to presume that the company, in making any decision in the exercise of its powers, has complied with all of the formal and procedural requirements in terms of this Act, its MOI and any rules of the company unless, in the circumstances, the person knew or reasonably ought to have known of any failure by the company to comply with any such requirement.

[62] Because the applicant was a director and shareholder of the first respondent during the relevant time, he is excluded from deriving a benefit from this provision, which makes the need to obtain the relevant documents all the more necessary as he could never derive any benefit of the Turquand rule.

Right of access under s 26 of the Companies Act

[63] As the former director of the first respondent, if this court finds that he holds a beneficial interest for the relevant period in accordance with s 26(1), then it should follow that he will be entitled to the documents that he seeks from the respondents.

[64] Insofar as the applicant seeks access to the documents and information in his capacity as the shareholder, the SCA decision in *Clutchco* is instructive.[21] In that case a shareholder sought access to company's books of first accounting entry (such as cash books, ledgers, journals and invoice books), alleging impropriety in company's financial statements and asserting a right to establish the true financial position of the company in order to be able to value his shareholding for purposes of resale.

[65] The SCA, in *Clutchco*, held that the right of access to first entry book does not avail a shareholder where he asserts minor errors and that he needed more substantial grounds of why he needed the information. More importantly, the SCA held that there might exist special circumstances in which a court would, in terms of s 252 of the old Companies Act 61 of 1973, grant some form of access to company information to a member who complained of oppressive conduct by the company.[22] This case was decided under the old Companies Act but the reasoning relating to the need to make available company

[21] Op cit fn 7.
[22] Ibid para 14.

documents and records to a shareholder where there is suspicion of oppressive or improper conduct holds.

[66] In *Clutchco*, the SCA held that, in terms of s 50(1)*(b)* of PAIA, the 'requester' of access to the records of any private body had to assert that the information was 'required for the exercise or protection of (a) right'. In this context, 'required' meant not 'needed', but rather 'reasonably required' in the particular circumstances,[23] as long as it connoted a substantial advantage or an element of need.[24]

[67] The SCA in Clutchco held that under the old Companies Act, a member is entitled to receive copies of the company's annual financial statements (ss 286, 302, 309) and to obtain copies of the minutes of the company's general meetings (ss 204, 206). A shareholder is not entitled to sight of the minutes of directors' and managers' meetings maintained in terms of s 242. Nor, unless the articles of association otherwise provide, is he or she entitled to inspect the accounting records of first entry maintained by the company in terms of s 284, unless the company's articles of association (more particularly, article 24) provide otherwise or in special instances where a court orders. However, that party could invoke Part 3 of PAIA provided that the circumstances warrant such a course.[25] *Clutchco* went on to state different provisions under the old Companies Act that protect the interests of shareholders.[26] Under the new Companies Act, s 26(1) provides that anyone who holds or has a beneficial interest in the company has the right to inspect and copy the documents that are listed in that subsec and s 24(3) and (4) as I have mentioned above.

[68] Under the new Companies Act, s 26(1) provides that anyone who holds or has a beneficial interest in the company has the right to inspect and copy the documents that are listed in that subsection and s 24(3) and (4). Considering the definition of beneficial interest, the applicant holds a beneficial interest in relation to the first respondent's securities for the 19 years that he was a director and shareholder of the first respondent as he held, for that period, a right or entitlement, through ownership, agreement, relationship or otherwise to (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching

[23] *Clutchco* para 12 and 13.
[24] Ibid paras 11 and 13.
[25] Ibid para 14.
[26] Ibid para 15.

to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities. He therefore falls under s 26(1) and is entitled to the documents listed in s 26(1) read with s 24(3) and (4) of the Companies Act, which he has listed in his notice of motion.

[69] What the respondents have not informed the court is that there are some of the documents that the respondents are not in possession of. The respondents had this opportunity and they did not use it and, instead, relied on technical arguments. It appears as if they could not do so because these are crucial documents that speak to how the second respondent conducted the financial affairs of the first respondent, presumably to the applicant's lack of knowledge, during the relevant period.

[70] Section 19(4) of the Companies Act states that subject to subsec (5), a person must not be regarded as having received notice or knowledge of the contents of any document relating to a company merely because the document – (a) has been filed; or (b) is accessible for inspection at an office of the company. It is therefore no answer to the applicant's request for documents that he can obtain those documents from the CIPC. Section 19(4) provides that a party obtaining documents from the CIPC does not amount to a party as 'having received notice or knowledge of the contents of any document relating to a company'.

[71] In *Nova Property, albeit* in the context of interpreting s 26(2), the SCA discussed the workings of s 26. It held as follows:

'The second aspect of s 26(2) of the Companies Act that requires emphasis is the nature of the right conferred by it in the context of s 26 as a whole. Unlike its predecessor, s 113 of the old Companies Act, s 26(2) expressly confers a right of access in respect of the securities registers. Section 26(5) then goes further and provides expressly, and in unqualified terms, that where a company receives a request in the prescribed form, the company 'must within 14 business days comply with the request'. There is nothing in ss 26(2) and 26(5) which, in any way, qualifies this right. Nor is there any reference in these sections to the reasonableness of either the request or the response. The only sub-section which mentions reasonableness is s 26(9), which creates the criminal prohibition. It provides:

"(9) It is an offence for a company to — fail to accommodate any reasonable request for access, or to unreasonably refuse access, to any record that a person has a right to inspect or copy in terms of this section or section 31; or to otherwise impede, interfere with, or attempt to frustrate,

the reasonable exercise by any person of the rights set out in this section or section 31."
A reasonable request in my view would be one which is made in accordance with the provisions of s 26(4)(a) and (b) of the Companies Act.'[27]

[72] As was held in *Nova Property*, if Parliament had wanted to limit the s 26(2) right, it would have done so expressly. Instead, it enacted an unqualified right in s 26(2) read with s 26(4) and introduced a reasonableness qualification only in respect of the criminal offence created by s 26(9).[28] Even though this was in the context of section 26(2), it applies with equal force in respect of section 26(1), which also does not contain a reasonableness qualification.

[73] The SCA in *Nova Property* concluded that s 26(2) clearly confers an unqualified right on members of the public and the media to obtain access to share registers. This means that the 'motive' with which the person seeks access to the information concerned is irrelevant.[29] *Nova Property* further held that the motive for seeking documents (under s 26(2), which also applies to s 26(1) in light of the formulation of both provisions) is irrelevant. Therefore, the respondents' contention that the motive which the applicant has provided for seeking the relevant documents, i.e. to appoint a forensic auditor who will conduct an investigation and upon his or her findings, the applicant will decide whether or not to institute a damages claim against the respondent cannot be discounted. This is particularly the case because s 32(2) does not merely require a party that requires access to information merely to exercise a right but also to protect a right. This is precisely what the applicant intends to do. This is particularly because the information and documents that he seeks in this application relate to how the first respondent was managed financially by the second respondent and the value of his shareholding.

[74] In *Tiso Blackstar Group (Pty) Ltd v Steinhoff International Holdings N.V.* (*Tiso Blackstar*),[30] the court granted the applicants (media houses and journalists, not shareholders of the respondent, Steinhoff) access to a forensic report requisitioned by them in terms of the PAIA. The objective of the report was to document findings by the

[27] *Nova Group* para 26.
[28] Ibid para 27.
[29] Ibid para 28.
[30] *Tiso Blackstar Group (Pty) Ltd and Others v Steinhoff International Holdings N.V* [2022] ZAWCHC 265; 2023 (1) SA 283 (WCC).

audit firm PricewaterhouseCoopers International Limited (PwC) during its investigation into alleged accounting irregularities in Steinhoff's annual financial statements. This would suggest that the report could be viewed as management information to which, in principle, only directors are entitled to the extent that it is required to execute their legal duties.

[75] The court held that the onus rested on Steinhoff to justify the refusal of the report.[31] Steinhoff denied the applicants access to the forensic report and argued, in the first instance, that the report was not required for the applicants to exercise their right to freedom of expression, and secondly, that the report was legally privileged, because it was commissioned to obtain legal advice.[32]

[76] The court rejected Steinhoff's first argument on the basis that the applicant was unable to exercise its right to freedom of expression under s 16 of the Constitution because the information available in the public domain was incomplete. It held that Steinhoff had failed to prove that the refusal was justified on the grounds provided for in s 67.[33] The court also rejected Steinhoff's second argument on the basis that it had failed to prove on a factual basis that the report was protected by legal privilege.[34] This was based on the letter of engagement, which stated that the purpose of PwC's appointment was to investigate accounting irregularities in Steinhoff's financial statements, the court held that the report had been requested for purposes of the production of financial statements[35] and Steinhoff's failure to mention in its SENS announcement to the market that the report was requisitioned for purposes of actual or contemplated litigation or that the report had been requested by its attorneys.[36]

[77] Consequently, the court found in favour of the applicants and granted them access to the forensic report to enable access to correct information, which would allow them to report accurately on matters of public interest. The right of the media entails the right to press freedom, the right to receive information or ideas, and the constitutional right to freedom of expression. Even though no reliance was placed on the Companies Act to obtain access to the forensic report, the judgment and its effects raise pertinent questions

[31] Ibid para 41; see also s 67 of the PAIA.
[32] Ibid para 37 and 43.
[33] Ibid para 38-40.
[34] Ibid para 65-66 and 70.
[35] Ibid para 57 and 59.
[36] Ibid para 55 and 64.

about the rights of the media and other stakeholders to access information deemed to be in the public interest, *vis-à-vis* the rights of shareholders and members of the public to company records and information under the provisions of s 26(1) and 26(2), respectively, of the Companies Act.

[78] The respondent relied on *Unitas Hospital v Van Wyk & Another*[37] to contend that the applicant did not make an effort to substantiate the request made on form C, and no sound reason has been given for such requested documents. This was in support of the respondent's argument that the applicant failed to make out a case for access to information in terms of section 53 of the PAIA, as he had allegedly failed to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right. This is substance over form insofar as the applicant's PAIA request for information is concerned, for reasons advanced above.

[79] The respondents also relied on *Anglogold*,[38] where the applicants in that case requested a list of ten records in terms of s 50(1) of the PAIA on the basis that such information was required by their attorneys to advise on whether they have adequate grounds to seek a remedy against the respondent, ie, to claim damages. The SCA held that the underlying reasons given for why the records were required did not relate to the exercise of the right to claim damages, but to the evaluation of whether the appellants should do so or not. The reasons given, therefore, did not meet the test of the records being 'required to exercise or protect' the right relied upon. On this basis, the respondents submitted that the applicant has failed to discharge the onus in relation to the aforesaid requirements. The respondents rely on the strength of this judgment to contend that the applicant is not entitled to access to the required documents because he does not seek them to exercise his right to claim damages, but rather to evaluate whether to do so or not, which according to the respondents was rejected by the SCA in *Anglogold*.

[80] *Anglogold* is distinguishable in that in that case the request was exclusively in terms of s 50(1) of PAIA. In this application, the main basis for requesting information is s 26(1) of the Companies Act. The applicant was quite express that a request under PAIA was an

[37] *Unitas Hospital v Van Wyk and Another* [2006] ZASCA 34; 2006 (4) SA 436 (SCA); [2006] 4 All SA 231 (SCA).
[38] Op cit fn 16.

additional or alternative request for the sake of completeness.

[81] *Anglogold* is also distinguishable from this case in that in that case, the respondent's argument was that since the appellants' request was received after the commencement of the certification application, the operation of PAIA was excluded under s 7(1), which provides that PAIA does not operate where the record is requested after the commencement of proceedings and the production of or access to that record is provided for in any other law. This was a live issue, which does not arise in the present proceedings.

[82] Insofar as the purpose for which the appellants in *Anglogold* sought the documents in question, in that case it was found those reasons were not related to the exercise of the right to claim damages but to the evaluation of whether they should do so, which meant that they were not required to 'exercise or protect' the right relied on. This is because in that case, most of the facts were within the knowledge of the appellants or admitted by the respondent. The SCA concluded that since the appellants were clearly in a position to formulate their claim without the requested documents, the documents in question were not reasonably required for the exercise of the appellants' right to claim damages from the respondent.

[83] This is not the case in the present matter. The facts that the applicant needs to establish from accessing the relevant documents are not within his knowledge or admitted by the respondents. In fact, it is quite the opposite as the respondents are relying on technicalities to avoid giving him any of the relevant documents. Furthermore, the nature and kind of the documents that the applicant seeks are reasonably required to formulate his claim as he states that he suspects financial misappropriation in the hands of the second respondent and/or that the value he obtained from selling his shares to the third respondent may not have been properly quantified. Once he obtains these documents, only then would he know if indeed there is financial misappropriation that was done by the second respondent on the first respondent, its nature, the period within which it was conducted and the amounts in respect of which it was done as well as the correct valuation of his shares as at September 2023. He intends to uncover all this information through appointing a forensic auditor. Only upon receipt of the forensic auditor's report would he know how to formulate his claim and how much he should claim for in compensation. This is a clear demonstration of how the present case is distinguishable from *Anglogold*.

[84] To further demonstrate the distinguishability of the present case with *Anglogold*, in the latter case, the respondent was found to have provided all the records which contained most of the facts, which were within the knowledge of the appellants or admitted by the respondent. This is not the case in the present case. Some of the documents that the applicant requires are founding documents such as the MOI, reports presented at the annual general meetings of the first respondent; annual financial statements of the first respondent, accounting records of the first respondent, notice and minutes of all shareholder meetings, including all resolutions adopted by the shareholders and any document that was made available by the first respondent to the holders of the securities in relation to each resolution adopted; copies of all written communication sent generally by the first respondent to all holders of any class of the first respondent's securities; minutes of all meetings and resolutions of directors or directors' committees, or the audit committee of the first respondent etc. It cannot be argued that the applicant is in a position to formulate his claim against the respondents, if any, in the absence of these crucial documents. They are therefore reasonably required for the exercise of protection of his rights as contemplated in s 32 of the Constitution, read in the main with s 26 of the Companies Act and, in the alternative or additionally, with ss 50 and 51 of PAIA.

[85] It is no answer for the respondents to place the applicant under s 26(2) category and contend that he should have followed the process set out in that provision by making the request and paying the prescribed fee when it is clear that he is not in the category of the members of public who seek company registers for companies that they have never been involved in or held a beneficial interest. Doing so would go against the intention of the legislature when it made a distinction between the groups of people that fall under s 26(1) and those that fall under s 26(4).

Compliance with PAIA

[86] Section 50(1)*(a)* provides that a 'requester' must be given access to any 'record' of a private body if 'that record is required for the exercise or protection of any right'. Such right of access is far from untrammelled, as appears from the rest of Part 3. The expression 'required for the exercise or protection of any rights' is also to be found in item 23(2)(a) of Schedule 6 to the Constitution, being the transitional arrangements in relation to the right to information.

[87] In *Nova Property*, the SCA held that the use of the word 'or' in s 26(4)*(b)* (instead of the conjunction 'and') makes it clear that procedurally, PAIA is an alternative to requesting and obtaining access to a company's records in terms of s 26 of the Act.[39] This finding is consistent with the provisions of s 26(7) of the Companies Act, which makes clear that the right conferred by s 26(1) are in addition to, and not in substitution for, any rights a person may have to access information in terms of (a) s 32 of the Constitution; (b) PAIA; or (c) any other public regulation.

[88] A complaint raised by the respondents was that the requests made for access to information both on 21 February 2024 and on 14 June 2024, respectively, were directed to the attorneys of the first respondent and not to the first respondent directly. This in my view is placing substance over form. The essence of this provision is that the request for information must come to attention of the relevant representatives of the company so that they could provide the relevant information. Part of that reason is because s 26(5) provides that for the requests made in the prescribed manner, under subsec (4)*(b)* it must within 14 business days comply with the request by providing the opportunity to inspect or copy the register concerned to the person making such request. Because of this time limit among other factors, it is crucial that the relevant individual(s) within the company receive the request for information timeously so that they can furnish the requested information and documents to the requester timeously.

[89] It is common cause that both requests for information reached the respondents. On or about 14 March 2024, the respondents responded to the first request dated 21 February 2024. In its answering affidavit, the respondents indicated that there was no need to respond to the latter letter as they had already communicated their position in their letter in response, dated 14 March 2024. There could also be no valid criticism that the respective requests were not clear regarding the nature of the information that the applicant sought from the respondents because all the required documents are clearly listed in each of the requests.

[90] Therefore, to the extent that the applicant submitted a PAIA request to the respondents' attorneys, that is in addition to, and not in substitution for, any rights that the

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[39] *Nova Property* para 30.

applicant has to access information in terms of section 32 of the Constitution, section 26 of the Companies Act, PAIA; or any other public regulation.

[91] In *Goosen-Joubert*, where a party sought access to documents of the NPC, the court held that it is in the public interest to ensure that funds raised by and for the respondent are used for its stated purpose.[40] The right to access information fosters a culture of transparency and accountability in both public and private bodies.[41] The court emphasised that a body to which a request for access to records is made, must deal with the specific request even though the requested records or information may already be available to the applicant.[42] The fact that the information that the applicant requested was available on the respondent's website, attached to the founding papers of the application, or the fact that the applicant was invited to a roundtable discussion, is no defence to not formally dealing with a request for access to records in a proper manner.[43] A body has a duty to respond formally to a request for access to records or information as detailed in s 56 of the PAIA. In a bold and innovative judgment, the court granted the applicant access to the accounting records and bank statements of the respondent which she was not a part of, as she was only a contestant to the beauty pageant organised by the respondent.[44]

[92] This is a critical judgment in the context of a requester who did not hold a beneficial interest in the company in the strict conservative interpretation that the respondents contend for. But the time she had spent in the organisation qualified her to be granted this information.

[93] In *Goosen-Joubert*, the court stated that even if the applicant was a member of the public, and had a reason to believe that the respondent's funds were not being used in a manner that [they were] intended, she was entitled to invoke the provisions of PAIA.[45]

[94] This remark in *Goosen-Joubert* is significant. It demonstrates a very liberal interpretation, especially since the court referred to the remedy as an 'extraordinary remedy'. Granted, in *Goosen-Joubert*, the company in question was an NPC. This may

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[40] *Goosen-Joubert* para 69.
[41] Ibid.
[42] Ibid para 66.
[43] Ibid para 66 and 67.
[44] Ibid para 18 and 73.
[45] Ibid para 69.

have contributed to the court's adopted approach since members of the public do not have financial interests in the company, nor are they members of the media. The one explanation could be that in light of the company being an NPC, then its expenditure could be regarded as being in the public interest

[95] The applicant is even in the better position than the applicant in *Goosen-Joubert* since between 1999 and September 2023, he was a director and 50% shareholder of the first respondent. He is certainly not a member of the public, as contemplated in s 26(2). There is therefore no reason why he should be treated in the same way as people contemplated in s 26(2) of the Companies Act as contended by the first respondent. In addition to the above, this is why the applicant can simply not fall under s 26(2) category as contended by the respondents.

[96] The potential effect of *Tiso Blackstar* is that those who do not have a direct legal relationship with the company, may be entitled to a wider scope of company information and records relative to a person who holds a beneficial interest in the company's securities. This is highlighted in the judgment in *Goosen-Joubert* where the court granted the applicant, who was not a member of the media or a member of an NPC, access to accounting records and bank statements of the company.

[97] In *Afriforum v Emadlangeni Municipality*,[46] the full bench restated the purpose of PAIA, how it ought to be interpreted and discouraged the overly technical interpretation of PAIA. It held as follows:

'In my view, the court a quo overlooked the objects and purpose of PAIA, which among others, is to provide a simple and inexpensive mechanism of obtaining information held by public bodies. Also, what seems to have eluded the court a quo, is the injunction in s 2(1), which provides that when interpreting a provision of PAIA, every Court must prefer any reasonable interpretation of the provision that is consistent with the objects of this Act over any alternative interpretation that is inconsistent with those objects. In my view, the court a quo adopted too technical an approach to the application. That approach led it astray, and in the process, scrutinized the applicant's request for access to the records with an eye reserved for court pleadings. That is inconsistent with the objects of PAIA.'

[98] The respondents also raised a complaint under the principle of subsidiarity. The

[46] *Afriforum v Emadlangeni Municipality* [2016] ZAGPPHC 1222 para 38.

respondents' complaint is that the applicant cannot rely directly on the Constitution in an attempt to circumvent reliance on the legislation that deals directly with right of access to information.

[99] In *MEC for Education, KwaZulu-Natal, and Others v Pillay*,[47] the Constitutional Court held that a litigant cannot circumvent legislation enacted to give effect to a constitutional right by attempting to rely directly on the constitutional right. To do so would be to 'fail to recognise the important task conferred upon the legislature by the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights'. There is no merit to the respondents' complaint because the applicant has framed his case by making reference to s 32 of the Constitution in the context of the right to access information since the Constitution is the supreme law of the land.

[100] It is clear from the application that the documents and information that the applicant seeks is premised on s 26(1) of the Companies Act. His reliance on PAIA is in addition to, and not in substitution for, any rights that the applicant has to access information in terms of s 32 of the Constitution, PAIA; or any other public regulation. The respondents' complaint on this score ought to fail.

[101] It appears that our courts have clearly signalled a change in direction from the approach adopted in *Clutchco*, and that the provisions in s 26(1) and 26(2) of the Companies Act are virtually obsolete, especially from the perspective of the holder of a beneficial interest in a company under s 26(1). This is an important development in light of the recent amendments to s 26 of the Companies Act, which was signed to law on 27 December 2024, but this particular section is not yet in operation (while others came into effect on 27 December 2024) for reasons I discuss next.

Amendments to the Companies Act, including s 26

[102] The scope of company information which is accessible to external parties (i.e. non-shareholders and non-directors), such as third-party purchasers, in terms of s 26(2) of the Companies Act is very limited. The reason for this is that the Act seeks to prevent access to sensitive company information by persons who may not have a legitimate interest in such

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[47] *MEC for Education: Kwazulu-Natal and Others v Pillay* [2007] ZACC 21; 2007 (3) BCLR 287 (CC); 2007 (2) SA 106 (CC); (2007) 28 ILJ 133 (CC) 2008 (1) SA 474 (CC) para 40.

information.

[103] However, specific sections of the Companies Amendment Act 2024 and the entire Companies Amendment Act, and the entire Companies Second Amendment Act, 2024 (collectively, Companies Amendment Acts, 2024) came into effect on 27 December 2024. The Companies Amendment Acts of 2024 introduce several changes to the Companies Act of 2008.

[104] Several amendments in the Companies Amendment Acts of 2024 that have not come into effect require the manner and form of documents, fees, or other items to be prescribed or determinations to be published, including through amended Companies Regulations, to implement the relevant amendment. However, updates to the Companies Regulations have not yet been published.

[105] For purposes of this judgment, amendments to the Companies Act 2024 which are not yet in effect include s 26 of the Companies Act. The amendment to s 26 is to the effect that third parties have the right to access directly from a company, the company's Memorandum of Incorporation, rules, the record of directors contemplated in s 24(3)*(b)*, the annual financial statements (AFS) and the register of disclosure of beneficial interests (where this is required). This is in addition to the securities and directors' registers, to which they already have access under s 26(2).

[106] The amendment also states that third parties cannot have access to the AFS of private, personal liability and non-profit companies with a public interest score below a certain threshold (less than 100 for internally prepared AFS and less than 350 for independently prepared AFS).

[107] These amendments are significant and they demonstrate the direction that the legislators are taking by granting access to third parties some of the documents listed in s 26(1) read with ss 24(3) and (4) of the Companies Act. It is therefore untenable to refuse the applicant access to the relevant document when soon people who have never held a beneficial interest in the company and who were restricted to the company's securities register under s 26(2) will now have access directly from a company, to the company's Memorandum of Incorporation, rules, the record of directors contemplated in s 24(3)*(b)*,

the annual financial statements (AFS) and the register of disclosure of beneficial interests (where this is required). In any event, this is in addition to the finding that I made above that the applicant has or holds a beneficial interest in the first period for the relevant period of 19 years that he was a director and shareholder of the first respondent.

[108] There is therefore no basis for the respondents to contend that for the relevant period the applicant does not hold a beneficial interest. It is a right that attached to him for the relevant period. This is particularly the case in light of the discussion above that he is not absolved of any conduct during the relevant period. Therefore, an attempt to place him in the category of s 26(2) is without substance as that section applies only to this parties, such as shareholders who want to value the shares of the company or the media that seeks to report about the activities of the company etc. The applicant's beneficial interest for the relevant can simply not be taken away through technical arguments that seek to waive or denounce his beneficial interest for the relevant period.

[109] I therefore make the following order:

1 The first, second and third respondents are directed to make the following documents available to the applicant, within fourteen (14) days from date of this order:

1.1 The first respondent's memorandum of incorporation and any amendments to it;

1.2 A record of the directors of the first respondent, including details of any person who has served as a director of the first respondent;

1.3 Copies of all reports presented at the annual general meetings of the first respondent;

1.4 Annual financial statements of the first respondent, as contemplated in the Companies Act, 71 of 2008;

1.5 Accounting records of the first respondent as contemplated in the Companies Act;

1.6 Notice and minutes of all shareholder meetings, including all resolutions adopted by the shareholders and any document that was made available by the first respondent to the holders of the securities in relation to each resolution adopted;

1.7 Copies of all written communication sent generally by the first respondent to all holders of any class of the first respondent's securities;

1.8 Minutes of all meetings and resolutions of directors or directors' committees, or the audit committee of the first respondent; and

1.9 The security register of the first respondent.

2 The abovementioned documents should be in relation to a period of 19 years from 1995 when the applicant became a director and shareholder of the first respondent (together with the second respondent) until when he sold his shares to the third respondent on 28 September 2023;

3 The first, second and third respondents are directed to pay the costs of the application, including the cost of counsel on scale B.

[redacted]

B LEKOKOTLA

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant:	A van der Merwe
Instructed by:	Leahy Attorneys Inc, Pretoria
	c/o McIntyre van der Post Attorneys, Bloemfontein
For the respondent:	R van der Merwe
Instructed by:	De Beer & Classen Attorneys,
	c/o Phatshoane Henney Inc Attorneys, Bloemfontein.