



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-209681

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
<u>20/11/2025</u>	
DATE	SIGNATURE

In the matter between:

NTSHAUPA MOHALE NCHAUPA

Applicant

and

KYALAMI SHISANYAMA (PTY) LIMITED

First Respondent

TSHEPO EVANS SEFOMOLO

Second Respondent

THOMAS CHAUKE

Third Respondent

GRANITE NETWORK (PTY) LIMITED

Fourth Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

- [1] This is an urgent application brought by the applicant, a 40% shareholder and former director of the first respondent, seeking to restrain the registration of the transfer of his shares and to obtain declaratory relief confirming his continued ownership thereof.
- [2] The application arises from a contested sale of the company to the fourth respondent, in which the applicant's shares were purportedly included despite his express withdrawal of consent before completion of the transaction.

Background

- [3] On 10 July 2025, the board of directors of the first respondent resolved to sell the company as a going concern for R12 million. The applicant initially sought to acquire the remaining 60% shareholding, but failed to raise the funds within the agreed timeframe.
- [4] The applicant mandated the third respondent to sell his 40% shareholding. A purchaser, the fourth respondent, was identified. On 16 July 2025, a sale agreement was concluded. The third respondent advanced R4.8 million to the purchaser. On 30 July 2025, the applicant received R2,225,226.27 net of deductions, and accepted the payment.
- [5] The applicant later discovered that his name had been removed from the CIPC registry and that the sale agreement had been concluded without full disclosure. Despite repeated requests, the applicant was not furnished with the sale agreement and proof of payment of the purchase price.

- [6] On 2 October 2025, a meeting was held where the applicant was informed that the purchaser had not paid the outstanding R7.4 million. The applicant withdrew his consent to the sale of his shares, which was accepted by the co-directors, the second and third respondents.
- [7] On 3 October 2025, the applicant's attorney confirmed the withdrawal and restoration of the applicant's shareholding in writing. On 8 October 2025, the purchaser paid the outstanding balance. Thereafter, the co-directors' attorney advised that the applicant's shares had been sold. The applicant was further advised that if he wished to purchase his shares back, he should contact the 4th respondent.

Issues for Determination

- [8] The issues for determination are:
- 8.1 Whether the applicant validly withdrew his mandate and consent to the sale prior to completion.
 - 8.2 Whether the respondents acted in breach of fiduciary and statutory duties.
 - 8.3 Whether the applicant is entitled to the urgent interdictory and declaratory relief sought.
 - 8.4 Whether the applicant's failure to tender repayment of the amount received precludes the relief sought.

Legal Framework

- [9] A mandate may be revoked at any time before performance, unless it is irrevocable or coupled with an interest. The principal is entitled to withdraw the mandate before completion, particularly where the sale is conditional upon full payment of the purchase price.¹
- [10] The mandate in this case was not irrevocable, nor was it coupled with an interest. It was a conventional agency arrangement, terminable at will. The applicant's withdrawal on 2 October 2025 was lawful and effective.
- [11] Directors owe fiduciary duties to act in good faith and in the best interests of the company and its shareholders. These duties include the obligation to avoid conflicts of interest and to disclose material information.² A director who acts as mandatary for a fellow shareholder must exercise the utmost good faith and avoid self-dealing.³
- [12] The removal of a shareholder from the CIPC registry without lawful basis constitutes a violation of corporate governance and may be interdicted.⁴
- [13] Urgent relief is justified where the applicant demonstrates a prima facie right, irreparable harm, and absence of alternative remedies.⁵

¹ *Blower v Van Noorden* 1909 TS 890 at 897; *Reid v Mitchell* 1925 AD 237 at 243.

² *Robinson v Randfontein Estates Gold Mining Co Ltd* 1921 AD 168 at 177.

³ *Phillips v Fieldstone Africa (Pty) Ltd* 2004 (3) SA 465 (SCA) at para 31.

⁴ *Pretoria City Council v Modimola* 1966 (3) SA 250 (T) at 254.

⁵ *Luna Meubel Vervaardigers v Makin* 1977 (4) SA 135 (W) at 137F–G.

Analysis

(a) *Validity of Withdrawal*

[14] The applicant's withdrawal of consent on 2 October 2025 was unequivocal and accepted by the co-directors. The sale was not yet complete, as the balance of the purchase price had not been paid, and the shares had not been transferred.

[15] The subsequent payment on 8 October 2025 did not revive the mandate, nor did it override the applicant's withdrawal. The respondents' acceptance of the withdrawal estops them from asserting otherwise.⁶

(b) *Breach of Fiduciary Duty*

[16] The third respondent's financial involvement with the purchaser, undisclosed to the applicant, constitutes a material conflict of interest. As a director and mandatary, he was under a duty to act with utmost good faith and to disclose all facts that might affect the applicant's decision.⁷

[17] The failure to disclose the advancement of R4.8 million to the purchaser undermines the integrity of the transaction and vitiates the mandate. The applicant was entitled to full disclosure before consenting to the sale.

(c) *Restitution Argument*

⁶ *Du Plessis v Pienaar NO and Others* 2003 (1) SA 671 (SCA) at para 20.

⁷ *Howard v Herrigel* 1991 (2) SA 660 (A) at 678E–F.

- [18] The respondents argue that the applicant is not entitled to relief as he has not tendered repayment of the amount he received. This argument is misplaced.
- [19] The applicant's claim is not for rescission of a completed sale, but for enforcement of his withdrawal of consent prior to completion. The principle of *restitutio in integrum* applies where a party seeks to undo a completed transaction. In this case, the transaction was not perfected at the time of withdrawal.⁸
- [20] Even if restitution were required, the respondents have not tendered to restore the applicant's shareholding or account for the full purchase price. Equity does not permit them to retain both the shares and the proceeds while denying the applicant his rights.
- [21] In any event, the applicant's attorney's letter of 3 October 2025 implicitly reserved the applicant's rights, including the right to account for any amounts received. The issue of repayment, if any, is ancillary and does not preclude the declaratory or interdictory relief.

(d) *Public Policy Consideration*

- [22] To permit the registration of transfer in these circumstances would undermine the integrity of shareholder rights and corporate governance. In my view, this court must intervene to prevent the erosion of lawful ownership through procedural irregularity and undisclosed dealings.⁹

⁸ *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 (5) SA 193 (SCA) at para 17; *Brooklyn House Furnishers (Pty) Ltd v Knoetze and Sons* 1970 (3) SA 264 (A) at 270H–271A.

⁹ *Gihwala and Others v Grancy Property Ltd and Others* 2017 (2) SA 337 (SCA) at paras 134–136.

Order

[23] In the premises, the following order is made:

1. It is declared that the matter is heard on urgency as contemplated in Rule 6(12) and that the rules relating to form, service and time periods are dispensed with.
2. The second to fourth respondents are interdicted and restrained from registering or causing to be registered the transfer of the applicant's 40% shareholding in the first respondent.
3. It is declared that the applicant remains the lawful owner of 40% shares in the first respondent held in terms of his share certificate.
4. The third respondent's mandate to sell the applicant's shares is declared have been lawfully withdrawn on 2 and 3 October 2025.
5. The second, third and fourth respondents are directed to restore the applicant's name to the CIPC registry as a 40% shareholder of the first respondent within 10 days of this order.
6. The second and third respondents are ordered to pay the costs of this application jointly and severally, the one paying the others to be absolved.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA.

Date of hearing: 13 November 2025

Date of judgment: 20 November 2025

APPEARANCES

For the Applicant

Adv K. Bokaba

Instructed by

Thobakgale Attorneys Incorporated

For the Respondents

Adv MJS Kock

Instructed by

Mothle Jooma Sabdia Inc