

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2024 - 050337

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES

A handwritten signature in black ink is visible, with a large black rectangular redaction box covering the lower portion of the signature.

DATE:28-11-25

SIGNATURE OF JUDGES:

In the matter between:

WO GRAHAM N.O.

First Applicant

A GRAHAM N.O.

Second Applicant

HA DU TOIT N.O.

Third Applicant

[in their capacities as the trustees for the time
being of the Rodzina Carbonile Trust]

and

JC REYNEKE

First Respondent

GAMAN 50 (PTY) LTD

Second Respondent

ELEGANT ELM TRADING (PTY) LTD

Third Respondent

RW WINCKLER

Fourth Respondent

L CRONJE

Fifth Respondent

This Judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be on this 28 day of November 2025

JUDGMENT

T. STRYDOM AJ:

Introduction

- [1] This matter concerns disputes regarding the possession of shares in a company called Elegant Elm Trading (Pty) Ltd (EET).
- [2] The applicants' case is based on spoliation and seeks the restoration, *ante omnia*, of the shares held in its name as per EET's share register and an issued share certificate number 4, from the respondents.
- [3] For purposes of convenience, I refer to the first and third respondents jointly as "the Reyneke respondents" and the second, fourth, and fifth respondents jointly as "the Gaman respondents".

The parties:

- [4] Applicants are trustees of the Namibian trust, named Rodzina Carbonile Trust. For purposes of this application, reference is made to Rodzina Carbonile Trust as “the trust”.
- [5] The first respondent is Jacobus Cornelius Reyneke, the sole director of EET. For purposes of this application, he is referred to as “Reyneke”.
- [6] The second respondent is Gaman 50 (Pty) Ltd, which only became involved with EET during approximately March 2024. For purposes of this application, the second respondent shall be referred to as “Gaman”.
- [7] EET is the third respondent, the company in respect of which the issues relating to shareholding are in dispute.
- [8] The fourth and fifth respondents are parties who became involved with EET in approximately March 2024 and were appointed as directors on 20 March 2024. For purposes of this application, they are referred to as “Winckler” and “Cronje”, respectively.

Issues for determination

- [9] The parties are *ad idem* that a company’s share register evidences its shareholding.
- [10] The main questions flowing from this are:
 - a. Who were the shareholders reflected in EET’s share register and the issued share certificates for the period 6 July 2020 to 8 March 2024 (the relevant period), before the issuance of the “*rectified*” share register? If the trust was the sole shareholder during the relevant

period, it follows that it was in possession of the shares and the bundle of rights attached thereto.

- b. If the trust was the sole shareholder during the relevant period, whether the actions of Reyneke, Winckler and Gaman, by causing the “*rectification*” of the existing share register and share certificates by substituting them with replacement ones, amounted to spoliation, susceptible to a claim based on the *mandament van spolie*.
- c. Whether a spoliation claim can be effective in circumstances where the sole shareholding in EET, being 100% of the issued shares in EET, has since been replaced by 1000 issued shares, 100 in the name of Mr Reyneke and 900 in the name of Gaman.

Factual background

- [11] The first applicant was desirous of acquiring a South African shelf company, of which the trust would be the sole shareholder, and requested Mr.Senekal, of the attorney firm Senekal Simmonds Inc., to assist, during May 2020.
- [12] The shelf company was to be a holding company of a Namibian company, which was to hold certain immovable properties in a property development/estate situated in Windhoek, Namibia, known as Am Weinberg.
- [13] Senekal instructed Ms. Reynders (an employee of Wehmeyer and Associates, Chartered Accountants) to assist in rendering company-related services in acquiring a shelf company and raised the question of the appointment of a suitable director for such a shelf company and the issuance of share certificates for the shelf company.
- [14] Reynders acquired the shelf company, EET, at a cost of R4,000.00.
- [15] In an email sent by Senekal to the first applicant, dated 18 May 2020, he recorded:

“Archie is dit reg so? Dit is die maatskappy wat die eenheid in Am Weinberg gaan koop en die bunker sal sy enigste aandeelhouer wees. Ek dink nog aan ‘n direkteur”

- [16] The reference to “*die bunker*” is a reference to the trust.

- [17] The first respondent, having instructed Senekal to obtain the shelf company, paid the costs regarding the same.

- [18] In relation to these issues, Reyneke’s version was that EET was a shelf company that was to be acquired on his instructions. He disputed that the trust engaged the services of the attorney, Senekal, to act on behalf of the trust. According to him, Senekal was his attorney, secured by him to establish EET. Reyneke’s version would be dealt with below.

- [19] It is common cause that Reyneke was nominated to become the first shareholder and director of EET, and that various corporate activities occurred on 6 July 2020. In particular:
 - a. Reyneke signed a document, *inter alia*, consenting to his appointment as director of EET.

 - b. He was issued with 1 ordinary no-par-value share in EET under certificate number 2.

 - c. In his capacity as sole director of EET, he signed and adopted a resolution for the allotment of 99 ordinarily no-par-value shares to himself under certificate number 3.

 - d. This resolution is confirmed by Reynders in her affidavit, in support of the trust’s application.

- [20] Reyneke, as the sole director of EET, thereafter signed and adopted a resolution on 6 July 2020, resolving to transfer the total of 100 ordinary no-par-value shares held by him under certificates numbered 2 and 3, respectively, to the trust.

- [21] This resolution is confirmed by Reynders in her affidavit, in support of the trust's application.
- [22] It is common cause that Reyneke then signed two separate security transfer forms, indicating the transfer of the 1 share, held under certificate number 2, and 99 shares, held under certificate number 3, to the trust. Share certificate number 4 was issued to the trust, and certificate numbers 2 and 3 were cancelled, which evidenced the trust as the beneficial owner of 100 ordinary shares in EET.
- [23] The two separate security transfer forms and the share certificate number 4 are confirmed by Reynders in her affidavit in support of the trust's application.
- [24] On 20 July 2020, all the documents pertaining to the appointment of Reyneke as director, the transfer of shares from a shelf company holder to Reyneke, the initial share certificates issued to Reyneke, as well as the subsequent transfer documents to the trust and share certificate in the name of the trust were sent by Senekal to Reynders. All such documents were duly signed by Reyneke.
- [25] According to Reyneke, a few months after the "*conclusion of the proceedings*", van Straaten (the first applicant's assistant) contacted him and requested the originals of share certificate number 4, and the CM 42 documents. He stated further that he initially signed these documents on his iPad device but acceded to the request and handed the original signed documents to van Straaten. The contents of the documents were the same as those earlier signed by Reyneke.
- [26] According to Reyneke, van Straaten requested the documents to be able to exercise the "*pledge*". However, the allegations regarding the "*pledge*" are vehemently disputed by the trust, which dispute is confirmed by an affidavit by van Straaten. The "*pledge*" will be dealt with below.
- [27] These transactions were borne out by the entries made and captured by Reynders in the electronic share register of EET.

- [28] Reyneke's response to the electronic share register maintained by Reynders is that it was "*dishonestly manipulated*" by Reynders, and that she never had a mandate to do so. These allegations will be dealt with below.

The Companies Act, 71 of 2008 (The Act)

- [29] Section 50 of the Act regulates the securities register and numbering. It provides that a company must maintain a securities register, indicating the authorized securities, the number of securities issued, the name of the person, the address of the person, and the number of securities held.
- [30] Under section 50(4) of the Act, a securities register maintained in accordance with the Act is sufficient proof of the facts recorded in it, in the absence of evidence to the contrary. This means that the register is *prima facie* proof, which, in the absence of evidence to the contrary.
- [31] In case Reynolds updated the security register on or before 1 September 2020 (the first available printed version bears that date), which occurred after Reyneke signed the two securities transfer forms, evidencing transfer of 100 shares to the trust.
- [32] In the block in the security transfer forms, for the signature of the transferor, Reyneke, it is specifically stated that:
- "I/We the undersigned hereby transfer the above securities from the name(s) aforesaid to the person(s) below or to the several persons named in part B of the Broker Transfer Forms (CM41) relating to the above security."*
- [33] Reyneke also signed a share certificate, of 6 July 2020, certifying that the trust is "*the registered proprietor*" of the fully paid-up shares, being 100 shares as per certificate number 4.
- [34] In terms of section 51(4) of the Act, a certificate evidencing any certificated securities of the company serves as proof that the person named therein is

the holder of those securities, in the absence of evidence to the contrary. If no evidence to the contrary is produced, the certificate becomes conclusive proof of ownership.

- [35] Put differently, it means that a share certificate constitutes a *prima facie* proof that the named securities holder owns the securities, in the absence of evidence to the contrary. If there is no evidence to rebut that position, it becomes conclusive proof.
- [36] Reyneke also signed a resolution in his capacity as director of EET, on 6 July 2020, which reads as follows:

"IT WAS RESOLVED THAT

The following shares are herewith transferred

<i>Transferor</i>	<i>Transferee</i>	<i>Qty</i>
<i>Jacobus Cornelius Reyneke</i>	<i>RODZINA CARBONILE TRUST</i>	<i>100</i>

Confirmation of shareholding after the transfer

<i>Shareholder</i>	<i>Quantity Shares</i>
<i>RODZINA CARBONILE TRUST</i>	<i>100</i>

Signed a correct record

(SIGNATURE Mr Reyneke)

JACOBUS CORNELIUS REYNEKE"

- [37] Despite all the documentation having been signed by Reyneke, his signature not being in dispute, Reyneke alleges that the shares in issue were never transferred to the trust.
- [38] Insofar as he alleges that the above-mentioned documentation does not correctly reflect the transfer of the securities to the trust, the documentation constitutes *prima facie* evidence of the transfer, and the question is whether Reyneke has produced evidence to the contrary.

"Whether the electronic share register of EET was dishonestly manipulated by Reynders, as alleged by Reyneke?"

- [39] On 15 September 2020, Reyneke sent an email to Mr Basch, a chartered accountant, regarding his appointment as the new auditor. In that email, he stated the following:

"Please see the FAS of Elegant Elm Trading attached.

The idea is to move this new Shelf Company to you.

It will hold some of the companies in Namibia that will be purchasing some of Archie's properties in Namibia.

Can you please complete the FAS part for you as the auditor then I will sign so that they can submit, and then you can take over from there.

I will also send you all the company docs and we could also arrange a quick con call with Archie to discuss the shareholding and workings etc. The shares was initially in my name and then moved to Rodzina Carbonile Trust. (this last part remains under wraps for now to the outside world where possible)

[Emphasis added].

- [40] The said letter was copied to the First Applicant.
- [41] In a follow-up email, dated 15 September 2020, Reyneke sent an email to Basch, enclosing detailed documentation. Included as part of such documentation, the CM 42 documents and issued share certificates confirming that the trust was the sole shareholder of EET.
- [42] Reyneke does not dispute the e-mails dated 15 September 2022 sent to Basch.
- [43] Reyneke responded that the aforesaid was simply an explanation provided to Basch as to the existence of the share certificate in the name of the trust. He explained further that this certificate was issued to acknowledge "a pledge". However, no such explanation or reference to "a pledge" is made in the e-mail communications.

- [44] On 24 May 2022, Reynolds responded by way of an email to an oral request from Mr. Vilonel, employed by Senekal Simmonds Inc. The documentation referred to in the next paragraph was provided by her to Vilonel.
- [45] On 24 May 2022, Vilonel forwarded the documentation to the first applicant and his assistant, van Straaten. Annexed to the email were the following documents:
- a. Printout of a share register, in all respects the same as the previous version printed on 1 September 2020, but this printed version showed the date of 24 May 2022, which correlates with the date on which the request was responded to.
 - b. Printouts of an unsigned share certificate dated 6 July 2020 and two unsigned security transfer forms, and a company resolution.
- [46] On 23 October 2023, Reyneke addressed a letter to Reynolds, referring to documents *"received from her"*, and stating that *"the share register requires correction to accurately reflect the ownership structure."* According to the letter, the share register of EET should only include him as the sole shareholder, and the share certificate issued for the trust was a *"security arrangement in the event of any unforeseen circumstances affecting him"*. According to Reyneke, *"the transfer of shares agreement should not have been recorded in the share register unless a trigger event has happened."* Immediate attention of Reynolds was required for the *"rectification"* of the share register accordingly.
- [47] The letter confirmed that the documents received by Reyneke included a share register, indicating the trust as the sole shareholder, and Reynolds was requested to *"rectify"* the share register. Her authority to do so was not questioned.

- [48] Despite this request, there is no evidence of any action being taken, let alone seeking the rectification of the share register, by Reyneke for the period 23 October 2023 until 8 March 2024.
- [49] Accordingly, for the relevant period of approximately four years, between 6 July 2020 and 8 March 2024, the position relating to the shareholding by the trust, as sole shareholder of EET, remained unaltered as depicted in the share register of EET.
- [50] On 8 March 2024, Reyneke addressed a letter to Reynolds terminating her mandate as the appointed company secretarial/public officer, with immediate effect.
- [51] The termination of Reynolds' mandate, *per se*, indicated an acknowledgment of the previous existence of her mandate.
- [52] Already at that stage, there was communication and cooperation between Reyneke and Winckler, a director of Garman, who was sent by Reyneke to collect the share register and company documentation from Reynolds. Winckler was to pay all outstanding fees owing to Reynolds' auditors' firm.
- [53] On 8 March 2024, Winckler attended the offices of Reynolds and was provided with copies of the documents, inclusive of the share register of EET, maintained by her.
- [54] On 27 March 2024, the trust, as the 100% shareholder in EET, delivered a letter in terms of section 61 (3) of the Act, demanding a shareholders' meeting to be convened.
- [55] On 3 April 2024, Reyneke addressed a letter to the trust, denying that the trust is the sole shareholder of EET, stating that the security register of EET does not reflect the trust as a shareholder. No mention was made about the register having been maintained by Reynolds, or any "*rectification*" thereof.
- [56] During April 2024, the trust launched an application in terms of section 61 (12) of the Act, requesting the court to order that a shareholders meeting be held.

The Trust was blissfully unaware that there was tampering with its shareholding in EET.

[57] In the answering affidavit to the section 61(12) application, dated 30 April 2024, deposed to by Reyneke, the following information appeared for the first time:

- a. On or about 8 March 2024, Reynolds was removed as EET's secretary, on which date Winckler attended the office of Ms Reynolds and took possession of all the company records of EET, including the records reflecting the trust as the 100% shareholder of EET.
- b. On 13 March 2024, EET concluded a share subscription agreement with Garman, represented by Winckler.
- c. On 20 March 2024, Garman was issued with the 900 no-par-value shares in EET, being 90% of the issued share capital.
- d. Share certificate number 4, the same certificate number which was previously issued to the trust for 100% shares, was now cancelled and issued to Garman under certificate number 4, now for 900 shares.
- e. The previous share certificate number 4, which was held by the trust, was simply deleted from existence.
- f. The previous share certificate numbers 2 and 3, which were previously replaced by share certificate number 4 issued to the trust, were now revived (although the previous numbers of shares, per certificate, inverted) in the name of Reyneke.
- g. Reyneke now caused himself to be reflected as the holder of the remaining 100 shares, 10% of the total shares issued of 1000.
- h. On 10 April 2024, Winkler and Cronje were appointed as additional directors of EET, now nominated by Garman.

- [58] The existing share register of EET, was unilaterally rectified by Reyneke, with the cooperation of Winckler and Garman, resulting in the same reflecting Garman holding 900 shares under share certificate number 4, and Reyneke holding 100 shares under share certificates 2 and 3 in EET. This was done without even communicating with the trust, in a clandestine manner behind the trust's back.
- [59] The trust share certificate number 4 was deleted from existence and substituted with the new share certificate number 4 in the name of Garman. Share certificates number 2 and 3 were revived (although the previous numbers of shares, per certificate, inverted) in the name of Reyneke.
- [60] On the respondents' version, 900 shares were issued to Garman following his payment of the amount of R500,000.00, on 13 March 2024, to EET in terms of the subscription agreement. The money was paid into Reyneke's attorney's account. Reyneke's case is that this was consequent upon a dire need of EET for immediate cash for legal fees and that the second respondent, Garman, was the only short-term investor who was willing to invest the amount of R500,000.00.
- [61] It is noted that at the time of the entering of the subscription agreement with Garman, for purpose of financing EET's legal fees, there was no litigation or threat thereof, as the section 61(3) of the Act demands only came thereafter.
- [62] The suggestion by the Gaman respondents that R 500,000.00 was a sufficient value for the acquisition of 900 shares, in circumstances where the value of the assets held by the Namibian company, of which EET held all shares, equated to tens of millions of Namibian dollars, highlights the extent of the unlawful actions.
- [63] Mr Reyneke , Winckler and Garman, by their unlawful actions, foiled the trust's ability to execute and proceed with its rights as a shareholder, to convene the meeting which it called for on 27 March 2024, under section 61(3) of the Act, and/or to get relief in terms of section 61(12) of the Act.

- [64] Having been surprised by the aforesaid, it resulted in the trust not proceeding with the application in terms of section 61(12) of the Act, as it obviously could not call for a meeting in the light of the dispute created by “*the rectified*” share register.
- [65] Accordingly, the trust brought an urgent application, on 21 May 2024, seeking relief in terms of part A of the application that the share certificate be corrected forthwith by EET, thus restoring the *status quo ante*.
- [66] The matter was found not to be urgent, and thus the present applications served before this court on the merits.
- [67] Reyneke's case is that share certificate number 4, which was issued in the name of the trust in respect of 100 shares, during 2020, was based on an agreement *in principle*, between him and the trust. He contends that the share certificate which was issued in favour of the trust, would only serve as security to the trust. The security is also referred to intermittently as “*a pledge*”.
- [68] The version presented by Reyneke, in his letter dated 23 October 2023 addressed to Reynolds, was that only he was to be included in the share register, as the share certificate number 4 issued to the trust is “*a security arrangement*” in the event of unforeseen circumstances affecting him. The transfer of shares agreement should not have been recorded in the share register unless a trigger event happened.
- [69] It is noted that Reyneke's request for “*the rectification*” of the share register was not addressed to the trust, but only to Reynolds, who was expected to make the rectification without the involvement of the trust.

Conclusions with reference to the share register

[70] I find Reyneke's explanations relating to the non-existence of the share register, informing that the trust was the sole shareholder during the relevant period, unconvincing, untenable, and palpably implausible.¹

[71] In this respect, I have no qualm in applying the robust approach in rejecting the version of Reyneke, contrary to the facts dealt with above. It follows that:

- a. The statements made by Mr Reyneke, that he was the one that required the shelf company, instructed the attorneys and/or Reynolds to do the necessary, is contrary to the content of the correspondence, which clearly shows that it was the first applicant who wanted to establish the trust as a "bunker", who dealt with Senekal regarding same and who paid the initial account of Reynolds for a shelf company.
- b. Reyneke, in support of his contentions, referred to statements reflecting invoices issued to EET, annexed to his answering affidavit. However, a reading of these statements shows that they relate to secretarial work done by Reynolds during the period 1 September 2020 to 31 October 2020, after the shelf company had already been established, for which EET would be liable.
- c. It cannot be disputed that on 6 July 2020, several corporate actions were taken, which included a resolution, the signing of transfer forms, the issuance of share certificates, all signed by no other person than Reyneke.
- d. The content and meaning of the documents cannot be ignored, especially by the person who confirmed it by attaching his own signature. All such actions were taken as part of a clear intention to transfer the shareholding. Nothing in the documents indicates a pledge or security.

¹ See *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 SCA at para [26]; *National Scrap Metal v Murray and Roberts* [2012] ZASCA (29 March 2012) para [21].

- e. Reyneke's attempt to discredit Reynolds, who is merely an employee of Wehmeyer and Associates, doing secretarial and administrative functions for companies, is rejected. She has no personal interest in the trust or EET. The suggestion that the trust persuaded her to "*fabricate*" evidence, as part of "*dishonest tactics*", and that she unlawfully "*manipulated*" the electronic copy of the share ledger, is not borne out by any of the facts, and is unsubstantiated, unwarranted, and unnecessary. The traverse is rather true, as she correctly reflected the shareholding of EET, in the name of the trust, after the transfer forms and share certificates that were issued and signed by Reyneke. This position remained the same for a period of approximately four years, until Reyneke decided that the register should be "*rectified*", which he unilaterally did after terminating Reynolds' mandate.
- f. The content of the letter, dated 23 October 2023, evidences the fact that it was acknowledged by Reyneke that Reynolds was in control of the share register, and that it reflected the trust as sole shareholder, as he required her to "*rectify*" the same in the manner dictated to her by Reyneke. The content of the letter confirms Reynolds' authority, at that point in time, to have dealt with the administrative function of maintaining the company's share register. When the share register was obtained from Reynolds by Winckler on 8 March 2024, it reflected the trust as a sole shareholder.
- g. According to Reyneke, the reason why Mr. Graham (the first applicant) wanted to ensure that the share certificate was to be issued to the trust was that Graham wanted to ensure that any new assets which he may require would be out of reach of his liquidated entities' creditors. The trust was created for the benefit of the Graham family. This stated motivation ties in with the earlier correspondence and the conclusion that the trust never intended to simply give away the shares to another party.

- h. If one closely analyses the “*pledge*” version, it simply does not make any sense. A pledge, in general terms, is when goods, property or rights are given to another to hold as security, pending the fulfillment of an obligation. There is no known *causa* for any pledge pleaded by Reyneke, such as a loan or the like. The attempt to refer to a *causa* is an unconvincing, vague reference to an “*arrangement*” of some sort (also described by Reyneke’s legal representatives as an inchoate agreement), between the trust and Reyneke, that the shares would be transferable if a triggering event happened, such as if Reyneke “*be hit by a bus*”.
- i. In general, when shares are pledged, they are not transferred by the pledgor to the pledgee. They are retained in the name of the pledgor.
- j. The version of the share certificates in favour of the trust, having been issued as “*security*”, which concept is something different than a pledge, also does not make sense. It is not explained what security is for what right or obligation, or why the trust needs security of some sort.
- k. Reyneke does not explain why, if there is a no legal *causa*, would the Trust be entitled to the shares if he be “*hit by a bus*”, as metaphorically explained by him. If the shares are in the name of Mr Reyneke, and he was entitled to them, the consequence of Reyneke passing will be that his executor will claim the shares for Reyneke’s estate.
- l. Furthermore, if this was a “*pledge*” arrangement, as suggested, why does Reyneke, after he unlawfully took full control of EET, go and defy the very arrangement upon which he relies, and issue 900 shares to Garman, diminishing his own stake in EET to a simple 10% of the company? This means the shares in “*pledge*” were discarded, or at best, that the trust will receive only a diluted 10% of the company in the event of the triggering event.

- m. The Reyneke respondents argued that the fact that Reyneke was to be the sole shareholder of the 100% shares, until the triggering event might have arisen, is on probabilities, supported by the facts that he signed surety in favour of the Namibian property owning company (Rainy Day) and also supported by the facts that he addressed various letters to entities such as banking institutions, informing them that he is the sole shareholder of EET.
- n. Whilst probabilities are not relevant, even if considered, the signing of the surety for a different entity was, according to the trust at no risk considering the value of the assets in that company, and Reyneke's outward representations cannot trump the undisputable facts as per the share register and share certificates.
- o. Fact is that the share register, held and maintained by Reynolds, correctly reflected the sole shareholding of 100% shares of the trust until the unilateral "*rectification*" thereof.
- p. The mere attempt to say that the share register was '*rectified*' acknowledges the fact that there was an existing share register, showing the trust as sole holder of the shares, which was not acceptable to Reyneke, as he changed it unilaterally, ignoring the fact that without the consent of the trust or the intervention of the Court, same could not occur. Reyneke took the law into his own hands in doing the "*rectification*" action.
- q. Reyneke conveniently ignores the wording of the documentation that he signed, which stated clearly under his own signature that the shares were transferred to the trust. In the face of the documentation constituting *prima facie* proof, Reyneke alleges that the transfer never occurred and that the documentation was not what it purports to reflect.
- r. The Reyneke respondents argued that Reynolds never had a mandate to act as the "*secretary of the company*". However, she

always played the role of doing secretarial services for the company, up to the point when her mandate was terminated by Reyneke on 8 March 2024. She did work acquiring the shelf company, captured the initial shareholding of Reyneke in the first shareholder register (with no protestation by Reyneke), and did work during the period 1 August to 30 September 2020, as borne out by statements attached and supplied by Mr Reyneke. The copy of the Share Ledger annexed as annexure FA9 to the founding affidavit bears the date on the bottom left-hand corner of Tuesday, 1 September 2020, either the date of creation or the producing (printing) of the document. The accusations levelled at Ms Reyneke of being dishonest or fraudulently manipulating the Share Ledger are unfounded and rejected. Why terminate her mandate on 8 March 2024, if she or her employer had no mandate at all?

Whether the principles of mandament van spolie applies?

[72] The trust relies on the case of *Tigon Ltd v Bestyet Investments (Pty) Ltd*,² which is a precedent for the case that the expunging of shares in a share register is a case where the *mandament van spolie* finds application. The following appears from the case page 642 E To 643 C:

"If we are dealing with an incorporeal right, then what Bestyet had to prove was that it had quasi-possession of the right in the sense that it actually or actively (daadwerklik) exercised that right and that further exercise of the right or rights has unlawfully been prevented by Tigon's resort to self-help. It did not have to prove the physical existence of the right, only the factual position.

To determine whether Bestyet proved that it had quasi-possession of the rights or rights, a closer look needs to be taken at the rights or rights enjoyed as a holder of shares. In Standard Bank of South Africa and another v Ocean Commodities Inc and others 1983 (1) SA 276 (A) at 288H Corbett JA (as he then was) said the following:

² 2001 (4) SA 624 (N)

'A share in a company consists of a bundle, or conglomerate, of personal rights entitling the holder thereof to a certain interest in the company, its assets and dividends... Normally, the person in whom the share vests is the registered shareholder in the books of the company and has issued to him a share certificate specifying the share or shares held by him'.

and

'It seems to me that a distinction (not always recognized) may be drawn between the share itself, which is an incorporeal movable entity, and the bundle of personal rights to which it gives rise. The argument that we are here dealing with purely personal rights to which the protection of the mandament van spolie does not extend is, therefore, not correct. The incorporeals, consisting of the shares, are, by statute, movable property, and possession is exercised by the holder negotiating, pledging, bequeathing, or otherwise dealing with the shares. The holder also exercises possession by being registered in the register of members and thereby being able to vote and receive dividends. Mr Brett's submission that the removal of a shareholder's name from the register leaves the rights of such shareholder intact and unaffected cannot be correct. The holder has been denied all the benefits of registration as a member. Tigon went a step further, however, and cancelled or expunged the very issue of the shares, effectively depriving the holder of all the rights of beneficial use'.

[Emphasis added].

- [73] It was argued by both the Reyneke respondents and the Gaman respondents that if the court should find that the trust was the shareholder of the 100% shares as per the share register on 8 March 2024, the trust did not show that it was in quasi-possession as it did not exercise its rights in terms of the shareholding.
- [74] I do not agree with this submission, as upon a reading of the *Tigon* case above, the mere fact that the trust appeared in the share register is sufficient to show quasi-possession. However, even if this conclusion is incorrect, the undisputed evidence is that the trust exercised its rights on 26 March 2024 by requesting a meeting of shareholders in terms of section 62(3) of the Act.

Spoliation

- [75] Being an application based on the *mandament of spolie*, I need only concern myself with the question of possession (inclusive of quasi possession).
- [76] The trust was in peaceful and undisturbed possession of the shares and the bundle of rights associated with the same, as confirmed by share certificate number 4 and the content of the then-existing share register.
- [77] The trust was in sole possession of the entire issued share capital of EET, comprising 100% ordinary shares.
- [78] The trust enjoyed all the entitlements which the bundle of rights of shareholding conferred upon a holder of shares registered in the share register of EET.
- [79] During the period 8 March 2024 to 20 March 2024, the trust's possession was interfered with unlawfully by the Reyneke respondents and the Garman respondents, and the effect of the interference was that:
- a. The trust was deprived of its peaceful and undisturbed sole possession of the entire issued share capital of EET.
 - b. The trust was denied its legal entitlements and rights as holder of the shareholding.
 - c. The trust was removed from the share register after the unlawful alteration of the company records, as the trust's shareholding was eradicated from the records.

- [80] The “*rectification*” of the share register was effected unilaterally and unlawfully, without the trust’s consent or a court order,³ in a clandestine manner behind the trust’s back.
- [81] The unilateral action of persons removing the name of a shareholder from a share register and stripping that shareholder of all rights and privileges associated with the share or shares it held constitutes an act of spoliation.⁴
- [82] The reason behind the practice of granting spoliation orders is that no one should be allowed to take the law into their own hands and to dispossess another illicitly of possession of property or rights.
- [83] If a person is dispossessed of his property or rights, the court can summarily restore the status *quo ante*, it will do so before any enquiry or investigation into the merits of the dispute.
- [84] In the process of “*rectification*”, Reyneke reissued previously cancelled share certificates numbers 2 and 3 in his own name (which were previously cancelled and superseded by share certificate 4), expunged share certificate 4, issued previously in favour of the trust, and created 900 new substituting shares issued to Gaman.
- [85] The issuing of the new 900 shares and allocation of shares in terms of the subscription agreement to Garman were done as a result of Reyneke having unlawfully acquired full control of EET, thereby circumventing the requirements of section 39(2) of the Act and article 2.1(3) of the MOI.
- [86] In terms of section 39(2) of the Act, each shareholder has a right of preemption, that is, a company that issues new shares must offer those shares to existing shareholders and allow them to subscribe to it.

³ See *Tigon Ltd V Bestyet Investments (Pty) Ltd* 2001 (4) SA 634 (N) at 645.

⁴ See: *Rooibokoord Sitrus (Edms) Bpk v Louw Creek Sitrus kooperasie Bpk* 1964 (3) SA 601 (T) at 605 B; *Walt v Sea Plant Product Ltd* 1999 (4) SA 443 (C) at 453 C - Confirmed on appeal 2000 (4) SA 711 (SCA); *Tigon Ltd v Bestyet Investments (Pty) Ltd* (supra) at 645;

- [87] These rights of pre-emption were also enshrined in article 2.1 (3) of the company MOI.
- [88] Winckler, representing Garman, was aware that the share register indicated the trust as the sole shareholder on 8 March 2024, and that Reynolds' mandate was terminated. He assisted Reyneke in collecting the company records on 8 March 2024, and he was the one who offered Reynolds payment for all outstanding fees. Being aware of the changes in the shareholding by Reynolds, the Gaman respondents considered it appropriate to seek legal advice regarding the lawfulness of entering into the subscription agreement on 13 March 2024, during the period of a mere 5 days after the documents were collected and unilateral changes to the shareholding were made, unlawfully allowing Reyneke full control of EET.
- [89] Winkler was also aware of the purpose of advancing monies to EET, to be a type of war chest for litigation, ostensibly to protect EET. This is a clear indication of Mr Winkler being aware of the disputes looming relating to the shareholding in EET.
- [90] The Garman respondents were so closely associated with the actions of the spoliation by Reyneke that their actions can be regarded as part and parcel of the wrongful deprivation of the trust's sole shareholding in EET, and all rights attached to it. The unlawful and wrongful deprivation actions were all concluded by the replacement of the trust's sole shareholding and shareholders' control, with the replacement shares issued to both Reyneke and the Garman. This allowed the Garman to have majority control of the shareholding in EET.
- [91] Even if it be argued that the aforesaid conclusion is incorrect, and that only Reyneke committed the spoliation, the actions of Reyneke, unlawfully and wrongfully depriving and appropriating the trust's sole shareholding and rights attached thereto, gave rise to a further string of unlawful actions, not only depriving the trust from its sole shareholding, but also unlawfully allowing new shares to be issued of which 900 shares were transferred to Gaman, and 100 shares were issued to Reyneke himself.

- [92] The shares register must be reinstated to the trust as the sole shareholder of EET, and the records of EET need to be restored to the position that they were prior to the respondents conducting their unlawful and wrongful actions.
- [93] The trust must be reflected as the sole shareholder of 100 shares in terms of the original certificate number 4, which should be reinstated.

Whether the changing of the shareholding had the result that the status quo ante can not be achieved?

- [94] Both the Reyneke respondents and the Garman respondents argued that, even if there was spoliation, the trust cannot be placed back in the position it was before the unlawful conduct of spoliation. They argue that the 100% shares, previously held by the trust as the sole shareholder, were replaced by a new shareholder regime.
- [95] Apart from the aforesaid and arising from the corporate actions of Reyneke, the balance of power was shifted, in that Winckler and Cronje became the co-directors together with Reyneke.
- [96] This was all done based on the “rectified” share register, unlawfully giving Reyneke and Garman the right to appoint new directors.
- [97] The respondents referred to *Tswelopele Non-Profit Organisation and others v City of Tshwane Metropolitan Municipality and others*, paragraphs [23] and [24],⁵ where the court held as follows:

“[23] But the heavy, albeit not universal, preponderance of academic commentators disfavoured the way the mandament was extended in *Fredericks*, and in *Rikhotso v Northcliff Ceramics (Pty) Ltd*²⁴ Nugent J held that a spoliation order cannot be granted if the property at issue has ceased to exist: the mandament has been received into our law as a possessory

⁵ 2007(6) SA 511 (SCA).

remedy, and not as a general remedy against unlawfulness. He observed that the issue of the mandament is a preliminary and provisional order, so that the assumption that underlies it is that the property in fact exists and may be awarded in due course to the properly entitled party. Since possession cannot be restored by substitution, the mandament could not be granted.³⁵ Nugent J concluded:

*'It was submitted that the conclusion to which I have come would encourage the destruction of property in the course of spoliation. I do not think that is correct. I do not suggest that the law countenances wanton destruction, nor that it does not afford a remedy. Remedies to discourage such conduct exist in both the civil and the criminal law. My conclusion is only that the mandament van spolie is not that remedy.'*³⁶

- [24] *The doctrinal analysis in Rikhotso is in my view undoubtedly correct. While the mandament clearly enjoins breaches of the rule of law and serves as a disincentive to self-help, its object is the interim restoration of physical control and enjoyment of specified property – not its reconstituted equivalent. To insist that the mandament be extended to mandatory substitution of the property in dispute would be to create a different and wider remedy than that received into South African law, one that would lose its possessory focus in favour of different objectives (including a peace-keeping function)."*
- [98] In the *Tswelopele*, there was a physical destruction of the spoliated property, and it was not a case of an incorporeal right being spoliated. In the present circumstances, the illicit deprivation can simply be undone by reinstating the previous shareholding and sole shareholders' control as part of the incorporeal rights to the trust. For restoration of incorporeal rights, it inherently means correcting the records to reflect the legal reality which was unlawfully altered. In the present circumstances, the shareholding was not destroyed, like a building, but it was unlawfully reconfigured.
- [99] I am satisfied that the trust is entitled to restoration to its previous position as the sole shareholder of the 100% shares issued in EET, and that the position should be restored *ante omnia*.

[100] To ensure effective, enforceable, and immediately capable of enforcement, an order should be granted that not only should the share register be rectified to the position before collection on 8 March 2024, but all company records should be altered to the pre-8 March 2024 position. This means that the appointment of the fourth and fifth respondents would be of no force and effect. This is done to fulfill the judicial function in an orderly and effective manner in the interests of justice.

[101] This judgment does not pronounce on Garman's right, if any, to claim any monies paid to EET or any other party, based on any cause of action that may exist, if so advised.

Costs:

[102] The costs order should be granted in favour of the successful party.

Order

In light of the above, I make the following order:

- [1] The first and third respondents are directed to forthwith and within 10 (ten) days of the date of this order, take all such steps as are necessary to rectify the share register of the third respondent to accord with the document attached, marked "A", being the share register of the third respondent as it existed immediately before the collection thereof by the fourth respondent from Reynolds on 8 March 2024.
- [2] All entries made in the share register of the third respondent after 8 March 2024, which are inconsistent with the position as set out in annexure "A", do not form part of the third respondent's share register and are of no force and effect.

- [3] All company records of the third respondent created on or after 8 March 2024, which altered the records of the third respondent from how they existed immediately before the collection of the share register by the fourth respondent from Reynolds on 8 March 2024, including in respect of the first, second, fourth and fifth respondents, do not form part of the third respondent's company records and are of no force and effect.
- [4] The first respondent and second respondent should pay the costs of this application, jointly and severally, the one paying the other to be absolved, on a party and party scale, the appropriate scale being Scale C.



STRYDOM AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the Applicants:	N. Konstandinides SC
Instructed by:	Van Hulsteyns Attorneys
For the First and Third Respondents:	APJ Els SC and J Myburgh
Instructed by:	Taljaard De Oliveira Attorneys
For the Second, Third and Fourth Respondents:	B Swart SC
Instructed by:	DLBM Attorneys
Date of Hearing:	18 and 19 November 2025
Date of Judgment:	28 November 2025

WEHMEYER AND ASSOCIATES

ELEGANT ELM TRADING (PTY) LTD

2018/459684/07

Share Ledger

Shareholder	SHARES ACQUIRED					SHARES TRANSFERRED			Balance
	Share	Date	Cert. No	Trans no.	Quantity	Trans	Date		
DENNIS JACOBUS BISHOP P O BOX 55039, ILLOVO, JOHANNESBURG GAUTENG, 2115	NPV	17/09/2018	1		1	Transfer	3	06/07/2020	0
	Allotment	A1	0	0		Name	Share Class	Cert No. Quantity	
						REYNEKE JACOBUS CORNELIUS	NPV	2 1	
XB004									0
JACOBUS CORNELIUS REYNEKE P O BOX 123, WAPADRAND, 0081	NPV	06/07/2020	2		1	Transfer	4	05/07/2020	0
	Transfer	T1 0	1	3		Name	Share Class	Cert No. Quantity	
						RODZINA CARBONILE TRUST	NPV	4 1	
	NPV	06/07/2020	3		99	Transfer	4	05/07/2020	0
	Allotment	A2		3		Name	Share Class	Cert No. Quantity	
						RODZINA CARBONILE TRUST	NPV	4 59	
XR095									0
RODZINA CARBONILE TRUST POSNET SUITE 26 PRIVATE BAG X25723 MOMENTUM PARK 0105	NPV	05/07/2020	4		100				100
	Transfer	T1		4					
XR097									100

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