



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

CASE NO: 2025-061844

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED:

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DATE

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SIGNATURE

In the matter between:

**ODETTE OCTAVIA JOUBERT N.O.**

First Applicant

**CHRIS ANAGNOSTELLIS N.O.**

Second Applicant

**MARMIKO FAMILIE TRUST (IT 12757/96)**

Third Applicant

**BLACK RHINO GAME LODGE (PTY) LTD**

Fourth Applicant

and

**MARTIN KYLE JOUBERT**

First Respondent

**COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION**

Second Respondent

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ORDER

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1. The application is referred to trial.
  2. The applicants shall, as plaintiffs in the action, within 20 days of the date of this order deliver its declaration.
  3. The further exchange of pleadings and pre-trial procedures, including discovery and the request for and provision of trial particulars, shall be regulated by the Uniform Rules of the Court in respect of action proceedings.
  4. The costs occasioned by the application, including the costs relating to the opposed motion, are reserved for determination in the trial.
  5. This judgment must be brought to the attention of the South African Revenue Services.

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#### JUDGMENT

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#### **TOLMAY J**

1. This is an application to declare the first respondent (Mr. M Joubert) a delinquent director in terms of s162 of the Companies Act.<sup>1</sup> The application was initially launched as an urgent application but was struck from the role due to lack of urgency. This is a further chapter in an ongoing dispute between members of the Joubert family to gain control over what may be described as family wealth.
2. The first and second applicants act in their capacity as trustees of the third

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<sup>1</sup> 71 of 2008.

applicant, the Marmiko Family Trust (the Trust). The Trust is the sole shareholder of the fourth applicant, Black Rhino Game Lodge (Pty) Ltd (BRGL). Mr Joubert is a director of BRGL. The first and second applicants are respectively the mother and the brother of Mr Joubert. The first and second applicants will collectively be referred to as the Trustees.

3. A perusal of the papers reveals that the Trustees questions the validity of Mr. Joubert's directorship of BRGL and this is the subject of another pending application. The Trustees and Mr Joubert are also involved in an application pertaining to the trustees of the Trust. The papers reveal a very acrimonious family dispute about what is described by the Trustees as "family money". They are of the view that Mr. Joubert is attempting to exclude them from this money.
4. In this application the Trustees wish to declare Mr Joubert a delinquent director. They allege fraudulent conduct on his part. They say he fraudulently represented to the South African Revenue Services (SARS) that he had been authorised to act as BRGL's Public Officer in terms of s246 of the Tax Administration Act<sup>2</sup>. This fraudulent act requires that he be declared a delinquent director in terms of s162(5)( c) of the Companies Act.
5. The Trustees allege that Mr Joubert had unilaterally usurped the role of Public Officer by fraudulently representing to SARS that he had the consent of the directors of BRGL to be so appointed. It is also alleged that Mr. Joubert perpetrated a fraud on the fiscus by submitting a forged document to SARS to

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<sup>2</sup> 28 of 2011.

manipulate the company's tax profile, by so doing it is alleged that Mr. Joubert committed a serious offence against the state's revenue collection processes that constitutes a criminal offence.

6. Mr Joubert explains that he is a director of seven companies. He and his mother, Mrs. Joubert, the first applicant, are directors in six of those companies. He alleges that the Trustees acted to the detriment of BRGL and were using the funds for personal purposes and to the detriment of the company. He says that he requested them to stop this conduct and to assist him in ensuring that BRGL becomes tax compliant. They refused and continued with unlawful conduct. At a directors' meeting the Trustees were advised that the company is trading in a manner that opens the directors up to accusations of reckless trading. Mr. Joubert wanted an accountant to be appointed urgently to sort the books out and get the company tax compliant. This led to further disputes and an urgent application brought by Mr. Joubert where an interim order was granted that inter alia appointed Beancouter (Pty) Ltd to regularize BRGL's books. An application was then successfully brought to stay the interim order. The Trustees terminated the services of Beancouter (Pty) Ltd, despite the fact that BRGL, according to him, still did not have audited financial statements and is not tax compliant.
7. Mr. Joubert also alleges that the second applicant is not a Trustee of the Trust, despite the Master's letter of authority confirming his appointment, he alleges that the second applicant was removed as trustee by the majority of trustees of the Trust. He denies the alleged fraudulent and unlawful conduct he is accused of. He says he did not fraudulently represent himself as BRGL's Public Officer,

nor did he submit any letter of appointment to SARS. He says he appointed a tax consultant Martmo Group (Pty) Ltd (Martmo) to review the BRGL's tax compliance during March 2025. He alleges that Martmo had irregularly submitted documents to SARS appointing him as Public Officer. He denies disrupting access to the e-filing system that resulted in penalties from SARS.

8. He alleges the Trust is not registered with SARS and that he was informed by Martmo that VAT returns were not filed by BRGL and that penalties will be levied by SARS. The version by Mr Joubert and allegations made by him against the Trustees are denied in the replying affidavit.
9. Before the hearing the Court asked counsel to consider whether the matter could be determined on application considering the disputes of fact. During argument counsel for the applicants indicated that the only issue the Court had to determine was whether the matter should be referred to evidence or trial. The applicant was of the view that the dispute is narrow, and the factual inquiry should be limited to the mandate given by Mr Joubert to Martmo and his knowledge of its actions. The only witnesses that will be required to deal with these issues will be that of Mr. Joubert and his attorney Mr Lazarus. The applicants proposed an order that limits the evidence to these orders and witnesses. It was argued on behalf of Mr Joubert that the matter should either be dismissed based on a foreseeable dispute of fact or referred to trial.
10. In my view the argument on behalf of the applicants is an oversimplification of the disputes between the parties. The applicants allege that a fraud was

committed by Mr Joubert and that must result in a declaration of delinquency as envisaged in s162 of the Companies Act. The Trust carries the onus to prove such fraud, and it must be borne in mind that fraud is not easily inferred.<sup>3</sup> The applicant carries the onus to prove its case. Therefore, it is inconceivable that the dispute be limited to Martmo's mandate and Mr Joubert's knowledge of Martmo's actions. Even if that is proven that will not ineluctably lead to fraud being established, considering the elements that are needed to prove fraud.

11. The Plascon-Evans<sup>4</sup> rule finds application. Relief in motion proceedings may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order.
12. The determination of whether a fraud was committed by Mr Joubert can only be established through evidence. The Trustees alleges that a fraud was committed based on the factual matrix set out by them in the affidavit. These allegations are denied by Mr Joubert, and he sets out the facts on which he relies to substantiate his version. As was stated in *Room Hire CO (Pty) Ltd v Jeppe Street Mansions (Pty Ltd)*<sup>5</sup> "...it is undesirable to attempt to settle disputes of fact solely on probabilities disclosed in contradictory affidavits,..." In *National Director Of Public Prosecutions v Zuma*<sup>6</sup> the SCA explained:

*"Motion proceedings, unless concerned with interim relief, are all about the*

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<sup>3</sup> Courtney-Clarke v Bassingthwaighe [1991] 3 All SA 625 (Nm), 1991 (1) SA 684 (Nm) P. 689 Gilbey Distillers & Vintners (Pty) Ltd v Morris NO 1990 (2) SA 217 (SE).

<sup>4</sup> Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd, [1984] 2 All SA 366 (A).

<sup>5</sup> 1949 (3) SA 1155 (T).

<sup>6</sup> 2009 (2) SA 277 (SCA).

*resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version".<sup>7</sup>*

13. It cannot be that Mr Joubert's version can merely be rejected on the papers. The parties have two diametrically opposed versions, which will require a consideration of probabilities and the credibility of the witnesses. The court will generally refer a matter to oral evidence where the scope of the dispute is narrow this is not the case here. The matter needs proper ventilation in trial proceedings.
14. It was argued on behalf of Mr Joubert that the factual dispute was foreseeable and that the application should be dismissed on that basis. I agree that the factual dispute was foreseeable, but in terms of Rule 6(5)(g) of the Uniform Rules of Court, when disputes of fact arise in motion proceedings and cannot be resolved on affidavits, the court may dismiss the application, refer the matter for oral

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<sup>7</sup> Id par 26.

evidence, or refer it to trial. The court should adopt the process that ensures justice is done with the least delay, and this rule may yield to the interests of justice, resulting in a referral to trial.<sup>8</sup> In the exercise of that discretion I deem it necessary that the matter be referred to trial. The parties make serious allegations against each other and the veracity of those allegations should be evaluated in a trial. It is also of concern that they accuse each other of transgressions against SARS. This judgment should accordingly be brought under the attention of SARS for its consideration.

The following order is made:

1. The application is referred to trial.
2. The applicants shall, as plaintiffs in the action, within 20 days of the date of this order deliver its declaration.
3. The further exchange of pleadings and pre-trial procedures, including discovery and the request for and provision of trial particulars, shall be regulated by the Uniform Rules of the Court in respect of action proceedings.
4. The costs occasioned by the application, including the costs relating to the opposed motion, are reserved for determination in the trial.
5. This judgment must be brought to the attention of the South African Revenue Services.

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<sup>8</sup> Golden Peanut and Tree Nut SA (Pty) Ltd v Vermeulen N.O and others, [2019] JOL 46046 (FB).

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R TOLMAY  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Appearances:

For Applicant: Adv H Viljoen & Adv N Daniels instructed by Osborn Wellsted Paulsen Incorporated.

For Respondent: Adv R Maphutha & Adv Seshoka instructed by Lazarus Joshua Attorneys.

Date of hearing: 27 November 2025.

Date of judgment: 9 December 2025.