

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2024-007980

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
5/12/2025	[REDACTED]
DATE	SIGNATURE

In the matter between:

KESAVAN MOODLEY

APPLICANT

and

STRAWBERRY WORX POP (PTY) LTD

FIRST RESPONDENT

ASHVEER JAIRAJH DWARIKAPERSADH N.O.

SECOND RESPONDENT

KRITHIKA DWARIKAPERSADH N.O.

THIRD RESPONDENT

RIDWAAN MOHAMED

FOURTH RESPONDENT

NISHA NAIDOO

FIFTH RESPONDENT

**S&A PROJECTS AND MANAGEMENT SERVICES
(PTY) LTD**

SIXTH RESPONDENT

**THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

SEVENTH RESPONDENT

JUDGMENT

DREYER, AJ

- [1] The first and second respondents, as the Trustees of the NKA Trust, and the sixth respondent, S&A Project Management Services (Pty) Ltd, together hold 50% of shareholding in Strawberry Worx Pop (Pty) Ltd. The sixth respondent, Mr Ridwaan Mohamed, was a Strawberry Worx shareholder until December 2023 when he sold his shareholding to S&A.
- [2] The balance of Strawberry Worx's shareholding is contested. The applicant contends that he is the 50% shareholder. The respondents contend that S&A acquired the disputed 50% shareholding in December 2023, from the fifth respondent, Ms Nisha Naidoo who was in fact the owner of the shares, not the applicant.

Factual matrix

- [3] On 6 February 2024, the applicant's application for urgent interdictory relief against the first, second, third, fourth and sixth respondents from giving effect to a resolution taken at a shareholders' meeting of the first respondent, Strawberry Worx, on 24 January 2024, removing the applicant as a director of Strawberry Worx, pending an application to set aside such resolution, was struck from roll for lack of urgency. The applicant persists with the interdictory relief.
- [4] The facts which gave rise to this application are contested. The parties have been involved in a series of contentious litigation since at least 2023. Central to all the pending litigation is the question of the applicant's shareholding and position as a director of Strawberry Worx.
- [5] The applicant contends in the founding affidavit that the respondents have admitted his 50% shareholding in Strawberry Worx, both in the pending action proceedings between the parties before the Durban High Court and in a letter addressed by the second to fourth respondents' attorneys, of 9 December 2022, to his attorneys of record. The applicant contends that Ms Naidoo

transferred her shareholding in Strawberry Worx to the KM Family Trust in 2016. In 2018, the KM Family Trust, in turn, transferred its Strawberry Worx's shareholding to the applicant. The applicant does not have a copy of the share certificate recording that he is the holder of 50% of the shareholding in Strawberry Worx. The applicant contends that any documents reflecting that anyone other than he is a 50% shareholder of Strawberry Worx are as a result of fraud perpetrated by Mr Ashveer Dwarikapersadh and Mr Mohamed.

- [6] The applicant disputes that Ms Naidoo held Strawberry Worx shares in 2023, or that she could legally have transferred her Strawberry Worx shareholding to S&A. In addition, the applicant disputes that S&A was a registered shareholder on 24 January 2024 when Strawberry Worx held its shareholders' meeting. The applicant contends that, until the valid transfer and recording of S&A shares in Strawberry Worx's share register, S&A had no right to call the shareholders' meeting or to vote at it.
- [7] The applicant contends that, as he is a 50% shareholder in Strawberry Worx, the shareholders' meeting of 24 January 2024 was not correctly called or constituted and any resultant shareholder's decision falls to be set aside. The applicant contends that he was not afforded procedural fairness at the shareholders' meeting of 24 January 2024 in that his right to legal representation was refused.
- [8] In contradistinction to the applicant's facts, the respondents deny that the applicant is or was ever a shareholder of Strawberry Worx. The respondents applicant asserts that the current shareholders of Strawberry Worx are the NKA Trust, represented by the second and third respondents, and S&A. This assertion is supported by Strawberry Worx's share register and issued share certificates. The respondents' deponent states that he ascertained the true position relating to the shareholding of Strawberry Worx in late 2023 on receiving the share register from Strawberry Worx's previous accountants, Ramathe Desai Bhagat and Jenna Accountants in late 2023. That share register is with Mr Antoon Nortje of WRN Accounting, who is the current company secretary.

- [9] The respondents rely on the affidavit of Ms Naidoo who confirms that she sold her Strawberry Worx shares, which she had held since 2010, to S&A in December 2023.
- [10] The respondents contend that at the Strawberry Worx's shareholders' meeting of 24 January 2024 they complied in all respects – notice of the meeting was given by the shareholders and the applicant was given an opportunity to make representations, but failed to do so.
- [11] The applicant persists in his replying affidavit that he is the 50% shareholder of Strawberry Worx. The applicant states that he had dealt with Strawberry Worx's share register in his founding affidavit and that Mr Cassim's affidavit confirms the transfer of the shares the KM Family Trust held in Strawberry Worx to him in 2018. This assertion, under oath, is incorrect. Mr Cassim does not confirm that Strawberry Worx's shares were transferred to the applicant in 2018. Mr Cassim's affidavit does not support the applicant's contention that he is a 50% shareholder of Strawberry Worx. The applicant fails to address in reply that Strawberry Worx's share register was held by Strawberry Worx' previous accountant. That share register does not record the applicant as a shareholder.
- [12] Ms Naidoo then recants.
- [13] On 15 July 2025 the applicant launched an application to introduce a further affidavit, a supplementary affidavit by Ms Naidoo. In the affidavit, Ms Naidoo denied that she ever was a shareholder of Strawberry Worx. Instead, she asserts that she initially held the shares as nominee for the applicant. She held these shares as nominee from 2010 to 2016. Still holding these shares as nominee for the applicant, these shares were transferred to the KM Family Trust. In 2018, the shares were transferred from the KM Family Trust to the applicant, himself. Ms Naidoo contends that the second respondent, Mr Ashveer, Dwarikapersadh ("Ashveer") induced her by fraudulent representations, undue influence and duress to conclude the sale of shares agreement.

- [14] The respondents responded to the supplementary affidavit stating that Ms Naidoo was represented by a senior practitioner in concluding the sale of shares agreement in December 2023. Ms Naidoo was not induced to conclude the agreement. The contemporaneous exchange of correspondence evidences the negotiation of the terms of the sale of shares agreement. In addition to her confirmatory affidavit filed in this matter in February 2024, the respondents record that Ms Naidoo had filed three other affidavits in the various pending litigation between the parties, confirming that she was a Strawberry Worx shareholder and denied that she had held the shares as nominee for the applicant.
- [15] I granted the application to introduce the further affidavits.
- [16] It is against this contested set of facts that the applicants' claim for interdictory relief must be considered.

Legal matrix

- [17] The removal of directors is regulated in section 71 of the Companies Act 2008. This section distinguishes between the removal of a director at the behest of the shareholders as opposed to that by the board of the company. Shareholders may remove a director by an ordinary resolution, namely, a vote in favour of the resolution by at least 51% of the shareholders. The relevant provision reads:

- “(1) Despite anything to the contrary in the company’s memorandum of incorporation or rules, or any agreement between a company and a director or between any shareholders and a director, a director may be moved by ordinary resolution adopted at a shareholders’ meeting by persons entitled to exercise voting rights in an election of that director, subject to subsection (2).*
- (2) Before the shareholders of a company may consider a resolution contemplated in subsection (1) –*
- (a) the director concerned must be given notice of the meeting and the resolution at least equivalent to that of a shareholder is entitled to receive,*

*irrespective of whether or not the director is a shareholder of the company;
and*

- (b) *the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.”*

- [18] There are three requirements for a shareholder to remove a director. First, the calling of the meeting by the shareholders. Second, the director must be given notice of the meeting and the resolution. Third, the director must be given an opportunity to make a presentation before the removal resolution is put to vote.
- [19] The shareholders’ meeting was called by S&A. The requisite notice of the meeting was given to the applicant. The sale of shares agreement concluded between Ms Naidoo and S&A is evidence of cession of the shareholding.¹ The delivery of the share certificate is not a requirement of the cession.² In *Botha v Fick*, the court held that the rule referred to in *Labuschagne v Denny*³ that “where a right of action is evidenced in a document, delivery of the document to the cessionary is necessary, not for the validity but for the completion of a cession of that right of action to him” is not a rule of the substantive law, but rather a matter of evidence.⁴
- [20] Thus, while beneficial ownership of shares can pass by cession between parties, the company recognises only the registered holder as the shareholder.
- [21] The persons entitled to exercise the voting right at the shareholders’ meeting are either the shareholder or the shareholder’s proxy.

¹ *Botha v Fick* 1995 (2) SA 750 (A) at 778 G-I, applied and confirmed in *Kaps and Others v Morapedi and Others* 2025 JDR 2619 (WCC) and *Aesthesis Holdings (Pty) Ltd v Eksteen Administration Holdings (Pty) Ltd and Others* 2025 JDR 0436 (GP).

² *Botha v Fick* above n 1 at 778I-J.

³ 1963 (3) SA 538 (A) at 543 in fine – 544B.

⁴ *Botha v Fick* above n 1 at 779 A-B.

- [22] In terms of section 49(2) of the Companies Act, a shareholder's certificate is proof that the holder owns the shares. This section is read with section 50(4) of the Companies Act, which states that:

"A securities register ... maintained in accordance with this Act is sufficient proof of the facts recorded in it, in the absence of evidence to the contrary."

- [23] Consequently, a person who holds a share certificate and whose name appears on the share register is, in the absence of evidence to the contrary, considered to be the registered shareholder.
- [24] By application of principles elucidated in *Botha v Fick* and the provisions of the Companies Act, *ex facie* Strawberry Worx's share register, the only persons who could exercise the right to vote at Strawberry Worx shareholders' meeting on 24 January 2024, were the NKA Trust and S&A.

Interim relief

- [25] Is the relief the applicant seeks interim? In *Airoadexpress*, the Appellate Division (as it then was), tracing the history of interdicts back to Roman Dutch Law, stated that an interim interdict is for relief that is pending some process (not necessarily by a court) already actually instituted or to be instituted that is capable of resulting in a binding determination "*of the matter substantially in issue between the parties*".⁵
- [26] The applicant seeks interim relief that he be re-instated as a director of Strawberry Worx, pending the finalisation of the determination of an application to set aside the resolution of the shareholders' meeting removing him as a director. That application cannot be determined without the critical and central dispute between the parties, namely who are the legitimate and registered shareholders of Strawberry Worx. That dispute will be finally determined in the litigation pending before the Durban High Court. The decision by the Durban High Court will determine whether Strawberry Worx's shareholders' meeting of

⁵ *Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban* 1986 (2) SA 663 (A) at 681D – F. The court referenced van der Linde Institutes 2.1.4.7 cf. *EFF v Gordhan* 2020 (6) SA 325 (CC) at para 47.

24 January 2024 was correctly called and constituted and consequently whether the resolution removing the applicant as a director of Strawberry Worx was valid and binding against the company. Though the applicant has recognised the finality of the decision to be made by the Durban High Court and has referenced it in his founding affidavit, that is not the final relief that the applicant seeks.

[27] The final relief the applicant seeks, namely setting aside the Strawberry Worx's shareholder resolution to remove him as director of Strawberry Worx, is not the *matter substantially in issue between the parties*; the shareholding of Strawberry Worx is.

[28] The interim relief the applicant seeks does not meet the requisite standard as articulated in *Airoadexpress*. For that reason, the application fails.

[29] If I am wrong, the applicant has failed to show that he has a *prima facie right open to some doubt*, entitling him to the interim relief that he seeks.

[30] This standard is adjudicated by taking "*the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, prima facie established, may only be open to 'some doubt'. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim interdict*".⁶

[31] In this matter the facts are a moving target. The disputes of fact are open to *more than some doubt*. The central issue in the disputed facts before me is who

⁶ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189, qualified in *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) at 688E, and approved in *Simon NO v Air Operations of Europe AB* 1999 (1) SA 217 (SCA) at 228G-H.

are the shareholders of Strawberry Worx. That question will be finally determined in the pending litigation in the Durban High Court. The applicant and respondents make contradictory assertions as to Strawberry Worx's shareholding. This is compounded by of Ms Naidoo's recanting that she was a Strawberry Worx's shareholder. Ms Naidoo's recanting version is in stark contrast to the available documentary evidence, such as the share certificate and share register.

Shareholders' meeting properly called and constituted

- [32] The *prima facie right* is a right relative to the final relief sought, namely whether the person will be successful in the anticipated or pending proceedings. In this instance, has the applicant established that Strawberry Worx's shareholders' meeting of 24 January 2024 was not properly called and constituted? At the heart of that question is whether the applicant or S&A was a shareholder of Strawberry Worx.
- [33] The applicant's contention that he is a 50% shareholder of Strawberry Worx is not supported by any extrinsic evidence. The only documentary evidence the applicant places before the court is an unsigned copy of a share certificate in the name of KM Family Trust. The applicant avers in his founding affidavit that the signed share certificates and the share register evidencing his shareholding in Strawberry Worx are in the possession of Strawberry Worx and he has no access to these documents.
- [34] The difficulty with the applicant's assertion is that he fails in reply to address respondents' withdrawal of the concession that he is a shareholder and the respondents placing into evidence Strawberry Worx's share register, which was obtained from the auditors. The share register does not reflect that the applicant is or was a shareholder. The share register records that Ms Naidoo was a 50% shareholder before these shares were acquired by S&A. There is no evidence before me which is contrary to Strawberry Worx's share register. In the absence of such contrary evidence, the share register is, in terms of section 50(4) of the Companies Act, sufficient evidence of Strawberry Worx's shareholding.

- [35] The applicant fails to address the respondents' contention that Ms Naidoo sold her shares in Strawberry Worx to S&A. This despite attaching the full bundle of the pleadings in the action pending before the Durban High Court to his founding affidavit. Included in the bundle of pleadings was an intended amendment brought by the respondents. In the intended amendment, the respondents deny that the applicant was a shareholder in Strawberry Worx.⁷ The respondents plead that S&A purchased Ms Naidoo's shares. A copy of the sale of shares agreement is attached.⁸ The applicant fails to address this sale of shares in his replying affidavit, despite the respondents' placing reliance on S&A's majority shareholding in Strawberry Worx as the basis for the correct calling and constitution of Strawberry Worx's shareholder's meeting on 24 January 2024.
- [36] Instead of replying to the respondents' contentions, the applicant makes sweeping allegations of fraud. It is trite that fraud will not be lightly inferred.⁹
- [37] Against these contested facts is Ms Naidoo's recanting affidavit. Ms Naidoo denies she ever held Strawberry Worx's shares in her own right, but only as the applicant's nominee, before these shares were transferred to the KM Family Trust, still as nominee for the applicant then onward transferred to the applicant. The applicant does not contend in either his founding or replying affidavits that Ms Naidoo held the shares in Strawberry Worx as his nominee nor that the KM Family Trust held the shares as his nominee.
- [38] Ms Naidoo contends that through fraud and undue influence she was induced to believe she was the holder of the shares, when she was not, and convinced her to sell her shares to S&A. Ms Naidoo does not retract that she received assistance and guidance from a senior legal practitioner when concluding the

⁷ At the time of the hearing, the amendment had been granted and the applicant had pleaded to the amendment. In the amendment, the applicant seeks a declaration of rights, that he holds 50% of Strawberry Worx's shares.

⁸ CaseLines, 10: Annexures to Answering Affidavit at 10-56 – 10-72.

⁹ *Gilbey Distillers & Vintners (Pty) Ltd and Others v Morris No and Another* [1990] 3 All SA 294 (SE) at 225-226; *Gates Appellant v Gates Respondent* 1939 AD 150 at 154-155.

sale of shares agreement. Her recanting affidavit does not square with her conduct recorded in the answering affidavit, and confirmed by her under oath.

[39] Ms Naidoo's recanting affidavit does not support the applicant. The recanting affidavit sets out a different version of the facts as that contended for and relied on by the applicant.

[40] With three versions of the shareholding in Strawberry Worx before me, the applicant has not established "*a prima facie right open to some doubt*", that Strawberry Worx's shareholders' meeting of 24 January 2024 was incorrectly called and constituted.

Denial of legal representation

[41] The second basis on which the applicant relies that the resolution of Strawberry Worx's shareholders' meeting of 24 January 2024 was invalid is that there was non-compliance with the provisions of section 71 of the Companies Act in that the applicant was denied the opportunity to have legal representation and to make submissions against his removal as director. The applicant's position is not supported by the papers. The applicant was given the requisite 10-day notice period of the shareholders' meeting. Section 71 does not afford a director legal representation. It affords a director an opportunity to make representations "*in person or through a representative*".

[42] The minutes of the shareholders' meeting, which the applicant does not dispute, reflects that the applicant was given an opportunity to make representations, but failed to make any representations as to why he should not be removed as a director. The only issue the applicant raised was that the meeting was not correctly constituted as he was a 50% shareholder of Strawberry Worx.

[43] The applicant's legal representatives, before they left the shareholders' meeting, conceded that the Companies Act does not give a director the right to legal representation at a shareholders' meeting. The only issue the applicant's legal representatives addressed was that there was a dispute regarding the

Strawberry Worx's shareholding. The minutes do not record that the applicant's legal representatives were prevented from making representations on his behalf. The applicant's legal representative made no representations against the resolution to remove the applicant as director. They stated that their presence at the shareholders' meeting was supported by a proxy given to them by the applicant as the 50% shareholder. The chairperson rejected these proxies on the basis that his role was to chair the shareholders' meeting, not make a determination on the shareholding of Strawberry Worx. That, the chairman stated, was a matter for the court to determine.

[44] The papers do not support the applicant that he has a prima facie right, open to some doubt, that Strawberry Worx's shareholders' meeting of 24 January 2024 be set aside.

[45] On this basis the application fails. Given my determination that the applicant has failed to show that he has a prima facie right, there is no need for me to consider the balance of the requirements for an interim interdict.

Costs

[46] This brings me to the question of costs.

[47] The applicant took no further steps in this matter from 6 February 2024 when the matter was struck from the urgent roll until 15 July 2025. The Applicant launched an application to introduce a further affidavit, the affidavit itself having been served (not filed) on 15 July 2025. No such curtesy was afforded to the court. In addition, the applicant served its heads of argument, together with an application seeking condonation for the late filing of heads on 15 July 2025. The application and heads were only filed by uploading to CaseLines on 25 July 2025, less than a court day before the hearing. The applicant sought no condonation for the period 15 to 25 July 2025. The only explanation counsel for the applicant proffered was that the attorney of record, Durban based, was "unfamiliar" with CaseLines. The applicant has a local correspondent attorney. CaseLines is and has been the methodology for the filing of all papers in this

division since March 2020. The proffered explanation is no excuse for the non-compliance.

[48] The applicant's practice note filed on 25 July 2025 recorded that the matter required one day for the hearing. The applicant's practice note was filed more than a week after the allocation of the roll. The practice directive specifies that a special allocation should be sought where matters require a hearing in excess of 4 hours. Such non-compliance is suffice for the matter to have been struck from the roll.

[49] In addition to the applicant's failure to comply with the practice directive of the court, the applicant has attached to its founding affidavit various pleadings from other pending litigation, without reference to the actual paragraphs or pages of those pleadings on which he relies. To exacerbate the matter, the applicant has pleaded that the content of attached pleadings is "*incorporated by reference*", leaving it to the court to discern what portion of the attached pleadings are relevant to issues in dispute in this application. As stated in the matter of *Swissborough Diamond Mining v Government of South Africa*:¹⁰

"Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met. See Lipschitz and Schwarz NNO v Markowitz 1976 (3) SA 772 (W) at 775H and Port Nolloth Municipality v Xahalisa and Others; Luwalala and Others v Port Nolloth Municipality 1991 (3) SA 98 (C) at 111B--C."

[50] Such failure merits an adverse costs order.

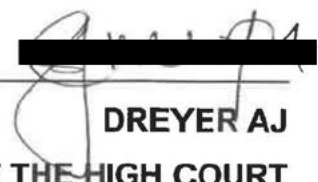
[51] As a mark of the court's displeasure, the applicant is directed to pay the costs of the hearing of this matter on scale as between attorney and client.

¹⁰ 1997 (2) SA 297 (T) at 324 F-G.

Order

[52] I make the following order

1. The application is dismissed.
2. The applicant is to pay the costs of the hearing of the matter on 28 and 29 July 2025 on scale as between attorney and client, the balance of the costs of the application on a party and party scale, costs of counsel on scale C.



DREYER AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

GD Harpur SC
Instructed by Boasing & Co

For the Respondent:

R du Plessis SC
Instructed by Pagel Schulenburg

Date of Hearing: 28 July 2025

Date of Judgement: 5 December 2025