



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no: 25795/2024

In the matter between:

LINDSAY GRAY

APPLICANT

and

ALAIN NICON FERRIER

FIRST RESPONDENT

BEANSTALK PRODUCTIONS CC

SECOND RESPONDENT

Heard: 04 August 2025,
Final submissions received on 19 August 2025

Delivered: 26 August 2025

Summary: Close Corporations Act. Application by a member to terminate the member's interest in the corporation under section 36. Member acquiring a majority interest in the corporation without payment. Allegations of BEE fronting and the Court's approach thereto. Application of the Court's discretion as qualified by 'just and equitable' in section 36(1)(d) and as the Court 'deems it fit' in section 36(2) of the Act. Circumstances that render it just and equitable to terminate members' interest. Attaching a value to a members' interest in a corporation- factors considered. Valuation considering the market value of the corporation, the member's contribution to the growth of the corporation since acquiring her interest, or to the

overall growth of the corporation since inception. The Court, in exercising its discretion, deemed it fit that the third option should apply.

ORDER

1. It is declared that circumstances have arisen which render it just and equitable that the Applicant should cease to be a member of the Second Respondent.
2. It is declared that either the Second Respondent or the First Respondent should acquire the Applicant's members' interest in the Second Respondent.
3. The First and/or the Second Respondent are directed to pay the Applicant R1 075 000 (one million and seventy-five thousand rand) by 8 October 2025 for the acquisition of the Applicant's member's interest in the Second Respondent.
4. The Applicant is directed to transfer her member's interest to the Second Respondent and/or the First Respondent against payment of the amount referred to in the preceding paragraph.
5. The Applicant's membership of the Second Respondent shall cease upon payment having been made in full.
6. The Respondents shall pay the Applicant's party and party costs, and Counsel's fees on scale B, as taxed or agreed.

JUDGMENT

Bhoopchand AJ:

[1] This application concerns the relief available to a member alleging an irretrievable breakdown in the relationship between her and another member of a corporation. The Applicant based the relief she sought on an unsigned agreement, contending that she acquired her members' interest in the Second Respondent

under the terms of the agreement. The Respondent interpreted her case as one of specific performance on a contract and asserted that the disputes relating to the alleged agreement were beyond adjudication in an application proceeding. The Applicant's case, as outlined in the notice of motion, is based on sections 36(1)(d) and (2) of the Close Corporations Act 69 of 1984 ('the Act'). As a last resort, and if the Court is not inclined to grant relief under section 36 of the Act, she asks that the Court wind up the Second Respondent.

[2] The Applicant, Lindsay Gray ('Gray') holds a 51% members interest in the Second Respondent, Beanstalk Productions CC ('Beanstalk'). Beanstalk is an events management, brand development and marketing corporation. The First Respondent, Alain Nicon Ferrier ('Ferrier'), holds the remainder of the members' interest in Beanstalk. Before acquiring her interest, Gray was employed by Beanstalk as head of strategy between 2017 and 2020, and in addition, provided consultancy services to Beanstalk through her entity, SACT Consulting ('SACT'). Gray was retrenched during November 2020, a casualty of the Covid 19 pandemic. Gray resumed her consultancy services to Beanstalk in January 2022 and her employment as head of strategy in April 2022, and 'managing director' from January 2023 to 23 April 2024. Gray acquired her majority interest in Beanstalk on 7 October 2022.

[3] The circumstances relating to Gray's acquisition of her majority member's interest in Beanstalk are unclear, except for her receiving it without paying anything for it. The unsigned agreement suggests that Gray's services rendered over the years to Beanstalk would be used instead of payment for her acquisition of the interest in Beanstalk. Ferrier denies the agreement. The unsigned contract did not make provision for the termination of Gray's membership in Beanstalk. In the negotiations that ensued regarding the repurchase of Gray's member's interest after Gray exited Beanstalk, Ferrier's attorney pointed to Gray's acquisition of her interest solely for empowerment reasons under the Broad Based Black Economic Empowerment Act 53 of 2003 ('the BEE Act'). Gray had allegedly agreed to re-transfer her members interest for R51. Gray denied that this was the agreement between the parties.

[4] Ferrier and his wife, Celeste Munge ('Munge'), the latter the operations manager at Beanstalk, relocated to Spain during March 2022, but ran Beanstalk from there remotely. Ferrier and Munge returned to South Africa in February 2023. The relationship between Gray and Ferrier became strained after his return. Gray complained that Ferrier began excluding her from important decision making and made decisions relating to the events organised by Beanstalk that ran contrary to how she would have done it. There were irregularities in the financial management of other events and diversion of opportunities to other entities. Gray asserts that these incidents led to an irreparable breakdown of trust between her and Ferrier by March 2024. Gray resigned as 'managing director' on 23 April 2024 and agreed to relinquish her members interest in Beanstalk.

[5] Ferrier denied that the trust between him and Gray had broken down. He suggested that Gray's cause for complaint originated from issues that usually beset the corporation, and for which she was, in some instances, responsible. He accused Gray of manufacturing reasons for the alleged breakdown in trust in her effort to garner support for this application.

[6] Ferrier recalled that Gray approached him in November 2021 to resume her consultancy services to Beanstalk. He confirmed his intention to relocate with Munge to Spain, but asserted that he intended to run the corporation remotely. He disputed Gray's assertion that he abandoned Beanstalk to her care and that she ran the corporation single-handedly, as being untrue. He denies a breakdown in trust between him and Gray. Gray indicated to him that she, among others, wished to change her work focus to incorporate other fields and to watch her health.

[7] Gray acquired the member's interest on the strength of a proposal made to Ferrier on 28 January 2022. It concerned Beanstalk's attainment of a level 2 BEE scorecard. Gray offered a solution in line with what she had done with another exhibition company, based on her being listed as a 51% owner of Beanstalk. A level 2 BEE scorecard is one level below the highest possible rating. The BEE rating system is scored across five criteria, signifying a strong commitment to transformation and thereby attracting government work as well as improving competitiveness in the private sector through preferential procurement recognition.

Gray's proposal to Ferrier was designed to confer upon her a paper-based majority interest valued at R1 per unit without any corresponding rights to profits, assets, governance, or operational influence. Her involvement was confined to the execution of statutory filings and BEE procurement documentation. Gray admitted to sending an email containing the proposal, but denied that it was to Ferrier. The email was sent to Munge. Gray denied that the member's interest she acquired in Beanstalk flowed from the proposal contained in her email. She was at pains to point out that the proposal attributed to her would have amounted to BEE fronting and distanced herself from the suggestion. Ferrier, in turn, regarded the proposal as absurd and stated that BEE fronting was never the intention of the agreement between him and Gray.

[8] A fronting practice is defined in the BEE Act as a transaction, arrangement or other act or conduct that undermines the achievement of the objectives of the Act. Section 1(c) of the BEE Act refers to the 'conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of broad-based black economic empowerment compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person'. Any person who knowingly engages in a transaction that undermines the BEE Act would be guilty of an offence under s 130 of the Act. ¹The purpose of the BEE Act is to transfer capital and skills to black people.² Fronting is a 'fraud on those who are meant to be the beneficiaries of legislative measures put in place to enhance the objectives of economic empowerment'.³

[9] A civil Court will be constrained to make a finding of BEE fronting unless a matter has been referred to the BEE commission or prosecuted under section 130 of the BEE Act. Although the odour of fronting permeated the papers in this application, the parties were rather circumspect about implicating each other and exposing themselves and Beanstalk to scrutiny under the BEE Act. Gray benefited from the

¹ *Swifambo Rail Leasing (Pty) Limited v Passenger Rail Agency of South Africa* (1030/2017) [2018] ZASCA 167; 2020 (1) SA 76 (SCA) (30 November 2018) (*Swifambo*)

² *Swifambo* at para 29

³ *Esofranki Pipelines (Pty) Ltd v Mopani District Municipality* [2014] ZASCA 21; [2014] 2 All SA 493 (SCA) (para 26), *Swifambo* at para 29

relationship as an employee with a managerial position. The Court accepts Ferrier's contentions that Gray had the necessary skills and experience for the work that was entrusted to her, but retains its insecurity about how Gray acquired a 51% interest in Beanstalk and that Gray's exit from the corporation may be opportunistic.

[10] Gray approached the Court under section 36(1)(d) of the Act to terminate her membership in Beanstalk. Section 36(1)(d) of the Act permits a member to apply to the Court for an order that circumstances have arisen which render it just and equitable that she should cease to be a member of the corporation. Section 36 allows for a member to seek the termination of another as well as their own member's interest in a corporation. The circumstances referred to are case-specific, but they must meet a threshold for the Court to accept that they are just and equitable and are deserving of an order ceasing the member's interest in the corporation. The wording of section 36(1)(d) envisages a flexible, non-prescriptive remedy that falls within the subjective purview of the Court in deciding what is just and equitable in each case. The circumstances are far less stringent than those prescribed in section 49 of the Act, where unfairly prejudicial, unjust or inequitable conduct constitutes the determinants to qualify for the wider remedy available under that section of the Act.⁴

[11] In small to medium close-knit corporations, the dynamics between personnel are key to their viability. Loss of mutual trust, deadlock, dysfunction, exclusion from decision making, marginalisation, unfair prejudice, oppression, or moral and ethical breakdown are some of the considerations that may constitute the circumstances envisaged under this section of the Act.⁵ Section 36 was enacted to dissolve the association between members whilst leaving the corporation intact. The Applicant bears the onus of proving that she is entitled to the relief sought, but has a wide and unlimited scope in making out a case.⁶ This Court views the provisions of section 36 to cater for the situation where interpersonal relationships between members influence the functioning and operations of the corporation.

⁴ *De Franca v Exhaust Pro CC (De Franca Intervening)* 1997 (3) SA 878 (SE) at 893 C-I

⁵ *Kanakia v Ritzshelf 1004 CC t/a Passage to India & another* 2003 (2) SA 39 (D) at 49C

⁶ *Geaney v Portion 117 Kalkheuwel Properties CC and Others* 1998 (1) SA 622 (T) at 631 H-632A, *Smyth and Another v Mew* (270/09) [2010] ZASCA 56; 2010 (6) SA 537 (SCA) (1 April 2010)

[12] The Court has considered the evidence tendered by Gray and the rebuttal thereof by Ferrier. Given that the threshold to succeed with section 36 relief is low, the Court accepts that Gray and Ferrier are unable to work with each other and that it is just and equitable that Gray ceases to be a member of Beanstalk. In the circumstances, it is unnecessary to delve into the minutiae of their disputes.

[13] The Court then moves to the requirements of section 36(2) of the Act. A Court granting an order under section 36(1) may make further orders concerning the acquisition of the member's interest and any other order arising from the cessation of membership. The Court is entrusted to execute the section 36(2) mandate as 'it deems fit'. Whilst this would accord with the Court applying its usual judicial discretion, the context of a section 36(2) order requires attention to affordability and viability considerations. In ensuring a clean and equitable severance of a member from their corporation, the Court should not destabilise the corporation or unfairly prejudice its other members. It is not an unfettered discretion and has to be informed by fairness, proportionality and the underlying regulatory purpose of the Act. 'As it deems fit' does not incorporate nebulous terms like 'fairness', 'just and equitable' or 'fair value', probably meaning that the legislature intended flexibility and avoided prescriptive valuation formulas.

[14] In arriving at what 'it deems fit', the Court considered the objective financial data provided by Gray together with the discretionary factors. The discretionary factors that influence the determination of an equitable value to Gray's members' interest include the duration for which she held the interest, the consideration she paid for it, her contribution to Beanstalk's finances and its growth, any misconduct or breaches of fiduciary duties, and conduct that is seen to undermine statutory objectives, e.g., BEE fronting.

[15] Gray sought an order that either Ferrier or Beanstalk acquire her members interest for R7 150 827.30 and for consequential relief. Gray and Ferrier participated in discussions about the value of Gray's members' interest. Whilst the specifics of those discussions are contested, it resulted in a valuation of the company by Chartered Accountant, Mynhardt Willem Branders ('Branders'). In his report dated 17 July 2024, Branders valued the corporation as of 29 February 2024 at R14 021 230.

Gray suggested to Ferrier that she was entitled to 51% of the value of the corporation, i.e., R7 150 827.30. Ferrier, through his attorneys, initially offered Gray R2 million, which was later reduced to R1 million, and by the time this hearing occurred, there was no offer for Gray's members' interest. Ferrier accepts that Gray's members' interest in Beanstalk has a value, but contends that it is dependent on many factors and not simply 51% of its market value. He accepted that he committed to acquiring Gray's members interest for fair value commensurate with her contribution to Beanstalk.

[16] Ferrier agreed to appoint Branders to perform the valuation of Beanstalk to enable a constructive discussion about his acquisition of Gray's members interest. Ferrier added that if the Court were inclined to order that he acquire Gray's member's interest, the amount paid should be directly linked to Gray's contribution to the growth of Beanstalk during the tenure of her ownership. He repeated that Gray did not pay any consideration for her member's interest despite the interest carrying substantial value.

[17] Ferrier contended that Beanstalk had a market-related value of about R9 million when he transferred the member's interest to Gray. Branders' valuation did not consider that Beanstalk had effectively lost 50% of its revenue as a result of Grays departure due to the loss of its BEE status and the losses Beanstalk has incurred by Gray poaching a major client, Jägermeister from the corporation. Ferrier contended that if the Court were to find he should acquire Gray's members interest, then the amount payable to Gray should be directly linked to her contribution to the growth of Beanstalk from when she acquired her member's interest to the time she unilaterally ceased fulfilling her duties.

[18] The Court issued a directive to the parties to obtain two further valuations of Beanstalk as of 7 October 2022 and 6 April 2024. The parties agreed that the Branders should perform the valuations. Branders provided a report on 12 August 2025. The valuations, including the original one performed as of 28 February, are illustrated in the table below.

	07/10/2022	29/02/2024	26/04/2024
Market value based on maintainable earnings	12 693 517	8 084 000	8 084 000
Excess capital held	1 747 301	5 937 230	7 358 195
TOTAL MARKET VALUE	14 440 818	14 021 230	15 442 195

[19] The table indicates that the Chartered Accountant chose the market and net assets approach above other methods to determine the value of Beanstalk.⁷ The choice was motivated by the comparable size, financial information available, and the lack of long-term financial forecasts for the corporation. The market value, reflecting the operational value of the business, dropped from R12 693 517 to R8 084 000 over the Applicant's tenure, suggesting to the Court that this could have occurred from reduced profitability, increased risk, or lower earnings. These factors could be due to the strained relationship between Gray and Ferrier or to market conditions. The excess capital held reflects the non-operational surplus funds. The increase from R1 747 301 when Gray acquired her member's interest to R7 358 195 when she relinquished it, suggests that Beanstalk accumulated significant capital during Gray's membership. The assets of Beanstalk increased by R5 610 894 over the eighteen months. If this indicator were used to value Gray's members' interest, she would be entitled to R3 752 679.40. The total value of Beanstalk increased by R1 001 377 during Gray's membership, meaning that if the Court adopted the value in growth approach, she would be entitled to R510 702.27. The value of Beanstalk as of 26 April 2024 had increased to R15 442 195. If the Court applied the total value method in calculating a fair value of Gray's interest, then she would be entitled to R7 875 519.40.

[20] Both Gray and Ferrier were in Court whilst the discussion of what would constitute a fair value of Gray's members interest ensued. In encouraging the parties to seek a mutually acceptable settlement, the Court pointed out that if it had to decide on valuation alone, the outcome could be unsatisfactory for one or the other

⁷ The Chartered Accountant declined to apply the income approach to the valuation and qualified the valuation by stating that valuations are not an exact science and may not be duplicated by another valuer

party or for both. The Court notes that the parties did not avail themselves of the opportunity to settle whilst the further valuations were performed. The Court emphasised that it retained its discretion to set a value to Gray's members interest irrespective of the further valuations received. After receiving Brander's report, the parties were invited to make succinct submissions on what would constitute a fair value of Gray's members interest. Ferrier contended for an amount of R510 702.27 whereas Gray submitted that R7 150 827 would be fair and equitable.

[21] The discretionary factors weighed heavily on the Court in determining the value of Gray's members interest in Beanstalk. Gray did not pay anything to obtain her member's interest. The cloud of BEE fronting hung heavily over both Gray and Ferrier over how Gray acquired a 51% paper interest in Beanstalk. Gray's acquisition of 51% of the member's interest in Beanstalk without consideration would suggest a nominal or symbolic ownership obtained in exchange for BEE compliance. Ferrier's admission that BEE considerations did play a significant role in Gray acquiring the member's interest and that Beanstalk would suffer financially from the loss of its BEE status on Gray's exit, confirms the Court's suspicions about how Gray acquired her majority interest in Beanstalk. The Court is loath to reward conduct that undermines statutory objectives like BEE.

[22] Gray's protestations that she made the BEE proposal to Munge, the operations manager of the corporation, does not lessen the suspicion underlying an inexplicable acquisition of a majority interest in Beanstalk for no payment. Gray received a salary and consultancy fees for her services to the corporation. The duration of her interest in Beanstalk was just eighteen months. Her insistence that she is entitled to 51% of the market value of the corporation seems opportunistic. Gray has taken at least one significant client of Beanstalk, namely Jägermeister. Her stated reasons for exiting Beanstalk related to her health and the pursuit of other interests.

[23] In the circumstances, it would be unjust and inappropriate to award Gray 51% of Beanstalk's market value. Nor would it be appropriate to award her the growth in market value of Beanstalk from 2022 to 2024. The latter would be seen to be rewarding Ferrier for exploiting Gray. After careful consideration, the Court has

settled on an objective method to determine the value of Gray's member's interest that can be supported. Beanstalk has, on average, grown by R1 403 835.90 per year over its eleven years in existence. Gray's interest in Beanstalk is over eighteen months of that period. The value of Gray's members' interest over eighteen months would amount to R1 073 934.40. The Court therefore deems it fit that either Ferrier or Beanstalk acquire Gray's interest in Beanstalk for R1 075 000, as rounded off. The order that follows shall place this value on her member's interest.

ORDER

7. It is declared that circumstances have arisen which render it just and equitable that the Applicant should cease to be a member of the Second Respondent.
8. It is declared that either the Second Respondent or the First Respondent should acquire the Applicant's members' interest in the Second Respondent.
9. The First and/or the Second Respondent are directed to pay the Applicant R1 075 000 (one million and seventy-five thousand rand) by 8 October 2025 for the acquisition of the Applicant's member's interest in the Second Respondent.
10. The Applicant is directed to transfer her member's interest to the Second Respondent and/or the First Respondent against payment of the amount referred to in the preceding paragraph.
11. The Applicant's membership of the Second Respondent shall cease upon payment having been made in full.
12. The Respondents shall pay the Applicant's party and party costs, and Counsel's fees on scale B as taxed or agreed.

BHOOPCHAND AJ
Acting judge
High Court
Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 26 August 2025

Applicant's Counsel: D Van Reenen

Instructed by Gillan & Veldhuizen Inc

Respondent's Counsel: J K Felix

Instructed by Frank Holland & Associates