

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: **2025- 239237**

In the matter between

NEW HEIGHTS 592 (PTY) LTD

Applicant

and

STELLENBOSCH BRIDGE INVESTMENT

First Respondent

HOLDINGS (PTY) LTD

JAAP DU TOIT

Second Respondent

ANDRÉ ROUX

Third Respondent

KLAPMUTS ESTATE (PTY) LTD

Fourth Respondent

BENBOW HOUSE BELEGGINGS (PTY) LTD

Fifth Respondent

**THE TRUSTEES FOR THE TIME BEING OF
THE JOHAN SERFONTEIN TRUST**

Sixth Respondent

JOHANNES CORNELIUS VAN KRIMPEN

Seventh Respondent

THE TRUSTEES FOR THE TIME BEING OF

Eighth Respondent

THE MAGDORINE SQUARA TRUST

THE TRUSTEES FOR THE TIME BEING OF

Ninth Respondent

THE CJ GEEL FAMILY TRUST

THE TRUSTEES FOR THE TIME BEING OF

Tenth Respondent

THE CHRIS GEEL FAMILY TRUST

Summary: Urgent Application - Dispute - Record Date - Composition
of Board of Directors - Rights Offer - Validity Disputed -
Section 59 of the Companies Act - Application Dismissed.

Coram: Wille, J

Heard: 11 December 2025

Order: 11 December 2025

Reasons Requested: 12 January 2026

Reasons Delivered: 28 January 2026

REASONS

WILLE, J:

INTRODUCTION

[1] At first blush, this urgent application concerned a dispute over the composition of the first respondent's board of directors and whether a rights offer extended by the board on 14 November 2025 to the first respondent's shareholders was valid.¹

[2] This request for reasons is at the instance of some of the respondents who were successful in opposing the urgent application. The reason why these respondents need reasons for my order is unknown. I can only assume they need these reasons to further regulate the affairs of the first respondent. While it is thankfully not the function of a court to render legal advice, I suppose the respondents in this case are, as a matter of law, entitled to reasons for the order I granted to their benefit. This is the second urgent application launched by the applicant in connection with this matter within a short space of time. In the first application, the applicant sought an order suspending the rights offer pending the outcome of the Annual General Meeting.²

¹ I issued the order at 20h15 at night.

² An order was also sought that the court convene an AGM of the first respondent.

[3] Following the first application, an order was granted. A portion of the first order was agreed upon, and a portion thereof was not agreed upon. By agreement, it was ordered that the company's auditors convene an AGM for the company on 17 December 2025. The order included the AGM's agenda.³

[4] A portion of the order recorded that the applicant would pay the required subscription costs to the designated trust account of Victor & Partners by 17h00 on Friday, 28 November 2025. It also provided that the payment in respect thereof was to be held in that trust account until the completion of the AGM on 17 December 2025.⁴

[5] Most importantly, the order recorded that this relief was in substitution for the relief originally sought regarding the suspension of the rights offer. Thus, the rights offer was not suspended after 17h00 on 28 November 2025. The auditors of the first respondent then gave notice to the shareholders of the AGM to be held on 17 December 2025.⁵

[6] It is this notice that was problematic, as the shareholders purported to determine that the record date for the AGM was the 28 November 2025. On 2 December 2025, the first respondent's board advised that the shareholders had exceeded their authority and lacked the power to determine a record date. Thus, an issue arose with the determination of the record date as 28 November 2025.⁶

³ This was the application that presented before Judge Ndita.

⁴ No more than this appeared from a proper reading of the order by Judge Ndita.

⁵ This notice was issued on 1 December 2025.

⁶ Namely that they could not determine the record date to be 28 November 2025.

[7] By contrast, the board advised that it determined the record date as 17 December 2025. This was then the essence of the dispute before me for urgent determination.⁷

THE RELIEF SOUGHT

[8] The applicant sought a declarator to the effect that the record date for shareholding voting rights to be exercised at the first respondent's annual general meeting on 17 December 2025, is and was 28 November 2025.⁸

CONSIDERATION

[9] Section 59 (1) of the Companies Act, 71 of 2008 ("CA") provides:

'...The board of a company may set a record date for the purpose of determining which shareholders are entitled to—

- (a) receive notice of a shareholders' meeting*
- (b) participate in and vote at a shareholders' meeting*
- (c) decide any matter by written consent or electronic communication, as contemplated in section 60*
- (d) exercise pre-emptive rights, as contemplated in section 39*
- (e) receive a distribution; or*
- (f) be allotted or exercise other rights...'⁹*

⁷ The applicant sought a declarator that the record date be 28 November 2025.

⁸ This declarator I dismissed. Thus, the record date is not 28 November 2025.

⁹ Section 59 (1) of the CA.

[10] Section 59 (2) of the CA provides:

'...A record date determined by the board in terms of ss (1)

(a) *may not be -*

(i) *earlier than the date on which the record date is determined; or*

(ii) *more than 10 business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and*

(b) *must be published to the shareholders in a manner that satisfies any prescribed requirements...*¹⁰

[11] Further, by way of legislative intervention, if the board does not determine a record date for any action or event, the record date is -

(a) *'...in the case of a meeting, the latest date by which the company is required to give shareholders notice of that meeting; or*

(b) *the date of the action or event, in any other case, unless the Memorandum of Incorporation or rules of the company provide otherwise...*¹¹

[12] The board of a company may set a record date for a meeting, and the record date cannot be earlier than the date on which it is determined.¹²

¹⁰ Section 59 (2) of the CA.

¹¹ Section 59 (3) of the CA.

¹² Section 59 (3) of the CA.

[13] Further, if no record date is set by the board, it shall be the latest date by which the company is required to give shareholders notice of the meeting.

Thus, by way of application:

- (a) the date on which the auditors determined the record date was 1 December 2025,
- (b) the determined record date was 28 November 2025.
- (c) the date is a date earlier than the date on which the record date was determined.¹³

[14] In addition, the record date of 28 November 2025 is more than 10 business days before the meeting, which was to be held on 17 December 2025¹⁴

[15] Turning now to the issue of the competence of the auditors to determine a record date. A company's board may determine a record date, but it is not obliged to do so. Upon a proper construction of the first order, the auditors were not given a magical power to determine a record date. This must be so, as the CA does not require a record date to be set; it provides a default position if none is set. The first order regulated the convening of the AGM with the agenda.¹⁵

[16] Nothing in the first order authorized the auditors to set a record date.¹⁶

¹³ In violation s 59 (2) (a) (i) of the CA.

¹⁴ In violation of s 59 (2) (a) (ii) of the CA.

¹⁵ Nothing more and nothing less.

¹⁶ The order by Judge Ndita.

[17] The company's board has determined a record date. It matters not if there is a dispute regarding the composition of the board. The determination of the records date remains extant. That said, there still may be a *bona fide* concern about the board's composition.¹⁷

[18] Inasmuch as it may be relevant, the applicant sought final relief concerning *bona fide* disputed issues regarding the composition of the board. Thus, the respondent's version must prevail. The applicant's argument focused on the record date rather than the validity of the rights issue. The applicant sought an order declaring the record date to be 28 November 2025.¹⁸

[19] The applicant's argument focused on an interpretation of s 36 and s 38 of the CA. Section 36 deals with the authorization of shares, while s 38 deals with the issue of authorized shares. It is permissible for directors to issue shares subject to certain specified limitations, namely that power is limited by the number of shares authorized by the Memorandum of Incorporation.¹⁹

[20] From a reading of the papers, it seems clear that the shares issued pursuant to the *rights issue* were authorized shares issued in accordance with the provisions set out in s 38. Whether or not the board was properly and validly constituted does not fall within the remit of any decision that may be validly taken at the AGM. This is a legal issue for a court to determine.²⁰

¹⁷ And the validity of the rights issue.

¹⁸ This declaratory relief was dismissed

¹⁹ *Cowan and Others v Norton and Others* [2025] ZAGPJHC 358 at para 29.

²⁰ This cannot be resolved by the shareholders of the first respondent.

[21] As a matter of law, the issue of whether the board was validly and properly constituted at the time when it extended the rights offer cannot be resolved by the shareholders of the first respondent at an AGM.²¹

[22] It goes without saying that the record date, as determined by the board, is and was 17 December 2025.²²

[23] These are my reasons for dismissing the urgent application at the applicant's instance, with costs.²³

E. D WILLE
CAPE TOWN

APPEARANCES

For the Applicant

A R G Mundell SC
H van der Vyver
Instructed by Ayoob Kaka Incorporated.

For the Second to Fifth Respondents

B J Manca SC
C R Cilliers
Instructed by Hayes Incorporated.

²¹ This is evident from the proposed amendment to s 38 in the form of s 38A.

²² And, not 28 November 2025.

²³ The order provided for the costs of two counsel.