



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 818/2024

In the matter between:

G.U.D. HOLDINGS (PTY) LTD

Appellant

and

COMPANIES AND INTELLECTUAL

PROPERTY COMMISSION

First Respondent

COMPANIES TRIBUNAL

Second Respondent

KHATIJA TOOTLA N.O.

Third Respondent

Neutral citation: *G.U.D. Holdings (Pty) Ltd v Companies and Intellectual Property Commission and Others* (818/24) [2026] ZASCA 10 (4 February 2026)

Coram: MEYER, KGOELE, KEIGHTLEY and COPPIN JJA and DAWOOD AJA

Heard: 7 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The time and date for hand-down is deemed to be 11h00 on 4 February 2026.

Summary: Company Law – Companies and Intellectual Property Commission (the Commission) - Companies Act 71 of 2008 – Interpretation of s 212 - Claim for confidentiality of information when submitting information to the Commission.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Ceylon AJ, sitting as court of first instance):

The appeal is dismissed with costs, including those of two counsel.

JUDGMENT

Meyer JA (Kgolele, Keightley and Coppin JJA and Dawood AJA concurring)

[1] This appeal concerns a confidentiality claim submitted in terms of s 212¹ of the Companies Act 71 of 2008 (the Companies Act). It is against the order of the Gauteng Division of the High Court, Pretoria (the high court), dated 18 December 2023, granting an application for judicial review brought by the first respondent, the Companies and Intellectual Property Commission (the Commission).² The high court set aside the decision of the second respondent, the Companies Tribunal (the Tribunal),³ and substituted it with an order dismissing the claim of the appellant, G.U.D. Holdings (Pty) Ltd (GUD), for confidentiality of its annual financial statements for the year ending 30 June 2020. The third respondent, Ms Khatija Tootla N.O., is cited in her official capacity as the member of the Tribunal who wrote the impugned decision. The appeal is with leave of the high court.

[2] GUD is a private for-profit company, deemed to be a pre-existing company and is required in terms of its Memorandum of Incorporation, the Companies Act and the Companies Regulations 2011 (the Companies Regulations) to have its annual financial statements audited and submitted to the Commission. It was established in

¹ Subsections 212(1) and (2) of the Companies Act reads:

‘(1) When submitting information to the Commission, the Panel, the Companies Tribunal, the Council, or an inspector or investigator appointed in terms of this Act, a person may claim that all or part of that information is confidential.

(2) Any claim contemplated in subsection (1) must be supported by a written statement explaining why the information is confidential.

² The Commission is established under s 185(1) of the Companies Act ‘as a juristic person to function as an organ of state within the public administration, but as an institution outside the public service’.

³ The Tribunal is established in terms of s 193(1) of the Companies Act as ‘a juristic person’.

1949 and conducts business in the automotive industry. It enjoys a high market share in certain of its product lines.

[3] Since inception, GUD never submitted its annual financial statements to the Commission. In terms of s 30(1) of the Companies Act, a company must prepare annual financial statements annually within six months after the end of its financial year. Sections 29 and 30 provide for what is to be contained in the financial statements. They must: present fairly the state of affairs of the business of the company, and explain the transactions and financial position of the business of the company;⁴ show the company's assets, liabilities and equity, as well as its income and expenditure, and any other prescribed information;⁵ include particulars showing directors' remuneration and benefits received.⁶ It must also file an annual return in the prescribed form within the prescribed period after the end of the anniversary date of its incorporation. In that return, it must include copies of its annual financial statements,⁷ securities register⁸ and register of the disclosure of beneficial interest.⁹

[4] On 21 February 2019, GUD submitted a claim for confidentiality, as contemplated by s 212(1) of the Companies Act, to be approved by the Commission 'in relation to all and the entire contents of its Annual Financial Statements, which may in the future have to be submitted to the CIPC'. GUD gave the following explanation in support of its claim for confidentiality:

'The reason for the Company claiming confidentiality of the Annual Financial Statements is that the Annual Financial Statements of the abovementioned Company contain *confidential and sensitive information* relating to:

- a. Profitability;
- b. Gross Profit;
- c. Annual Turnover;
- d. Asset Base and Liabilities; and
- e. Company Ownership and Structure.

⁴ Section 29(1)(b).

⁵ Section 29(1)(c).

⁶ Section 30(4)(a).

⁷ Section 33(1)(a).

⁸ Section 33(1)(b).

⁹ Section 33(1)(c).

This information is of a sensitive nature and would prejudice the Company and its Shareholders if it is accessed by:

Competitors, Customers and Unions, ie. The Company enjoys a high market share in certain of its product lines, which makes the protection of its profitability from possible new competitors and from customers even more acute and it is in the interest of protecting the business of the Company that a claim for confidentiality is being requested from the CIPC in terms of the provisions of section 212(1) and (2) of the Act. The financial information recorded in the financial statements of the Company is also sensitive and would prejudice the Company and its Shareholders if it is accessed by its customers, suppliers, executive directors, employees (other than those required to have access for the purpose of their jobs) and especially if accessed by the unions, seeing that the automotive industry is heavily unionized. The Company and its subsidiaries are involved in the motor industry. National Union of Metal Workers of South Africa (NUMSA) is currently the majority union representing the employees in the business.'

[5] On 18 April 2019, the Commission refused GUD's claim for confidentiality. However, it permitted GUD to file a supplementary affidavit for further consideration by the Commission. Therein, GUD responded to the reasons given by the Commission for refusing its claim for confidentiality. In addition, its chief financial officer states:

'21. I make the following submissions in respect of the Company's right to privacy and the potential harm that disclosure of the financial statements to the public in general, is likely to cause the Company. I do so with reference to the categories of information that must be included in the financial statements to be submitted to the Commission:

- 21.1. The quantum of dividends declared and paid: as the Company is a private company and its shareholders are private entities, dividends paid to them are not for public information.
- 21.2. Levels of outside funding in the business: the bank receives the Company's financial statements and is able to decide whether or not to provide the funding the Company may require. How the business is financed is not information that should or needs to be made known to the public in general.
- 21.3. Revenue, cost of sales and gross profit information and all the information contained in the statement of profit or loss and other comprehensive income needs to be kept confidential. For competitors to know the Company's gross profit percentage would put us at a distinct disadvantage in the industry. This is especially as most of our competitors are importers and therefore we do not have access to their annual financial statements. For them to know our operating costs would also put us at a distinct disadvantage as

they would know what price we need to sell our products at and could potentially undercut us with our customers.

21.4. The cash flow statement also contains information that should be kept confidential, as it shows how the business is being funded and run.

21.5. The goodwill note gives information on how we have valued divisions within the Company and the risk each division/subsidiary is exposed to. The information is highly sensitive and could again give competitors an edge if they knew what we needed from each division and what risks we were exposed to.'

[6] On 11 September 2019, the Commission refused GUD's supplemented claim for confidentiality. In refusing its claim, the Commission concluded:

'Section 212(1) of the Companies Act provides for a person to claim that all or part of the information is confidential (my emphasis). Your claim for confidentiality of the "entire statements" of your audited financial statements in terms of section 212 is too broad, widely encompassing and therefore not granted. Information deemed confidential such as trade secrets (for example) is not required to form part of the annual financial statements and may be omitted. Your client has a right in terms of section 212(7) to refer this matter to a court for an appropriate order.'

[7] Dissatisfied with this outcome, on 3 October 2019, GUD submitted an application to the Tribunal wherein it sought a decision: reviewing and setting aside the decisions of the Commission taken on 18 April 2019 and 11 September 2019, refusing its claim for confidentiality of its audited financial statements; and the replacement of that decision with one granting its claim. On 25 November 2019, the Tribunal published its decision striking the matter from its roll for lack of jurisdiction to adjudicate the application. On 4 August 2020, GUD applied to the Gauteng Division of the High Court, to review and set aside the Tribunal's decision. On 29 June 2021, that court found that the Tribunal had the requisite jurisdiction to grant such decision and referred the matter back to the Tribunal.

[8] On 14 September 2021, GUD submitted a new claim for confidentiality to the Commission 'for the entire contents of annual financial statements for the financial year-end 30 June 2020. Attached to the claim were GUD's annual financial statements for the 2020 financial year, with the redaction of the directors' remuneration. On 27

September 2021, the Commission refused its claim for confidentiality stating, inter alia, that:

'It is of crucial importance to note that this information is of a general nature, These (*sic*) information is contained in the annual financial statements of all reporting entities mandated to report and this information is not out of the ordinary. It is in line with International Financial Reporting Standards (IFRS) and the Companies Act requirements.'

[9] Once again dissatisfied with the outcome, on 18 October 2021, GUD submitted a further application to the Tribunal wherein it sought a decision: reviewing and setting aside the decision of the Commission taken on 27 September 2021, and the replacement of that decision with one granting GUD's claim for confidentiality. On 13 December 2021, the Tribunal upheld GUD's application and replaced the decision of the Commission with one granting GUD confidentiality in respect of its 2020 annual financial statements.

[10] Dissatisfied with the decision of the Tribunal, the Commission initiated the application that forms the subject of this appeal in the high court on 16 May 2022. The high court reviewed and set aside the decision of the Tribunal, substituted it with an order dismissing GUD's claim for confidentiality in respect of its 2020 financial statements, together with an adverse costs award against it. In the present appeal, GUD raises several grounds of review under s 6(2) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). However, counsel agree that, unless it is found that GUD established that the information forming the subject-matter of its claim for confidentiality is indeed 'confidential' as contemplated in s 212(1) of the Companies Act, it cannot succeed on any one of its grounds of review. It is, therefore, to that question which I now turn.

[11] Whether information is 'confidential' as contemplated in s 212(1) of the Companies Act, raises the issue of the proper interpretation of that provision. Section 212(1), like any other written instrument, must be interpreted by application of the triad: language, context and purpose.¹⁰ An interpretation that results in absurdity must be avoided. Section 212 enables a person who submits information to the Commission,

¹⁰ *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 28.

the Panel, the Companies Tribunal, or the Financial Reporting Standards Council, to claim that the information be treated as confidential, by submitting a claim in writing to that effect.¹¹ The claim will be considered and decided upon by the relevant entity, which has to furnish written reasons for the decision.¹² The relevant entity may take confidential information into consideration in making its decision,¹³ but where the reasons for a decision would reveal any such confidential information, the entity is under an obligation to provide the party claiming confidentiality with a copy of the proposed reasons at least ten business days before publishing the reasons.¹⁴ A party who received such a copy may apply to court within five business days after having received the copy for an order to protect the confidentiality of the information.¹⁵

[12] The Companies Act does not provide a definition for the adjective ‘confidential’ used in s 212(1). The protection of confidential information is not always absolute.¹⁶ What would constitute information of a confidential nature will depend on the particular facts and circumstances of each case. Important considerations in determining whether information is indeed confidential, are, by way of example, the potential usefulness of the information to a rival,¹⁷ and the public interest score (PIS) of a company.¹⁸ PIS is the measure of public interest in a specific company, determined by its potential social footprint and impact on the public. In terms of reg 26 of the Companies Regulations, the PIS is calculated through the accumulation of points based on the number of employees in the employment of the company, third party liabilities owed by the company, the annual turnover of the company, and the number of shareholders of the company. PIS is an indication of a company’s level of public interest; the level to which it must be regulated, and the financial reporting standards required for transparency in the public interest. The higher the PIS, the greater the degree of transparency required, because of the heightened demands for public accountability, regulation, and oversight through financial statements review and audit,

¹¹ Subsections 212(1) and (2).

¹² Subsection 212 (3).

¹³ Subsection 212 (5).

¹⁴ Subsection 212 (6).

¹⁵ Subsection 212 (7).

¹⁶ *Meter Systems Holdings Ltd v Venter & Another* 1993 (1) SA 409 (W) at 430E; *Pexmart CC & Others v H Mocke Construction (Pty) Ltd & Another* [2018] ZASCA 175; [2019] 1 All SA 335 (SCA); 2019 (3) SA 117 (SCA); [2018] BIP 345 (SCA) para 65.

¹⁷ *Coolair Ventilator Co (SA) (Pty) Ltd v Liebenberg & Another* 1967 (1) SA 686 (W) at 691B.

¹⁸ See s 30(2)(b) of the Companies Act.

and, where applicable, social and ethics review. Regulation 26(2) of the Companies Regulations requires companies to calculate their PIS at the end of their financial year.

[13] In *Nova Property Group Holdings Ltd and Others v Cobbett and Another*,¹⁹ Kathree-Setiloane AJA said this:

‘[16] The role that companies play in our society and their obligations of disclosure that arise from the right of access to information in s 32 of the Constitution, is central to the interpretation of s 26(2) of the Companies Act. Both this court and the Constitutional Court have recognised that the manner in which companies operate and conduct their affairs is not a private matter. In *Bernstein & others v Bester NO & others* [[1996] ZACC 2; 1996 (4) BCLR 449; 1996 (2) SA751 (CC) para 85], the Constitutional Court made the position plain. The Court said:

“The establishment of a company as a vehicle for conducting business on the basis of limited liability is not a private matter. It draws on a legal framework endorsed by the community and operates through the mobilisation of funds belonging to members of that community. Any person engaging in these activities should expect that the benefits inherent in this creature of statute will have concomitant responsibilities. These include, amongst others, the statutory obligations of proper disclosure and accountability to shareholders. It is clear that any information pertaining to participation in such a public sphere cannot rightly be held to be inhering in the person, and it cannot consequently be said that in relation to such information a reasonable expectation of privacy exists. Nor would such an expectation be recognised by society as objectively reasonable. This applies also to the auditors and debtors of the company.”

[17] This approach has been repeatedly endorsed. This passage in *Bernstein* was cited by this court in *La Lucia Sands* [*La Lucia Sands Share Block Ltd & others v Barkhan and Others* [2010] ZASCA 132; 2010 (6) SA 421 (SCA); [2011] 2 All SA 26 (SCA) para 21], in dealing with s 113 of the Companies Act 61 of 1973 (the old Companies Act), the predecessor to s 26 of the Companies Act. Similarly, in his separate concurring judgment in *S v Coetzee* [[1997] ZACC 2; 1997 (4) BCLR 437; 1997 (3) SA 527 (CC) para 98], Kentridge AJ emphasised that ‘those who choose to carry on their activities through the medium of an artificial legal persona must accept the burdens as well as the privileges which go with their choice.’ Most recently, in *Company Secretary of Arcelormittal South Africa and Another v Vaal Environmental Justice Alliance* [[2014] ZASCA 184; 2015 (1) SA 515 (SCA); [2015] 1 All SA 261 (SCA) para1], this court emphasized that “citizens in democracies around the world are growing alert to the

¹⁹ *Nova Property Group Holdings Ltd and Others v Cobbett and Another* [2016] ZASCA 63; [2016] 3 All SA 32 (SCA); 2016 (4) SA 317 (SCA) (12 May 2016) (*Nova Property Group*).

dangers of a culture of secrecy and unresponsiveness, both in respect of government and in relation to corporations' and that Parliament, driven by Constitutional imperatives, had rightly seen fit to cater for this in its legislation'.

[14] The Companies Act gives specific recognition to a culture of openness and transparency in s 7, which lists the Act's core objectives. Section 7(b)(iii) in particular, provides that one of the purposes of the Companies Act is to-

'[encourage] transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation.'

Section 5(1) provides that the Companies Act must be interpreted and applied in a manner that gives effect to the purposes set out in s 7.

[15] Part C of Chapter 2 of the Companies Act (ss 23-34) is titled 'Transparency, accountability and integrity of companies'. This part of the Companies Act provides that a company must annually prepare financial statements and prescribes what they must contain. It directs that they must be audited and, together with the company's annual return, be submitted to the Commission. The Commission must make the annual return electronically available to any person.²⁰ This constitutes an unqualified right to access since the legislature did not set requirements for a person to request a copy of, or electronic access to, the annual return.²¹ Any person, upon payment of the prescribed fee, may inspect any document filed under the Companies Act.²² The Commission is enjoined to make the information in the register sufficiently and effectively available to the public.²³

[16] Section 212 is enacted with these objectives in mind. It recognises that the establishment of a company is not purely a private matter and may impact the public in several ways. While the Companies Act recognises and promotes a culture of openness and transparency, s 212 creates an exception and provides for the protection of a limited type of information that is shown to be confidential. Such protection should not be granted lightly, otherwise the objectives of transparency and

²⁰ Section 33(1A)(a) read together with regulation 30(9) of the Regulations.

²¹ In *Nova Property Group* para 47, this Court, in dealing with s 26, held: 'If Parliament is of the view that the right should be qualified in some way, because of concerns relating to abuse of the right to access, it can legislate accordingly but it has chosen not to do so.'

²² Section 187(5)(d).

²³ Section 187(4)(c).

corporate governance would be undermined. It is incumbent upon a person claiming confidentiality of specific information to proffer cogent and full reasons why that information should be declared confidential.

[17] The inevitable conclusion when considering the reasons proffered by GUD why the entire contents of its 2020 annual financial statements should be declared confidential, is that it dismally failed to establish the type of ‘confidentiality’ envisaged by s 212. It was incumbent upon GUD to allege in detail, with reference to each relevant item appearing in its 2020 financial statements, why it contended that such item of information is confidential. It failed to do so. GUD has a high PIS exceeding a score of 350. There accordingly rests a higher degree of transparency and public accountability on it, which it needed to address in seeking the information protected from access or disclosure. It did not do so. As was stated by the Commission, ‘[t]he information claimed by GUD to be confidential, is of a general nature and this information is contained in the AFS of all reporting entities and is in line with the International Financial Reporting Standards (IFRS) and the Companies Act requirements’. What GUD sought to achieve was the confidentiality of its 2020 and all future annual financial statements and it, therefore, simply gave generalized reasons for its claim for confidentiality.

[18] Furthermore, it remains a mystery why GUD redacted its directors’ remuneration and benefits received from the 2020 annual financial statements it submitted with its claim for confidentiality to the Commission. In terms of s 33(1)(c), the annual financial statements must include particulars showing directors’ remuneration and benefits received. A party claiming confidentiality of information cannot, without the consent of the Commission, decide what information to redact.²⁴

[19] In the result, the following order is made:

The appeal is dismissed with costs, including those of two counsel.

P A MEYER
JUDGE OF APPEAL

²⁴ *Companies and Intellectual Property Commission v Companies Tribunal and Others* (26738/2022) ZAGPPHC 2034 (18 December 2023).

Appearances

For appellant:

C P Wesley SC

Instructed by:

Friedland Hart Solomon & Nicolson,
Pretoria
Lovius Block, Bloemfontein

For respondent:

M C Erasmus SC (with C Janse van
Rensburg)

Instructed by:

The State Attorney, Pretoria
The State Attorney, Bloemfontein.