Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG

Case No:2025-232971

In the matter between:

THOMAS ALWYN KOEKEMOER Applicant

and

TERS & TOM TRADING (PTY) LTD First Respondent

TERTIUS NORTJE Second Respondent

Third Respondent

PHILLIP NORTJE

Coram: Mfenyana J

This judgment was handed down electronically by circulation to the parties' representatives by email. The date of handing down of the judgment is deemed to be **26 January 2026.**

ORDER

(a) The requirements of the Rules relating to forms, service and timeframes are dispensed with, and the matter is dealt with as one of urgency.

(b) The respondents are ordered not to interfere in any manner whatsoever in the applicant's right to execute his rights and responsibilities as a director and shareholder of the first respondent.

(c) The respondents are ordered and directed not to forbid the applicant in any manner whatsoever, from entering, using or occupying the office in the Spar Building, which he used and occupied prior to 18 November 2025.

(d) The respondents are ordered and directed not to remove or cause to be removed any movable items from the said office, without the written consent of the applicant.

(e) The respondents are ordered and directed not to withhold or cause to be withheld, reduce or cause to be reduced any payments, salaries, emoluments or benefits due to the applicant by virtue of his position as a director and shareholder of the first respondent without the written consent of the applicant.

(f) The first respondent is ordered to effect payment to the applicant of any amounts in respect of salaries, emoluments or benefits to the applicant in his capacity as a director and shareholder of the first respondent, which the applicant received, whether directly or by debit order prior to 18 November 2025, and which were terminated by or on behalf of the first respondent after 18 November 2025 without the written consent of the applicant, and without a company resolution as prescribed by section 71 of the Companies Act, within five days of this order. Such payments shall be made to the applicant, alternatively to the entity/ies to which such payments were made before their termination.

(g) The orders in paragraphs b) to f) shall operate as interim relief and with immediate effect pending the determination of Part B and any steps to be taken by the applicant within 60 days of this order against the respondents, setting aside the findings by Commissioner S. van Wyk against the applicant.

(h) The first and second respondents are ordered to pay the costs of Part A of the application on a party and party scale, including costs of counsel on scale C.

JUDGMENT

Mfenyana J:

[2] The applicant brought an urgent application for relief in two parts. In Part A, the applicant seeks interim relief that he be declared a director and the holder of a 49% shareholding in the first respondent (the company). He further seeks several orders interdicting the respondents from interfering with his rights in executing his duties and responsibilities as a shareholder and director of TERS; from entering, using or occupying the office in the Spar building, Christiana, which he occupied prior to 18 November 2025. He further seeks an order interdicting the respondents from removing, or causing the removal of, any movable items from the said office without his written consent. Lastly, the applicant seeks an order interdicting the respondents from withholding or reducing any payments, salaries, emoluments, or benefits due to him, in his capacity as a director, shareholder, or employee of the company, without his written consent.

[3] The relief in Part A would operate as interim relief pending the outcome of the final relief sought by the applicant in Part B.

[4] The second respondent, in his personal capacity, opposes the application, while the first and third respondents do not.

[5] The applicant avers that he was invited by the second respondent to join the company as a director and shareholder. Upon joining, he became responsible for the financial management (as Chief Financial Officer) of the company, while the applicant was responsible for general management.

[6] The second respondent, allegedly acting on behalf of the company, instituted disciplinary proceedings against the applicant. The disciplinary hearing culminated in the summary dismissal of the applicant as an employee of the company. All payments to the applicant were thereafter discontinued. The letter of dismissal specifically records that the applicant's positions as shareholder and director of the company are not implicated.

[7] The applicant contends that he and the second respondent are, in addition to being directors and shareholders of the company, employees of the same company. He further contends that "*… the fairness of the disciplinary proceedings and of the subsequent dismissal and termination of payments"* to him are matters regulated by labour law."

[8] The applicant challenges the authority of the second respondent to terminate his services and payments as a director of the company without a resolution by the first respondent. The removal of directors is sanctioned by two provisions of the Companies Act, and in both instances, a resolution should be adopted either by the shareholders or the board of directors.

[9] Although the dismissal of an employee does not require board approval and can be effected as part of managerial responsibilities, the second respondent was not accorded any managerial responsibilities. Relying on *Waterfront*[1], the applicant argues that where a party's employment (or payments) has been terminated without proper authority, such termination is unlawful and the appropriate remedy is an interdict.

[10] The applicant avers that, as there is no written contract of employment, he is not under the control or supervision of the second respondent and that he occupies the position of a director rather than that of an employee.

[11] The applicant was dismissed on 18 November 2025 and notified of the outcome on the same day. He states that he was unable to institute court proceedings immediately, due to a lack of funds and only managed to depose to an affidavit, eight business days after 18 November 2025. To

[1] *V & A Waterfront properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* 2006 (1) SA 252 (SCA).

this end, he contends that there is no basis to contend that urgency is self-created.

[12] He further contends that both he and his wife are suffering from chronic illnesses and are on chronic medication, and if the unlawful conduct of the first respondent is not arrested, he will not obtain substantial relief in due course.

[13] The second respondent contends that the applicant has failed to demonstrate that he would suffer irreparable harm or that he would not be afforded substantial redress in due course. He argues that the applicant, furthermore, has an alternative remedy which is being pursued at the CCMA.

[14] The respondent disputes that the applicant approached the court at the earliest opportunity, noting that the applicant was aware of the impending disciplinary action, which he had threatened to interdict. Accordingly, the respondent contends that the applicant should not have waited until his salary was discontinued before launching the proceedings.

[15] Urgent applications are governed by Rule 6(12), which requires an applicant to demonstrate that the matter warrants the attention of the urgent court and that urgency is not self-created. The applicant must also show that he will not obtain substantial redress at a hearing in due course.

[16] I am persuaded that urgency was not self-created, and the delay was not inordinate and sufficiently explained by the applicant. It is not difficult to understand that once payments to him were discontinued by the company, it was nearly impossible for him to undertake any financial decisions, including prosecuting this application. His chronic, undisputed illness clearly requires treatment, and no substantial redress could be obtained in due course. As such, he will not obtain substantial redress in the ordinary course. Urgency has therefore been established.

[17] The applicant contends that he has satisfied the requirements for an interim interdict. First, he has no alternative remedy and cannot obtain comparable and effective relief other than through the granting of an interdict.

[18] He further contends that the balance of convenience favours him. He is the director and shareholder, and currently has no income. Both he and his wife are in need of medical aid.

[19] Concerning a *prima facie* right, he contends that he is entitled to exercise his rights as a director and shareholder of the company, and that this entitlement is under threat. He further states that this situation is likely to persist for a considerable period if the interim interdict is not granted.

[20] The second respondent contends that he is acting in his personal capacity "(t)o protect the interests of the company. In view of the applicant's

conduct, waiting for the board meeting will not provide the required outcome.

[21] The second respondent concedes that the applicant is a director and a shareholder of the company. Consequently, the relief for a declaratory order is incompetent in the absence of a dispute between the parties.

[22] The second respondent submits that the applicant has not provided details of the duties he is allegedly performing to justify his uninterrupted visits to the premises, particularly as he had not been there for months before June 2025.

[23] He contends that the applicant has referred the dispute regarding the payment of his remuneration to the CCMA, which is an effective alternative remedy available to the applicant. He will therefore be able to obtain substantial redress in due course, he adds.

[24] The second respondent raises the following points in *limine*: The first is that this court lacks jurisdiction in that the dispute between the parties, being a labour dispute, is serving before the CCMA, which has exclusive jurisdiction over the dispute between the parties. Although the issue of lack of jurisdiction is not canvassed in the answering affidavit, the respondent contends that the court seized with this matter may *mero motu* decide the issue.

[25] Reference was made to *Communication Workers Union v Telkom SA Ltd*[2], where the court held that where it is apparent from the facts that the court has no jurisdiction, the court may still determine that issue even though it was not canvassed elsewhere in the affidavit.

[26] This point in *limine* is misplaced. The dispute between the parties relates to the applicant as a director and shareholder. Nothing further need be said in this regard.

[27] [27] Regarding the requirements for an interdict, the second respondent avers that the applicant has failed to demonstrate a basis for his entitlement to a salary in his capacity as a director of the company. Here, I interpose to point out that the applicant was dismissed as an employee of the company and not as a director. It is trite that the process for the removal of a director must follow the stipulations of section 71(1) and (3) of the Companies Act[3].

[28] There is no suggestion that this process was ever implemented. Ironically, the second respondent references these peremptory provisions of the Companies Act to impugn the applicant's contention that the second respondent lacked authority of the second respondent to act on behalf of the company.

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[2] *Communication workers Union v Telkom SA Ltd* 1999 (2) SA 586 (T); 1999(2) All SA 113 (T).

[3] Act 71 of 2008.

[29] The fact that the matter is pending in the CCMA, the second respondent, continues, proves that the applicant has alternative relief and would obtain substantial redress in due course. He contends that the applicant was dismissed from his position as the general manager of the company, and cannot seek that the company continue to pay his remuneration as he does in this application. He further avers that the applicant does not have a prima facie right to remuneration as a director and provides no details of his duties as a director.

[30] Concerning the balance of convenience, the applicant contends that the court may weigh up the prejudice to be suffered by both parties. The question of prospects of success plays a vital role in assessing the balance of convenience. Where the prospects of success in the main application are stronger, the less the need for the balance of convenience to favour the applicant.

[31] It is worth reiterating that the applicant's status as a director and shareholder of the company is not implicated by his dismissal as an employee.

[33] The first respondent does not oppose the application, and the second respondent confirms that he is not acting on the first respondent's behalf. Accordingly, the orders sought against the first respondent will be adjudicated as unopposed.

[32] It is settled law that an applicant for an interim interdict must establish a *prima facie* right, if open to some doubt.[4] Although the applicant initially admitted being an employee of the company, together with the second respondent, he later turned around and stated that he assumed that because there was no written contract of employment between himself and the company, he was not an employee. Both parties, however, accept that the issue of the termination of the employment relationship is before the CCMA and should therefore not detain this court.

[33] The second respondent stated that the status of the applicant as a director and shareholder was not implicated by his dismissal, and to this end, there is no dispute which requires the court to grant the relief sought in paragraph 1 of the notice motion, declaring the applicant a director and a shareholder of the company. What may require confirmation is that he is a holder of 49% shares of the first respondent.

[34] The remaining issue is whether the applicant is entitled to any payments, salaries, emoluments, or benefits as a director. Salaries and other emoluments constitute the remuneration an employer pays an employee for services rendered, including any allowances to directors and non-cash benefits.

[4] *Setlogelo v Setlogelo* 1914 AD 221; see also: *Webster v Mitchell* 1948 (1) SA 1186 (W).

[35] As a director, the applicant may be entitled to payments and benefits. The applicant has demonstrated, based on the Annual Financial Statements (albeit only in the replying affidavit), that in the 2025 financial year, he received R1.3 million, which equates to R113 000.00 per month. While the applicant refers in his replying affidavit to a payslip, he failed to attach it, and, as a result, it is not clear what portion of the annual compensation constituted the salary he was receiving. The applicant has not specified the portion of the payment he seeks from the first respondent. He has, however, established a *prima facie* right to payment; the only uncertainty concerns the exact amount to be ordered. It follows, therefore, that the applicant's claim insofar as it pertains to payments he ordinarily received as evidenced by the annual financial statements, as well as his medical aid benefit, should be sustained.

[36] The fact that payments and benefits were discontinued indicates that he is suffering harm, which is not only imminent but continuing. Save for stating that the applicant received payments and benefits by virtue of being an employee, the second respondent provides no further explanation for the termination of the payments and benefits to the applicant as a director. The applicant contends that his medical condition requires chronic medication without which the harm would be permanent and cannot be mitigated by a damages claim. Though the details of his responsibilities as a director have not been identified, these are matters which ought to fall within the knowledge of both the applicant and the second respondent, as

directors of their company; alternatively, they are easily ascertainable. In this regard, the balance of convenience favours the applicant.

[37] The applicant has demonstrated that he is a director and shareholder of the first respondent, which is admitted by the second respondent. His duties and responsibilities should not be interfered with. It has not been disputed that before 18 November 2025, the applicant occupied the office in the Spar Building, Christiana. It is also no dispute that there are movable items in his office, though not specified. The parties are also in agreement that the applicant is a director and a holder of 49% shareholding of the first respondent.

Costs

[38] It is trite that costs follow the result. Although the applicant has sought costs on an attorney and client scale, I am not persuaded that the opposition by the second respondent was vexatious, more particularly as the applicant did not readily locate his dispute as a director but also as an employee, which latter dispute is serving before the CCMA. Although the first respondent did not oppose the application, I am of the view that costs should nonetheless be awarded against it. This is because it was the first respondent who terminated payments to the applicant, thereby precipitating this application. It was the first respondent's conduct, through the actions of the second respondent, which necessitated the present litigation.

Order

[39] I therefore make the following order:

(a) The requirements of the Rules relating to forms, service and timeframes are dispensed with, and the matter is dealt with as one of urgency.

(b) The respondents are ordered not to interfere in any manner whatsoever in the applicant's right to execute his rights and responsibilities as a director and shareholder of the first respondent.

(c) The respondents are ordered and directed not to forbid the applicant in any manner whatsoever, from entering, using or occupying the office in the Spar Building, which he used and occupied prior to 18 November 2025.

(d) The respondents are ordered and directed not to remove or cause to be removed any movable items from the said office, without the written consent of the applicant.

(e) The respondents are ordered and directed not to withhold or cause to be withheld, reduce or cause to be reduced any payments, salaries, emoluments or benefits due to the applicant by virtue of his position as a director and shareholder of the first respondent without the written consent of the applicant.

(f) The first respondent is ordered to effect payment to the applicant of any amounts in respect of salaries, emoluments or benefits to the applicant in his capacity as a director and shareholder of the first respondent, which the applicant received, whether directly or by debit order prior to 18 November 2025, and which were terminated by or on behalf of the first respondent after 18 November 2025 without the written consent of the applicant, and without a company resolution as prescribed by section 71 of the Companies Act, within five days of this order. Such payments shall be made to the applicant, alternatively to the entity/ies to which such payments were made before their termination.

(g) The orders in paragraphs b) to f) shall operate as interim relief and with immediate effect pending the determination of Part B and any steps to be taken by the applicant within 60 days of this order against the respondents, setting aside the findings by Commissioner S. van Wyk against the applicant.

(h) The first and second respondents are ordered to pay the costs of Part A of the application on a party and party scale, including costs of counsel on scale C.

[redacted]

S MFENYANA
Judge of the High Court
Northwest Division, Mahikeng

Appearances:

For the applicant:
Counsel: J.H.F Pistor SC
Instructed by: Lourens Bezuidenhout Inc.
c/o Maree & Maree Attorneys Inc.

For the second respondent:
Counsel: A.G van Tonder
Instructed by: van de Wall Inc.
c/o van Rooyen Tlhapi Wessels Inc.

Date of hearing: 12 December 2025
Date of judgment: 26 January 2026