

Reportable:	YES / <u>NO</u>
Circulate to Judges:	YES / <u>NO</u>
Circulate to Magistrates:	YES / <u>NO</u>
Circulate to Regional Magistrates:	YES / <u>NO</u>

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA NORTH WEST DIVISION, MAHIKENG

Case No:2025-230965

In the matter between:

PAWS HAVEN NPC

1st Applicant

ANNELIZE VAN DER WESTHUIZEN

2nd Applicant

and

ABEL ERASMUS

1st Respondent

VEE ERASMUS

2nd Respondent

This judgment was handed down electronically by circulation to the parties' representatives and by uploading the judgment on Caselines. The date of the handing down of the judgment is deemed to be **10 March 2026**.

ORDER

- a. The first and second respondents are forthwith restrained and interdicted from passing themselves off as directors and/or committee members of the applicant and presenting themselves as such to any member of the public, or stakeholders of the first applicant.
- b. The first and second respondents are forthwith restrained and interdicted from taking any decisions and/or actions on behalf of the first applicant.
- c. The first and second respondents are forthwith restrained and interdicted from making contact with any staff member, stakeholder, financial institution and / or sponsor of the first applicant for any purpose related to the first applicant's business.
- d. The first and second respondents are restrained and interdicted from entering the premises of the first applicant.
- e. The first and second respondents are forthwith restrained and interdicted from convening any meeting on behalf of the first applicant.
- f. The first and second respondents are forthwith restrained and interdicted from threatening, intimidating, harassing and/or interfering with the first and second applicants and any member of staff of the first applicant, either by conventional means or posting on social media.
- g. Any decisions and / or actions taken by the first and second respondents purporting to represent the first applicant are invalid.
- h. The orders in paragraphs a. to g. shall remain in place and operate as an interim interdict with immediate effect, pending the final adjudication of Part B.
- i. The applicants are granted leave to supplement their papers if

necessary, in respect of the relief sought in Part B.

- j. The first and second respondents are ordered to pay the costs of Part A of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Mfenyana J:

Introduction

- [1] The applicants seek an order interdicting the respondents from presenting themselves to anyone as authorised representatives of the first applicant. The application is styled as Part A and B. In Part A, the applicants seek interim relief interdicting and restraining the respondents from holding themselves out as authorised representatives of the first applicant. Part B relates to the declaration of invalidity of the constitution of the NPC.
- [2] The respondents oppose the application.
- [3] When the matter was heard, there were no heads of argument filed on behalf of the respondents. Mr Jungbluth explained that when he received the directive of this court, it was already too late for him to prepare the heads of argument and sought this court's indulgence. I ruled that, in view

of the fact that heads of argument are primarily for the benefit of the court, the matter should proceed in the absence thereof.

[4] The respondents have opposed the application.

Factual matrix

[5] The first applicant, Paws Haven NPC, is a non-profit company registered in terms of the Companies Act¹ on 4 July 2025. It operates under the directorship of the second applicant and two other directors. It houses 400 dogs and 300 cats, and has been providing care and shelter for these animals. It also promotes and oversees the adoption of these animals by members of the public. It employs various individuals, who receive salaries for the provision of their services to Paws Haven NPC. Paws Haven NPC does not generate income and relies on funding to carry out its responsibilities for the care of the animals.

[6] Prior to its registration, it operated as an NPO. It appears that in June 2025, on the request of the first respondent, the first and second respondents joined the NPO. The first respondent was to provide advisory services in the creation and running of companies, while the second respondent volunteered to assist with free-roaming cats under the care of the NPO.

¹ Act 71 of 2008.

- [7] According to the applicants, the decision to register as a company was taken in May 2025 after the resignation of its then chairperson. It was this transition that the first applicant offered to assist with as he professed his knowledge of the processes involved in the formation of companies. The respondents then became members of the management committee of the NPO.
- [8] The NPO was subsequently deregistered, and in July 2025, Paws Haven NPC was registered. The applicants state that, on the advice of the first respondent, the management committee was retained, as the second applicant was unaware that the NPC did not require it and that the governance of an NPC falls to the directors under a Memorandum of Incorporation.
- [9] In August 2025, the first respondent presented a constitution, which the directors of the NPC signed.
- [10] Over time, the relationship between the applicants and the respondents soured. According to the applicants, this was due to the first respondent's bullying and controlling behaviour and his insistence on being involved in staff meetings.
- [11] This culminated in the first respondent convening a meeting on 29 October 2025, in which he sought to have the second applicant removed as the

chairperson and thereafter appointed the second respondent in her stead. The applicants contend that the meeting had no force or effect as no sufficient notice was issued and the meeting was not quorate. Thus, the applicants contend, the entire process is of no force and effect.

[12] The directors of the applicant resolved to dissolve the management committee with effect from 29 October 2025, having learnt that it was not required for the NPC.

[13] On 4 December 2025, the first respondent issued notice of a meeting to be held on 19 December 2025. The purpose of the meeting, as set out in the agenda, was to remove the second applicant and another director of Paws Haven NPC as directors and appoint Ms Zippor Vavane (Ms Vavane) as a member and chairperson of the management committee.

[14] In messages posted by the respondents on the social platform, the second respondent demanded company information relating to the NPC, stating that the first respondent was the beneficial owner of the NPC. The applicants aver that it is this behaviour which led the applicants to instruct their attorneys, who urged the first respondent to desist from his conduct. They further contend that instead, the respondents escalated their unlawful behaviour and attempted to take control of the first applicant's bank account, and entered into employment contracts with prospective employees. The applicants aver that the respondents intend to effectively

take over Paws Haven NPC in the meeting of 19 December 2025, which the respondents deny.

[15] The exchange of correspondence between the applicants' attorneys and the respondents' attorneys yielded no positive results. When all efforts to resolve the matter amicably failed, the applicants instituted the present proceedings.

[16] On 5 December 2025, the first respondent, ostensibly as an employer on behalf of Paws Haven NPC, purported to enter into contracts of employment with Messrs Lloyd Mkandawire (Mr Mkandawire) and Ian Smit (Mr Smit). The said contracts were witnessed by the second respondent. According to the second applicant, when these purported contracts came to their attention, they had not yet been signed by the two prospective employees. It is alleged that on the same day, the first respondent attempted to gain access to the bank account of the NPC held at Nedbank.

[17] In response to the first respondent's actions, the applicants, on the same day, addressed a letter to the respondents informing them that they had no authority to act on behalf of Paws Haven NPC. In the same letter, the applicants requested the respondents to provide an undertaking that they would desist from their conduct, which the respondents failed to provide.

Urgency

- [18] The applicants allege urgency on the basis that the two respondents lack the authority to act for the first applicant. They contend that this conduct prejudices them, as an innocent third party may rely on it, unaware of the lack of authority, and any resulting decisions would still bind the applicants
- [19] The applicants further aver that they will not be afforded substantial redress at a hearing in due course, as it would, in all probability, only take place in no less than eight months, at which point the respondents would have carried on with their unlawful conduct. They contend that if the meeting scheduled to take place on 19 December 2025 were to continue, the only option available to the applicants would be to review the decisions taken at that meeting. If the review application were to be opposed, it would only be heard in 2027. By then, it would be too late and the applicants would have suffered immense prejudice.
- [20] The applicants assert that there can be no suggestion that the respondents were not given sufficient time to respond. In this regard, they aver that, judging by the fact that the respondents managed to file a 62-page answering affidavit, they cannot complain of prejudice. The applicants further point out that the respondents refused to engage with them since 4 December 2025.

- [21] According to the applicants, the trigger event occurred during the day on 5 December 2025. They argue that there was, therefore, no undue delay, and even if there were, each case would depend on its own circumstances. In this regard, Ms Smit, counsel for the applicants, referred to the Nelson Mandela decision, in which the court held that attempts by a party to resolve a matter do not constitute dilatory conduct. She further stated that when the respondents convened a meeting on 29 October 2025, there was no urgency at that point.
- [22] On 10 November 2025, the applicants' attorneys sent a letter to the first respondent, requesting that the respondents, inter alia, stop making unfounded allegations against the second applicant, tender an apology and desist from such conduct. The letter further recorded that one committee member had resigned because of the respondents' bullying conduct.
- [23] Ms Smit added that it is not in dispute that the first applicant was registered as a non-profit company in July 2025. That being the case, the company is run by its directors in accordance with its Memorandum of Incorporation. She recounted the activities of the respondents on 29 October 2025, that they attempted to remove the second applicant from the committee and that the committee was later disbanded.

- [24] The applicants aver that the respondents seek to disregard the directors' decision and act as though the committee still exists. Accordingly, the applicants contend that the respondents have no authority to engage the first applicant's stakeholders or to make decisions without the directors' permission or formal resolution.
- [25] The respondents, on the other hand, contend that the application should be struck off the roll, as it is not urgent and amounts to an abuse of the process of court. They further allege non-compliance with Rule 6(12)(b) and state that the dispute underpinning the urgent interim relief began in October 2025, when the directors of Paws Haven NPC unanimously resolved to disband the NPO's management committee, which comprised the respondents, the three directors of the NPC, and Mr Gawie Janse van Rensburg (Mr Janse van Rensburg).
- [26] They point out that on 30 October 2025, the day after its dissolution, the former management committee, despite having been disbanded, issued a demand and notice of misconduct against the first respondent, alleging he had attempted to remove a director of the NPC, restricted that director's access to official communication platforms and groups, and informed staff that the director had acted fraudulently.
- [27] The respondents further outline the subsequent events, in particular a letter from the respondents' attorneys to the applicants' attorneys. In this

letter, the respondents challenge, *inter alia*, the appointment and authority of Paws Haven's directors, which they contend, in terms of its constitution, is the exclusive function of the management committee. The letter records that it was agreed that the first respondent and all other members of the management committee would be registered as directors, but that this was "never completed". It also states that Ms Marais, one of the directors, resigned from the management committee on 29 July 2025, which the applicants deny. Importantly, the respondents deny that their actions of 29 October 2025, in convening the meeting, are unlawful as clause 7.2 of the Constitution permits the chairperson or two members of the committee to convene a special meeting.

[28] The respondents further contend that the dissolution of the management committee is unlawful and unconstitutional, as it is the only body empowered to manage the organisation.

[29] In subsequent correspondence between the parties, the respondents requested that the management committee provide resolutions authorising the appointment of the applicants' legal representatives, the institution of any legal proceedings, and the use of Paws Haven's funds for legal costs. They further requested confirmation of who would be liable for the legal fees. The respondents also provided a copy of Paws Haven's Constitution.

- [30] The respondents thus contend that the trigger events, as alleged by the applicants, which occurred on 5 December 2025, do not justify the institution of the application on an urgent basis, particularly as the applicants did not afford the respondents an opportunity to respond to their demand for an undertaking.
- [31] Rule 6(12) governs urgent applications and allows the court to dispense with the normal timeframes, forms and service requirements and hear a matter ahead of the usual timeframes. The Rule allows an applicant to 'jump the queue' provided that the applicant has set out explicitly the grounds which render the matter urgent, and why they cannot attain substantial redress in the ordinary course.
- [32] I do not propose to repeat the applicant's submissions, save to note their allegation that the respondents, without authority, present themselves as representatives of Paws Haven. If they continue to do so and conclude agreements with innocent third parties, the NPC will be bound by such agreements.
- [33] On the other hand, the respondent's argument that the application could have been avoided had the applicants afforded them an opportunity to consider the undertaking has no merit. The application could have equally been avoided had the respondents responded to the applicant's request at any stage, including in this application. All they have to say is that they

were not put on terms. Consequently, they elected not to respond to it or abide by it, if so considered.

- [34] If the matter were heard in the ordinary course and the applicants' fears were realised, they would not obtain substantial redress at a later hearing. The respondents also do not indicate what redress, if any, the applicants could then obtain. Although the respondents admit to the conduct complained of and seek to justify it, if the applicants' case has merit, no substantial recourse would be available in the ordinary course.

Applicants' submissions

- [35] On the merits, the applicants aver that the respondent's reliance on the constitution of the NPC is unsustainable as that constitution is of no force or effect as it does not comply with section 16 of the Companies Act, which stipulates the process of amending the memorandum of incorporation, which is its primary constitutional document. They aver that the only managing authority of the NPC is its board of directors.
- [36] The applicants aver that they are prejudiced by the respondents' falsely presenting themselves as representatives of Paws Haven NPC. They say the first respondent's controlling behaviour has jeopardised their relationship with the local municipality by taking over the first applicant's municipal contact role and excluding the directors. The first respondent has also created social media chat groups in which he insults the second

applicant and questions the NPC's management. This conduct, they add, led to the resignation of Ms Marais as a committee member, the veterinary assistant, and to volunteers withdrawing from some events, to the NPC's prejudice.

[37] They contend that the respondents have never been members of the NPO and are not beneficial owners of the NPC. This is not surprising. The respondents' involvement with the NPO, before it was deregistered, was limited as they only joined at the tail end of its existence. The second respondent, however, volunteered to assist with free-roaming cats, which fall under the care of the first applicant, through her Facebook page. The applicants state that the second respondent has, however, failed to account in accordance with their understanding, and is using the name of the NPC for her own ends and benefit.

[38] The applicants thus aver that they have complied with the requirements for an interim interdict as the respondents continue to threaten, intimidate and harass the second applicant and staff members of the NPC, in so doing, are stifling the directors of the NPC from discharging their responsibilities to its stakeholders and running an accountable business. They assert that they have a clear right not to be harassed or intimidated by the respondents.

[39] They further assert that the balance of convenience favours them as the respondents would suffer no prejudice if they were prevented from harassing the applicants and the staff members of the NPC and prohibited from entering the premises of the first applicant.

[40] The applicants seek a punitive cost order on an attorney and client scale, in respect of part A, on the basis that they have forewarned the respondents on various occasions to abstain from their conduct, but they have persisted. They add that the respondents' conduct is malicious.

Respondent's submissions

[41] The respondents contend that there has been financial mismanagement and governance failures at the NPC, and that the first respondent was denied access to the NPC's Nedbank account. He cites instances of such mismanagement, among which is an occasion where funds earmarked for a golf event were diverted by the second applicant to pay salaries.

[41] The first respondent concedes that he approached a representative of Nedbank and sought to access the bank account of the NPC to establish its financial position. He also requested that the account be frozen until he could establish what payments were made.

- [42] Concerning the allegation that he concluded employment contracts with prospective employees, the first respondent states that the contracts had not yet been signed by the employees.
- [43] The respondents contend that the meeting of 19 December 2025 was convened in accordance with the NPC's constitution. However, in terms of the Companies Act, the "constitution" of a non-profit company is its Memorandum of Incorporation, which governs how the company is run, its fundamental structure, and its relationship with stakeholders.
- [44] They further deny that they want to take over the first applicant, stating further that Ms Vavane from the local municipality had always been part and parcel of the management committee, and no decisions had been implemented

Discussion

- [45] The central issue in the present application is the control of Paws Haven NPC. It is common cause that the first applicant was registered as an NPC, that the parties' relationship is not disputed, and that the NPO was deregistered, the NPC was registered, and the management committee was dissolved. Consequently, the respondents' connection to the company, which appears to have been solely through the management committee and, in the case of the second respondent, her volunteer work with the free-roaming cats, has come to an end.

[46] The first respondent concedes that he tried to access the NPC's bank account and instructed a Nedbank official to place it on hold, despite having no legal right to do so. Whatever their belief in the correctness of their cause, this conduct can only be described as an attempt to 'hijack' the first applicant's bank account and consequently its business.

[47] The respondents concede that they purported to conclude employment contracts with at least two prospective employees, relying only on the fact that the contracts had not yet been signed. They do not allege that they desisted from this conduct. Not only is this explanation inadequate, but it is also a little too late. It is only a matter of time before an innocent third party is lured into the confusion created by the respondents.

[48] The applicants are entitled to run their business free from intimidation and any form of harassment from the respondents and anyone, for that matter. While the respondents deny any wrongdoing, they persist in justifying their actions, ostensibly in the belief that they are entitled to police the first applicant's activities. This cannot be. There is no dispute that none of the respondents is a director of the first applicant. What they say is that they are members of the management committee.

[49] The management committee was disbanded. Even if it were not, the governing body of a non-profit company is the board of directors.² They

² Section 66 of the Companies Act provides:

are responsible for directing, controlling and managing the affairs of the entity. The Companies Act does not provide for a committee to run the company or exercise power over the directors who are the lawfully authorised accounting structure in terms of the Act.

[50] While the first respondent appears to be 'running the show', the second respondent has enabled his actions and acted in concert with the first respondent. The evidence presented to this court is that while she continued to use the name of the first applicant, and potentially received donations in its name, she has failed to account to the first applicant. She has also actively demanded to be provided with the first respondent's corporate information.

[51] There can be no prizes for guessing that the acrimony between the respondents and the second applicant, in particular, has resulted in a total breakdown of their professional relationship. That notwithstanding, the business of the NPC does not revolve around the applicants and the first

66. (1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform 5 any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.

(2) The board of a company must comprise –

- (a) in the case of private company, or a personal liability company, at least one director; or
- (b) in the case of a public company, or a non-profit company, at least three directors.

respondent. Putting on hold the entity's accounts would not only prejudice the directors of the company, but also its employees and the animals the entity seeks to protect. That the first respondent was not bothered that the affairs of the NPC would come to a standstill, as long as he got what he wanted, is telling.

[52] None of the other members of the management committee in whose interests the respondents are supposedly acting has deposed to confirmatory affidavits or played any role in these proceedings. It is clear that the opposition of the matter is driven by the first respondent, ably assisted by the second respondent. In pressing ahead with their activities, they seem to suggest that their actions are precipitated by financial mismanagement of the NPO, which was only discovered after its deregistration. This is not sustainable. The CIPC provides remedies for anyone who is not satisfied with the governance of a non-profit company.

[53] The meeting of 19 December 2025 or any meeting convened by the respondents on behalf of the first applicant would not have been properly constituted absent the authority of the Board. It follows that any decisions or resolutions taken in an improperly convened meeting are invalid and are of no force and effect.

[54] It boggles the mind why the respondents persisted in their opposition in these circumstances. Despite their justifications, the fact of the matter is

that no explanation, no matter how well articulated, can justify their unlawful interference in the first applicant and their intimidation of the second applicant and the staff members, some of whom deposed to affidavits to that effect. That, in my view, brings the discussion to a close.

Costs

[55] I can find no reason to depart from the general rule that costs follow the cause. The applicants are entitled to their costs, more so in circumstances where they gave the respondents ample opportunity not to continue with their conduct. I have already noted that there was no reason for the respondents to persist in their opposition. They are the authors of their own fate. In those circumstances, a punitive cost order is warranted, as there cannot be any conceivable reason why the applicants should be out of pocket.

Order

[56] Accordingly, I make the following order:

- a. The first and second respondents are forthwith restrained and interdicted from passing themselves off as directors and/or committee members of the applicant and presenting themselves as such to any member of the public, or stakeholders of the first applicant.
- b. The first and second respondents are forthwith restrained and interdicted from taking any decisions and/or actions on behalf of the first applicant.

- c. The first and second respondents are forthwith restrained and interdicted from making contact with any staff member, stakeholder, financial institution and / or sponsor of the first applicant for any purpose related to the first applicant's business.
- d. The first and second respondents are restrained and interdicted from entering the premises of the first applicant.
- e. The first and second respondents are forthwith restrained and interdicted from convening any meeting on behalf of the first applicant.
- f. The first and second respondents are forthwith restrained and interdicted from threatening, intimidating, harassing and/or interfering with the first and second applicants and any member of staff of the first applicant, either by conventional means or posting on social media.
- g. Any decisions and / or actions taken by the first and second respondents purporting to represent the first applicant are invalid.
- h. The orders in paragraphs a. to g. shall remain in place and operate as an interim interdict with immediate effect, pending the final adjudication of Part B.
- i. The applicants are granted leave to supplement their papers if necessary, in respect of the relief sought in Part B.
- j. The first and second respondents are ordered to pay the costs of Part A of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.



S Mfenyana
Judge of the High Court
Northwest Division, Mahikeng

Appearances:

For the applicants:

Counsel: D Smit

Instructed by: Jan Ellis Attorneys

For the respondents:

Counsel: W Jungbluth

Instructed by: Willie Jordaan Attorneys

Date of hearing: 12 December 2025

Date of judgment: 10 March 2026