Not reportable

CASE NUMBER:1269/24

In the matter between:

TARIEFDIENSTE (PTY) LTD	**APPLICANT**
and	
THE EXECUTIVE MAYOR: JB MARKS LOCAL MUNICIPALITY	**FIRST RESPONDENT**
THE SPEAKER: JB MARKS LOCAL MUNICIPALITY	**SECOND RESPONDENT**
THE MUNICIPAL MANAGER: JB MARKS LOCAL MUNICIPALITY IN HIS CAPACITY AS INFORMATION OFFICER	**THIRD RESPONDENT**

Coram: WESSELS AJ

Date of hearing **: 25 November 2025**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down of the judgment is deemed to be 15h00 on 11 February 2026.

Summary: Company — Deregistration — Effect of — Company ceasing to exist as a legal entity upon deregistration — Litigation initiated or continued by a deregistered company a nullity — Practice — Applications and motions — Affidavits — Purpose of — Defining issues and placing evidence before court — Failure to disclose current corporate status — Costs — Personal liability — Piercing the corporate veil — Section 20(9) of the Companies Act 71 of 2008 — Unconscionable abuse of juristic personality — Sole director litigating through various guises and deregistered entity — Discrepancies in registration numbers and questionable cession of mandates — Director held personally liable for costs.

ORDER

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i. The application is dismissed.

ii. Johannes Marthinus Venter is declared to be personally liable for the costs of this applicant and is ordered to pay the respondents' costs on a party and party Scale B.

iii. The respondents are not entitled to costs for the drawing of their main heads of argument in this application.

JUDGMENT

Wessels AJ

Introduction

[1] The applicant brought this application in terms of the Promotion of Access to Information Act 2 of 2000 ('PAIA') to review the decision of the first respondent, second respondent, and/or third respondent to disallow the applicant access to information it requested from the third respondent as the Information Officer of the JB Marks Local Municipality ('the Municipality').

Condonation

[2] On 30 May 2024, Reddy J removed this application from the roll and ordered time frames for the filing of answering and replying affidavits, as well as for the delivery of heads of argument by both parties.

[3] The applicant brought a condonation application for the late filing of the replying affidavit. Although the respondents assailed the condonation application in their heads of argument, they did not formally oppose it. Despite the absence of opposition to the condonation application, condonation remains an indulgence and not a right. The onus still rests on the applicant to show that condonation

should be granted. In *Grootboom v National Prosecuting Authority and Another*[1], the Constitutional Court held that:

'... the standard for considering an application for condonation is the interests of justice. However, the concept "interests of justice" is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both Brummer and Van Wyk emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.'

[4] The parties have not explained their non-compliance with Reddy J's order, insofar as it concerns the late filing of their heads of argument. Non-compliance with a court order, without condonation, normally results in the striking or dismissal of a matter. The failure to comply with Reddy J's order does not, in my opinion, warrant dismissal of the application.

[5] Heads of argument have been filed, albeit late, and the matter is ripe for hearing. Bearing in mind that the non-compliance with the order cannot be attributed to a single party, striking of the application is a more appropriate sanction. An important consideration is that this matter is ripe for hearing and striking it from the roll for non-compliance with the order of Reddy J would burden the roll of this Court in the future. This will have a stifling effect on the administration of justice. It would furthermore militate against the interests of

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[1] *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013) para 22.

justice if any party were allowed to recover costs for heads of argument filed out of time without obtaining condonation therefor.

[6] I align myself with the authorities cited by Wepener J in *Pangbourne Properties Ltd v Pulse Moving CC and Another* [2], albeit in a different context. The authorities essentially drive home the point that the Court does not engage in formalism in applying the rules, or, in the present context, in the late filing of heads of argument contrary to a court order. As with the rules, which are '*not an end in themselves to be observed for their own sake but provided to secure the inexpensive and expeditious completion of litigation before the courts. Where one or other of the parties has failed to comply with requirements of the rules or an order made in terms thereof and prejudice has thereby been caused to the opponent, it should be the Court's endeavour to remedy such prejudice in a manner appropriate to the circumstances, always bearing in mind the objects for which the rules were designed. See in this regard the remarks of Schreiner JA in Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 *(A) at 278F-G.*'

[7] In the interest of the administration of justice, I am inclined to grant condonation for the late filing of the replying affidavit and to allow the matter to proceed on the heads of argument filed.

Facts

[8] The nature of the applicant's business is the investigation of municipal accounts rendered to its clients and to resolve extant disputes between the clients of the applicant and the municipalities that render municipal services to such

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[2] *Pangbourne Properties Ltd v Pulse Moving CC and Another* (2009/30282, 2009/37649) [2010] ZAGPJHC 121; 2013 (3) SA 140 (GSJ) (19 November 2010)

clients. In fulfilment of its mandate, it sought information from the third respondent in his capacity as the Information Officer of the Municipality.

[9] On 20 July 2023, the applicant made a written request for access to information under PAIA regarding some of the applicant's clients.

[10] The information was not provided by the third respondent, triggering the provisions of s 27 of PAIA, as the failure to provide the information was treated as a deemed refusal. The applicant lodged an internal appeal against the deemed refusal to provide the information in terms of PAIA.

[11] The applicant brought this application to review the first respondent's dismissal of an appeal relating to the applicant's request for information under PAIA. It is apposite to mention that Johannes Marthinus Venter ('Mr Venter'), the deponent to the founding affidavit, is the sole director of the applicant, as he is the protagonist in the factual matrix that led up to the issuing of this application. To demonstrate the involvement of Mr Venter in the application, the respondents make the following allegation in the answering affidavit:

> '4.3 The deponent has even traded previously under the guise of Munisipale Tariefdienste (Eiendoms) Beperk. To this end I annex hereto as annexure 'AA5' a copy of correspondence exchanged with Venter under the guise of this entity in 2019 relating to some of the same account at issue herein.'

[12] In the replying affidavit, the applicant replies to this allegation as follows:

> '11. The allegation that I previously traded under the guise of 'Munisipale Tarief Dispuutdienste' is incorrect.

12. The **applicant underwent a name change** in 2021 as is evident from a company search annexed hereto marked "RA1".

13. **Therefore there is only the applicant** and not two separate entities.' (emphasis added)

[13] The applicant relies on a WinDeed electronic company search report generated on 22 October 2024 ('the company report') attached to the replying affidavit. The company report supports the allegation contained in the replying affidavit that the company's name was changed. As far as can be ascertained from the company report, the name was changed from '*Munisipale Tarief Dispuutdienste*' to '*Munisipale Tariefdienste*' on 09 April 2022.

[14] The company report, which the applicant relies on as proof of its registration, indicates the applicant's current status as '*Annual return final deregistration*'. When the applicant was deregistered is not clear. The inescapable conclusion is that, at the time the company report was generated on 22 October 2024, the applicant had been deregistered.

[15] The effect of a company's deregistration is that it ceases to exist as a legal entity, with no legal personality or capacity to institute or defend legal proceedings. A deregistered company is regarded as non-existent. In *Miller and Others v Nafcoc Investment Holding Company Ltd and Others*[3], the Supreme Court of Appeal ('SCA') in drawing a comparison between liquidation and deregistration of a company, gave the following description of the effect of the deregistration of a company:

[3] *Miller and Others v Nafcoc Investment Holding Company Ltd and Others* (324/09) [2010] ZASCA 25; [2010] 4 All SA 44 (SCA); 2010 (6) SA 390 (SCA) 2011 (4) SA 102 (SCA) (25 March 2010) para 11. See also *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd* (086/2014) [2015] ZASCA 25; 2015 (4) SA 34 (SCA); [2015] 2 All SA 322 (SCA) (20 March 2015).

'Deregistration, on the other hand, puts an end to the existence of the company. Its corporate personality ends in the same way that a natural person ceases to exist on death.

[16] All actions allegedly undertaken on behalf of the deregistered company are therefore null and void and have no legal effect. Its property transfers automatically, without any form of delivery, into the ownership of the State as *bona vacantia*.[4]

[17] If a company is restored under s 82(4) of the Companies Act[5] the company is deemed to have continued in existence as if it had not been deregistered[6]. However, until restoration occurs, any litigation is a nullity.

[18] The applicant's counsel was understandably unable to provide any clarity on the issue of the applicant's deregistered status other than the facts contained in the papers. The only evidence before me, consisting of the applicant's version supported by an electronic company search report, indicates that the applicant had been de-registered. I cannot venture beyond the applicant's version as conveyed in the replying affidavit. In *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*[7], the court dealt with the purpose of a founding affidavit in motion proceeding as follows:

'It is trite law that in motion proceedings the affidavits serve not only to place evidence before the Court but also to define the issues between the parties. In so doing the issues between the parties are identified. This is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that must be met and in respect of which they must adduce evidence in the affidavits. In *Hart v Pinetown Drive-Inn Cinema (Pty) Ltd* 1972 (1) SA

[4] *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd* (086/2014) [2015] ZASCA 25; 2015 (4) SA 34 (SCA); [2015] 2 All SA 322 (SCA) (20 March 2015) para 15.
[5] Companies Act 71 of 2008.
[6] See in general *Newlands* Ibid, fn2.
[7] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 323 E-I.

464 (D) it was stated at 469C—E that 'where proceedings are brought by way of application, the petition is not the equivalent of the declaration in proceedings by way of action. What might be sufficient in a declaration to foil an exception, would not necessarily, in a petition, be sufficient to resist an objection that a case has not been adequately made out. The petition takes the place not only of the declaration but also of the essential evidence which would be led at a trial and if there are absent from the petition such facts as would be necessary for determination of the issue in the petitioner's favour, an objection that it does not support the relief claimed is sound.'

[19] The court in *Swissborough* gave the salutary warning that the more complex the dispute between the parties, the greater precision that is required in the formulation of the issues[8]. The court applied this principle to both answering and replying affidavits[9]. It would be remiss of me not to point out that the applicant had a substantial period to rectify its status.

[20] On the evidence before me, I conclude that the applicant's deregistered status renders the application a nullity. For this reason, the application should be dismissed.

Costs

[21] Central to dismissing this application for the want of the applicant's existence would be the recovery of the respondents' costs, given that the applicant is a deregistered company.

[22] The respondents allege in the answering affidavit that Mr Venter had been engaging with and litigating against the Municipality in various guises. During the proceedings, the question of Mr Venter's personal liability in the case of an

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[8] *Swissborough*, ibid at 324 C-D.
[9] *Swissborough*, ibid at 324 B-C.

adverse cost order against the applicant formed part of the engagement with both parties' counsel. In light of these engagements, I permitted both parties to submit supplementary heads of argument on the issue of piercing the corporate veil.

[23] The applicant has corroborated that Mr Venter had been litigating against the Municipality in various forms. Both the applicants and the respondent attached to their papers numerous examples of applications and actions initiated against the Municipality by Mr Venter and/or entities in which he serves as the sole director. Apart from litigating against the Municipality in his personal name, Mr Venter is the sole director of Johan M Venter Inc and the applicant.

[24] In the current application, two of the applicant's clients, Forum SA Trading 129 and Top Speed Marketing (Edms) Bpk, originally provided Johan M Venter Ing with a mandate to investigate and to claim all fees, levies, credits, or any other debit unlawfully levied by the municipality.

[25] Johan M Venter Ing, in turn, ceded this mandate to the applicant, who accepted the cession. What troubles this Court is that, in the course of the cession of the mandates, Mr Venter represented Johan M Venter Ing (as its sole director) as the cedent and also the applicant (as its sole director) as the cessionary. Even more intriguing is that the papers contain no consent from Johan M Venter Inc's clients to cede their mandates to the applicant, which might render these cessions void, but I need not further dwell on this issue.

[26] What the applicant does not explain in the replying affidavit is why the applicant is cited in this application as *'Tariefdienste (Pty) Ltd'*. In contrast, the company search indicates in its history section that the applicant's name was changed from *'Munisipale Tarief Dispuutdienste'* to its current name, *'Munisipale Tariefdienste'*.

[27] Lastly, an even more perplexing situation arises from the discrepancy in the applicant's registration numbers in the application. In the founding affidavit, the applicant's registration number is 2018/111050/07, while the electronic company search report lists it as 2017/411250/07.

[28] All the aforementioned concerns remain unexplained. The applicant attempted to re-argue the issue in its supplementary heads of argument, which in itself was unwarranted as it was not the reason for this Court's request for further heads of argument. Despite the argument advanced by the applicant's counsel in the supplementary heads of argument, the explanation of the applicant, especially in light of the serious consequences of the deregistered status of the applicant, was an essential requirement of the applicant. This principle has been enunciated in *Swissborough,* as is evident from the following passage from this judgment[10].

> 'Regard being had to the function of affidavits, **it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof.** If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met.' (emphasis added)

[29] The basic tenet of piercing the corporate veil is that the company's separate legal personality is disregarded and its conduct and liabilities are attributed to the controlling individual.

[30] Mr Venter has utilised various entities and guises to conduct litigation against the Municipality, often interchangeably. The use of a deregistered entity to pursue a review application, coupled with the unexplained discrepancies in

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[10] *Swissborough* at 324 F-H

registration numbers and the questionable cession of mandates, points to an abuse of the corporate personality.

[31] In terms of s 20(9) of the Companies Act 71 of 2008, if a court finds that the incorporation of a company or any act by it constitutes an unconscionable abuse of the juristic personality, the court may declare that the company is to be deemed not to be a juristic person in respect of personal liability.

[32] Consequently, the applicant's lack of legal existence at the time of these proceedings renders the application a nullity. Furthermore, Mr Venter's conduct warrants an order that he be held personally liable for the costs of this application.

Order

[33] Resultantly, the following order is made:

i. The application is dismissed.

ii. Johannes Marthinus Venter is declared to be personally liable for the costs of this applicant and is ordered to pay the respondents' costs on a party and party Scale B.

iii. The respondents are not entitled to costs for the drawing of their main heads of argument in this application.

[redacted]

M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the applicant	:	Adv C Wessels
Instructed by	:	WJ Coetzer Attorneys Lichtenburg c/o Labuschagne Attorneys Mahikeng
For the respondents	:	Adv J van Rooyen
Instructed by	:	Tlou Attorneys Mahikeng