



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02568ADJ2026

In the matter between:

THAMSANQA WISEMAN MANYATHI
(Identity Number: XXXXXX XXX XXXX)

APPLICANT

and

SPHEPHILE THULANI GUMEDE
(Identity Number: XXXXXX XXX XXXX)

RESPONDENT

Presiding Member: Dr. Minah Tong-Mongalo

26 March 2026

DECISION (Default)

A INTRODUCTION

1. This matter concerns an application brought in terms of section 71(8) of the Companies Act 71 of 2008 ("the Act") for the removal of the Respondent as a director of Just Cool Solutions (Pty) Ltd, registration number 2015/175122/07 ("the Company").

2. The Applicant initiated these proceedings by filing Form CTR142, accompanied by a founding affidavit setting out the factual matrix and legal grounds upon which the relief is sought.
3. The Applicant now seeks a default order under Regulation 153 of the Companies Regulations, 2011 ("the Regulations"), claiming that the Respondent failed to provide an answering affidavit within the timeframe specified.

B JURISDICTION

4. It is common cause that the Company has two directors only, namely the Applicant and the Respondent.
5. In terms of section 71(8) of the Act, where a company has fewer than three directors, any application for the removal of a director must be determined by the Companies Tribunal.
6. This Tribunal accordingly has the requisite jurisdiction to adjudicate the matter.

C SERVICE AND DEFAULT

7. The CTR142 application was duly filed on 26 January 2026.
8. The Applicant relies on a proof of service to establish that the application was served on the Respondent on 27 January 2026.
9. In terms of Regulation 143(1), a respondent who has been served with an initiating document is afforded 20 business days within which to file an answering affidavit.
10. Regulation 153(1) empowers the Tribunal to grant a default order only where it is satisfied that the application was adequately served and that the respondent is in default.
11. The Applicant submitted proof that the Respondent was served via email and courier. In relation to the alleged service by email, no read receipt or delivery

report is attached to the papers.

12. There is furthermore no email correspondence or other objective evidence before the Tribunal showing that the email address used for service is indeed an email address of the Respondent or one ordinarily used by him.
13. In relation to the alleged courier service, the proof of service does not stipulate the address to which the documents were dispatched.
14. These deficiencies prevent the Tribunal from verifying whether the initiating documents reached the Respondent. The Respondent's failure to file an answering affidavit cannot, in these circumstances, be treated as a default for purposes of Regulation 153.

D ANALYSIS

15. Proper service is not a mere formality. Regulation 142(2) requires the applicant to serve the application and supporting affidavit on each respondent, while Regulation 153(2)(b) permits the Tribunal to grant a default order only if it is satisfied that the notice or application was adequately served.
16. In *TC Cooling CC v TC Cooling SA (Pty) Ltd*¹, the Tribunal held that email service was inadequate because the email addresses used did not include the respondent director's email address reflected elsewhere in the papers, and there was no other proof that the respondent received notice. Considering the insufficient proof of service, the Tribunal refused default relief and emphasised that the merits could not be reached while service remained uncertain.
17. "The procedural aspect of the rule of law is generally expressed in the maxim *audi alteram partem* (the *audi* principle). This maxim provides that no one should be condemned unheard. It reflects a fundamental principle of fairness that underlies or ought to underlie any just and credible legal order."²
18. On the papers before me, the Applicant has not shown that the email address used was one through which the Respondent could reliably be reached, nor has

¹ (CT00480ADJ2020) [2021] COMPTRI 24 paras 2.3-2.4, 4.1-4.3 and 5.2-5.3.

² *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) para 187.

the Applicant shown where the couriered documents were delivered or to whom they were handed.

E CONCLUSION

19. Although the Tribunal has jurisdiction to entertain an application of this nature under section 71(8) of the Act, the Applicant has not satisfied the Tribunal that the Respondent was properly served.

20. The application for a default order accordingly cannot succeed and falls to be dismissed. This dismissal is not a determination of the merits of the removal application.

21. The Applicant is not precluded from re-enrolling the matter upon proper service of the initiating documents on the Respondent and the filing of satisfactory proof thereof, including proof of the service address and the identity of the recipient in the case of courier service, or objective confirmation that the email address used belongs to or is ordinarily used by the Respondent.

F ORDER

22. The application for a default order is hereby dismissed.

23. The dismissal of this application is without prejudice to the Applicant's right to re-enroll the matter after proper service and the filing of satisfactory proof thereof.

24. There is no order as to costs.

Dr. Minah Tong-
Mongalo