IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02433/ADJ/2025

In the matter between:

GIFT MABASA **Applicant**

and

Ms. JOSEPHINE MOGOKARE TSHABOENG **First Respondent**

Mr. LEHLOHONOLO TIM TSHABOENG **Second Respondent**

Presiding Member H.K Dlepu

Date of Decision: 23rd March 2026

Decision and Reasons

INTRODUCTION

1. This is an opposed application for the removal of a director in terms of section 71(8) of the Companies Act 71 of 2008 ("the Act"), in which the Applicant, Mr Gift Mabasa, seeks the following order from the Companies Tribunal:
   i) that his unlawful removal by the Respondents as one of the two (2) directors of Tlhomogo Trading and Projects (Pty) Ltd, as reflected in the CIPC records, being

unlawful, unprocedural, and prejudicial, and in breach of section 71(8) of the Act, be reversed;

ii) that he be reinstated as a director of Tlhomogo Trading and Projects (Pty) Ltd;

iii) that Ms Josephine Mogakare Tshaboeng be removed as a director of Tlhomogo Trading and Projects (Pty) Ltd due to her breach of fiduciary duties, in that she failed to act with the required care, loyalty, and good faith; prioritised personal interests over those of the company; acted negligently in conducting the financial affairs of the company, including the misdirection of funds for personal financial gain; engaged in wilful misconduct, thereby endangering the company and its stakeholders; committed acts of theft, fraud, and abuse of power; conducted reckless trading; and brought the company into disrepute, thereby exposing it to legal and reputational harm.

2. This application is primarily founded on a plethora of allegations, including unlawful conduct by the other directors, dereliction of fiduciary duties, fraud, misappropriation of funds, and reckless trading.

3. The Applicant further alleges that the Respondents committed a series of breaches of contract. The application is supported by a substantial body of documents and annexures, many of which are not necessarily relevant to the determination of the issues falling within the jurisdiction of the Companies Tribunal. The Tribunal, being a creature of statute with specific powers, is empowered, inter alia, to adjudicate matters relating to the removal of a director in terms of section 71(8) of the Companies Act 71 of 2008.

4. The Applicant had also included alternative prayers that fall outside the jurisdiction of the Companies Tribunal. Including such relief in this decision would serve no purpose and would only dilute the essence of the present application.

BACKGROUND

The Applicant's submissions

5. The Applicant alleges that, during or about October 2023, his company, Ingwenya Properties (Pty) Ltd, was invited by the Respondents who were at the time the directors and shareholders of Tlhomogo Trading and Projects (Pty) Ltd to acquire a 70% shareholding in Tlhomogo Trading and Projects (Pty) Ltd.

6. The Applicant further alleges that the company was insolvent at the time he was approached to recapitalise it by way of a cash injection, in exchange for Ingwenya Properties (Pty) Ltd acquiring a 70% shareholding and representation in the Respondents' company as a director. The parties allegedly agreed that the recapitalisation would take place over a period of 24 months.

7. The Applicant alleges that he provided the required guarantees for the recapitalisation and was subsequently appointed as a co-director on 22 December 2023, representing Ingwenya Properties (Pty) Ltd's interests on the board of Tlhomogo Trading and Projects (Pty) Ltd, as both a director and a 70% shareholder.

8. The Applicant further alleges that various agreements were concluded between Ingwenya Properties (Pty) Ltd and Tlhomogo Trading and Projects (Pty) Ltd, which formalised their relationship in respect of the recapitalisation of the latter.

9. It is further alleged that, by providing the guarantees to the Respondents, the suspensive conditions forming the subject of the sale of shares agreement were fulfilled within the agreed period of 24 months.

10. The Applicant submits that the suspensive conditions in terms of the sale of shares agreement were fulfilled on 18 November 2023, being prior to the due date, and that the transfer of shares in terms of the said agreement occurred on the same date.

11. The Applicant has attached a board resolution dated 23 December 2023, reflecting his appointment as a director of Tlhomogo Trading and Projects (Pty) Ltd, together with a copy of the CIPC confirmation.

12. The Applicant alleges that, on 16 January 2025, the other director of Tlhomogo Trading and Projects (Pty) Ltd, Mr Lehlohonolo Tim Tshaboeng, resigned without providing any explanation, leaving the Applicant and the First Respondent as the only remaining directors of the company.

13. The Applicant alleges that, on 22 May 2025, he received notification that a certain individual, namely Ms Lettah Nkomo, had attempted to remove him as a director of Tlhomogo Trading and Projects (Pty) Ltd without his knowledge. This attempt was unsuccessful, and further attempts were similarly unsuccessful.

14. The Applicant reiterates that the suspensive conditions in terms of the sale agreement were fulfilled on 18 November 2023, and that a meeting was convened to address the fulfilment of those conditions.

15. The Applicant alleges that the Respondents made unlawful attempts to alter the company's register of directors without complying with the procedures prescribed in section 71(8) of the Companies Act.

The Respondent's Submissions

16. The Respondents allege that, on or about 16 October 2023 and 22 December 2023, they entered into a Share Purchase Agreement and a Pre-Contract Agreement with the Applicant, both subject to certain suspensive conditions to be fulfilled within specified time periods. The salient terms of the Pre-Contract Agreement included, inter alia, the following:

i) that a definitive sale agreement was to be concluded within 30 days following a 14-day due diligence period, and that the full purchase price or guarantees were to be delivered on the closing date;

ii) that a meeting was to be held to agree on the scope and timelines of the renovations, followed by payment within seven (7) days;

iii) that the Applicant was required to provide proof of the availability of funds for the proposed recapitalisation; and

iv) that the Applicant was to make timeous construction-related payments as a demonstrable indication of funding capacity.

18. The Respondents allege that the Applicant failed to comply with the suspensive conditions of the agreements. A meeting was convened to discuss the way forward; however, the Applicant allegedly failed to remedy his non-compliance. As a consequence, the Share Purchase Agreement and Pre-Contract Agreement did not become operative, and all agreements entered into between the parties lapsed and became null and void.

19. The Respondents further allege that the Applicant, without authority, effected changes to the CIPC register of directors and fraudulently caused his name to be recorded as a director of Tlhomogo Trading and Projects (Pty) Ltd.

20. The Respondents state that they attempted to remove the Applicant's name from the CIPC records on the basis that such registration was fraudulent and unauthorised by the lawful directors and shareholders of Tlhomogo Trading and Projects (Pty) Ltd.

21. The Respondents further allege that the Applicant was never authorised to effect any amendments to the CIPC company records to include himself as a director and shareholder. Such amendments were allegedly made without the knowledge, consent, or authority of the existing directors or authorised representatives of the company and are accordingly unlawful and without legal effect.

22. The Respondents aver that a Ms Connie Mathebula was, at all material times, the duly authorised company representative responsible for effecting any changes at CIPC, and that the impugned changes were not made by her.

23. The Respondents, through their legal representatives, issued a termination and/or cancellation letter with immediate effect and offered to refund the Applicant any amounts paid towards the alleged purchase of shares.

24. The Applicant was requested to reverse all alleged unauthorised CIPC entries, to cease and desist from representing himself as a director or shareholder of Tlhomogo Trading and Projects (Pty) Ltd, and to engage with the Respondents' attorneys to arrange for a refund of any amounts paid within a specified period. The Respondents indicated that, failing compliance, they would institute civil proceedings and lay criminal charges against the Applicant.

25. In an effort to regularise the position, the Respondents convened a shareholders' meeting to consider the removal of the Applicant as a director in terms of section 71(1) of the Companies Act 71 of 2008.

26. On 1 August 2025, the Respondents issued a notice convening a shareholders' meeting in terms of section 71 of the Companies Act, to consider and, if deemed appropriate, to pass an ordinary resolution for the removal of the Applicant, Mr Gift Mabasa, as a director of Tlhomogo Trading and Projects (Pty) Ltd.

27. The meeting was held on 19 August 2025, at which a resolution was adopted to remove the Applicant as a director of the company. The Applicant attended the meeting and was afforded an opportunity to make representations as to why he should not be removed.

28. A resolution to remove the Applicant as a director of Tlhomogo Trading and Projects (Pty) Ltd was passed in his presence, and the CIPC was duly notified, following which the removal was effected in the CIPC register of directors.

APPLICABLE LAW

29. Section 71 of the Companies Act 71 of 2008 ("the Act"), which regulates the removal of directors, is applicable and provides as follows:

"(1) Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders' meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2).

(2) Before the shareholders of a company may consider a resolution contemplated in subsection (1):

(a) the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether the director is a shareholder of the company; and

(b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

(3) If a company has more than two directors, and a shareholder or director has alleged that a director of the company:

(a) has become—

(i) ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69(8)(a); or

(ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

(b) has neglected, or been derelict in the performance of, the functions of a director,

the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

(4) Before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given:

(a) notice of the meeting, including a copy of the proposed resolution and a statement setting out the reasons for the resolution, with sufficient specificity to reasonably allow the director to prepare and present a response; and

(b) a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

(5) If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66(4)(a)(i), if applicable, may apply within 20 business days to a court to review the determination of the board.

(6) If, in terms of subsection (3), the board of a company has determined that a director is ineligible or disqualified, incapacitated, or has been negligent or derelict, as the case may be—

(a) any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director, may apply to a court to review the determination of the board; and

(b) the court, on application in terms of paragraph (a), may—

(i) confirm the determination of the board; or

(ii) remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated, or has been negligent or derelict.

(7) An applicant in terms of subsection (6) must compensate the company, and any other party, for the costs incurred in relation to the application, unless the court reverses the decision of the board.

(8) If a company has fewer than three directors—

(a) subsection (3) does not apply to the company;

(b) in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal to make a determination contemplated in that subsection; and

(c) subsections (4), (5), and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.

(9) Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have at common law or otherwise to apply to a court for damages or other compensation for—

(a) loss of office as a director; or

(b) loss of any other office as a consequence of being removed as a director.

(10) This section is in addition to the right of a person, in terms of section 162, to apply to a court for an order declaring a director delinquent or placing a director on probation."

POINTS OF LAW RAISED BY THE RESPONDENTS

30. The Respondents raised the following points *in limine* at the commencement of the hearing:

30.1. The Companies Tribunal is a creature of statute, and its jurisdiction is neither inherent, general, nor discretionary. It may only adjudicate applications expressly permitted by the Companies Act 71 of 2008 ("the Act") and may grant only those remedies specifically contemplated by the Act.

30.2. Regulation 142 is procedural in nature. It regulates the manner in which an application is brought before the Tribunal; it does not create substantive rights, expand standing, or confer jurisdiction where none exists under the Act.

30.3. The Respondents submitted that the Applicant's founding affidavit and the relief sought reveal that the dispute is, in substance:

i) a dispute arising from a failed and unfulfilled commercial transaction;

ii) a dispute concerning alleged contractual entitlements, repayment of monies, or a "forced buy-out";

iii) a dispute permeated by allegations of fraud, theft, and criminal conduct; and

iv) a dispute in respect of which the Applicant lacks the requisite *locus standi* to seek the relief claimed, in that Ingwenya Properties (Pty) Ltd never acquired any shares in the company due to the non-fulfilment of the suspensive conditions contained in the Share Purchase Agreement

(SPA) and the Pre-Contract Agreement (PCA). No shares were issued or transferred, and the Applicant is neither a shareholder nor a prescribed officer of the company. The Applicant has brought this application in his personal capacity, whereas the alleged directorship was not to be in his personal capacity but as a representative of Ingwenya Properties (Pty) Ltd. Furthermore, Ingwenya Properties (Pty) Ltd is not a shareholder in Tlhomogo Trading and Projects (Pty) Ltd.

31. Having considered the Respondents' submissions together with the Applicant's papers, the Tribunal is of the view that only the Applicant's prayer in terms of section 71(8) should proceed. The remaining prayers fall outside the jurisdiction of the Tribunal and cannot be entertained, as they concern issues beyond the Tribunal's statutory mandate.

EVALUATION

32. The Applicant's case is premised on his alleged unlawful removal as a director in terms of section 71(8) of the Companies Act 71 of 2008 ("the Act").

33. The Respondents, on the other hand, contend that the Applicant fraudulently procured his appointment as a director. In the alternative, they submit that, even if the Tribunal were to find that the Applicant was validly appointed as a director, he was lawfully removed by the shareholders in terms of section 71(1) of the Act.

34. According to the agreements concluded between the parties, the Applicant's appointment as a director was contingent upon Ingwenya Properties (Pty) Ltd acquiring a 70% shareholding in Tlhomogo Trading and Projects (Pty) Ltd. In my view, the Applicant failed to adequately address whether Ingwenya Properties (Pty) Ltd

indeed became a shareholder in the Respondents' company. The Applicant's appointment was not independent, but was intended to be in a representative capacity on behalf of Ingwenya Properties (Pty) Ltd.

35. The Respondents submit that the Applicant breached the terms of the agreements, with the result that the agreements lapsed. Consequently, the Applicant could not have been validly appointed as a director in his personal capacity in the absence of Ingwenya Properties (Pty) Ltd acquiring the contemplated 70% shareholding in Tlhomogo Trading and Projects (Pty) Ltd.

36. The Applicant, in his papers, failed to properly address the issue of share acquisition by Ingwenya Properties (Pty) Ltd, and elected not to link his appointment as a director to such shareholding. Furthermore, the Applicant did not deal with the shareholders' meeting which he attended, at which a resolution was adopted to remove him as a director in terms of section 71(1) of the Act.

37. The Applicant relied on clauses in the agreements as the basis for submitting his details to the CIPC for appointment as a director, notwithstanding that the agreements were subject to suspensive conditions. During the hearing, the Applicant contended that he had fulfilled the conditions by providing guarantees, but failed to demonstrate that such guarantees satisfied the requirements for the transfer of shares in terms of the sale agreement.

38. Even if the Applicant were to be regarded as a director, the documents before the Tribunal indicate that the Respondents complied with section 71(1) of the Act. The

removal process satisfied the procedural requirements, including notice and the opportunity afforded to the Applicant to make representations.

39. The resolution relied upon by the Applicant as proof of his appointment appears to have formed part of agreements subject to suspensive conditions, which were not proven to have been fulfilled. There is no evidence that the sale of shares was finalised. The Applicant also failed to provide proof that Ingwenya Properties (Pty) Ltd became a shareholder in Tlhomogo Trading and Projects (Pty) Ltd. Such proof would have been necessary to justify his appointment as a director.

40. In the circumstances, one would have expected a stand-alone resolution by the directors and/or shareholders confirming the Applicant's appointment, supported by minutes evidencing the fulfilment of the suspensive conditions. Section 70(3) of the Act governs the appointment of directors, read together with the Companies Regulations, which require, inter alia, the filing of a Form CoR39 supported by duly signed resolutions. No such documentation was properly provided to substantiate the Applicant's appointment.

ORDER

In the premises, the following order is made:

a. The Application is hereby dismissed.

HLALELENI KATHLEEN DLEPU

Tribunal Member