IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 249566/2025

Date of hearing: 13 March 2026

Date delivered: 25 March 2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) ~~REVISED~~

25/3/26 [redacted]

DATE SIGNATURE

In the application between:

EDWIN WAYLAND GREEN	**Applicant**
and	
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**First Respondent**
BELUZI TRADING (PTY) LTD	**Second Respondent**
BELUZI BANANAS LIMITADA	**Third Respondent**
FIRST NATIONAL BANK LTD	**Fourth Respondent**

JUDGMENT

SWANEPOEL J:

[1] This is an urgent application in which the applicant seeks the following relief:

[1.1] That the matter be heard as one of urgency;

[1.2] That the first respondent be ordered to 'reload' the applicant as a director of the second respondent pending the outcome of mediation and/or any other application instituted between the parties;

[1.3] That the first respondent be ordered to provide all documents requested by the applicant on 19 December 2025 in terms of the Promotion of Access to Information Act, 2 of 2000 ("PAIA");

[1.4] That the first respondent be ordered to cooperate in the mediation process in accordance with the Mediation Directive, and that Mr. Alan Nelson SC be appointed as mediator;

[1.5] That, if the mediation process were unsuccessful, that the applicant may institute proceedings within 15 days to have his name restored as director of the second respondent;

[1.6] That the first and third respondents be ordered to pay the costs on a punitive scale;

[1.7] Further and/or alternative relief.

[2] Neither the first nor the fourth respondents opposed the application. The first respondent, the Companies and Intellectual Property Commission, abides the decision of the Court. I shall, for the sake of convenience, refer to the second and third respondents collectively as "the respondents".

[3] The applicant is an erstwhile director of the respondents. The third respondent is a company registered and incorporated in Mozambique. It is the sole shareholder of the second respondent. During 2025 the third respondent brought an application in Mozambique to remove the applicant as director, which resulted in a provisional order being granted in favour of the third respondent, and which caused the applicant to resign as director of the third respondent.

[4] On 25 November 2025 the deponent to the founding affidavit, Ms. Miriam Veloso, addressed a notice to the applicant on behalf of the third respondent, in which the applicant was given notice that the third respondent had resolved to possibly remove the applicant as director of the second respondent. In the notice the third respondent alleged various incidents of malfeasance, including the misappropriation of company assets, obstruction of the operations of the company, the breach of

fiduciary duties, incompetence and the failure to perform his duties adequately.

[5] The third respondent gave notice that a virtual meeting would be held at 10h00 on 10 December 2025 in order to consider the applicant's possible removal. The applicant was invited to make a presentation to the meeting in person or through a representative before the resolution was put to a vote. He was asked to confirm his attendance at the meeting by 5 December 2025.

[6] The applicant did not respond to the notice, he did not make representations, nor did he appear at the meeting. Consequently, the third respondent resolved to remove the applicant as director.

[7] On 11 December 2025 the respondents submitted a request to the first respondent ("the CIPC") for it to amend its records to reflect the applicant's removal as director. As a matter of course, the CIPC advised the applicant of the request immediately. The applicant objected to the request on 12 December 2025. On 17 December 2025 the CIPC advised the applicant that the request had been rejected. Nonetheless, on 18 December 2025 the CIPC, apparently pursuant to a second amended request by the third respondent on 17 December 2025, amended its records to reflect the applicant's removal as director.

[8] The applicant alleges in the founding affidavit that he had never received notice of his proposed removal as is required by the Companies Act, 71 of 2008 ("the Act"). He says:

> "… I was not afforded an opportunity to make representations, no proper meeting took place and no further resolution was passed for my removal as a director."

[9] The averment that notice was not given is false. Nevertheless, it is against this background that the applicant approached the court for relief on an urgent basis. On 21 December 2025 the applicant launched this application, calling upon the respondents to deliver their answering affidavit by 29 December 2025, in order that the matter could be heard on 6 January 2026. When the respondents opposed the application, the applicant delivered a notice in terms of rule 7 of the Uniform Rules, challenging Dentons Attorney's authority to act for the respondents. In response to the said notice, the second respondent delivered a resolution authorizing Dentons to act on their behalf.

[10] Before I deal with the merits of the application, it is necessary to consider the applicant's authority challenge, and the respondents' averment that the application is not urgent, and if it is, that the urgency is self-created.

Rule 7

[11] Rule 7 (1) of the Uniform Rules provides that:

> "Subject to the provision of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that

such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorized so to act...."

[12] Ordinarily, a rule 7 notice is intended to elicit proof that an attorney has been properly authorized to act for a party to a matter. The second respondent has attached a resolution to its reply in terms of rule 7, which confirms that Dentons is authorized to act on its behalf. The third respondent has not delivered a resolution, but it has filed an answering affidavit which confirms that it has authorized Dentons to act on its behalf. I am satisfied that the respondents have authorized Dentons to act on their behalf.

[13] However, the actual attack is against the authority of the remaining director of the third respondent to instruct Dentons to act on its behalf, in circumstances where the third respondent's memorandum of association require at least three directors to be appointed. The same attack is made upon the authority of the second respondent's remaining director to act unilaterally where the memorandum of incorporation requires a minimum of two directors.

[14] As far as the third respondent is concerned, article 14 of the Articles of Association provides that the company is managed by one or more director, and article 19 provides that the third respondent is bound by the signature of one director. The Articles provide in various instances that the "Directors or the Board of Directors" may represent the company,

which suggests that a decision by a Board of at least three directors is not necessary to bind the company.

[15] As for the second respondent, section 66 (11) of the Act provides that:

> "(11) Any failure by a company at any time to have the minimum number of directors required by this Act or the company's Memorandum of Incorporation, does not limit or negate the authority of the board, or invalidate anything done by the board or the company."

[16] Consequently, the remaining director of the second respondent was entitled to request the CIPC to remove the applicant as director, and, subsequently, to instruct Dentons to act on the company's behalf. I am satisfied that Dentons was properly instructed to act for the respondents.

Urgency

[17] As I have said, the application was brought on an urgent basis, and was intended to be heard on 6 January 2026. Notwithstanding the fact that the application was brought on some urgency, and required the respondents to file their answers by 29 December 2025, which they did, the applicant did not reply by 6 January 2026. Consequently, the matter had to be postponed, and furthermore, due to the voluminous papers, the parties had to seek a special allocation.

[18] The respondents argue, correctly, that the applicant waited from 25 November 2025 until 21 December 2025 to launch the application. There is simply no explanation for the delay. The applicant seemed to believe that he could wait to see what the CIPC eventually decided. However, he does not explain why he did not take any action for almost a month after becoming aware of the proposed removal, before launching these proceedings. Moreover, the applicant does not explain why he did not deliver a reply timeously.

[19] The applicant alleges that the matter is urgent because he performs certain crucial functions within the company. The respondents vehemently deny this averment. It is alleged that the applicant has been neglecting his duties for some years, and that, in fact, it is the deponent to the second respondent's answering affidavit who fulfils the essential functions in the company. I have no reason to disbelieve the respondents, and I certainly cannot reject their version. I am therefore bound to accept the respondent's version.[1]

[20] In my view, there is no urgency to the matter, but in any event, any urgency that there may have been was self-created. However, in light of the view I take on the merits, I shall also deal with that aspect of the case.

Merits

[21] Section 71 of the Act governs the removal of directors. The relevant provisions of section 71 are the following:

“"71. **Removal of directors**

(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 or not 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 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 reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and

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

(5) ...

(6) ...

(7) ...

(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."

[22] The applicant's initial denial that notice was given to him in terms of section 71 morphed into an acknowledgement that notice was in fact given on 25 November 2025. The applicant's latest contention is now that:

[22.1] The respondents called for a virtual meeting without providing a link to the meeting, resulting in the applicant not being provided with an opportunity to join the meeting; and

[22.2] Due to the respondents giving notice as contemplated in subsection (3), the provisions of subsection (8) (b) apply, and that the respondent was, consequently, obliged to refer the matter to the Companies Tribunal.

[23] By virtue of the fact that the second respondent has only two directors, the provisions of subsection 71 (1) and (2) apply. The applicant now says that the respondents failed to give proper notice, because they

did not provide a link to the virtual meeting. Subsection 71 (2) (b) only requires the respondents to have provided the applicant with a reasonable opportunity to participate in the meeting. All that was required from the applicant was to give notice that he wished to attend the meeting, which would have resulted in the link being provided to him. In my view the notice given by the respondents was reasonable, and had the applicant merely responded to the notice, he would have been able to participate in the meeting. It was his decision not to do so.

[24] The alternative argument, that the second respondent was obliged to refer the matter to the Companies Tribunal, is equally without merit. Subsection 71 (8) (b) is not peremptory. It provides that a director or shareholder of a company with less than three directors may refer the matter to the Companies Tribunal if the circumstances referred to in subsection 71 (3) prevail. A director or shareholder is not obliged to do so.

[25] In my view, prima facie, the respondents complied fully with subsections 71 (1) and (2). The applicant contends that the CIPC had an obligation to consider whether the removal notice was proper. The applicant's latest version is that the notice was inadequate in that it did not provide a virtual link. In the initial letter of objection to the CIPC the applicant initially said that the section 71 (2) notice requirements had not been complied with, in other words that no notice was given.

[26] When the notice letter was produced by the second respondent, the applicant's version changed, and whilst he acknowledged that the notice was sent, he then alleged that the notice did not comply with the requirements of section 71 (2). I have already rejected that contention. Therefore, there is no reason to believe that the CIPC was incorrect in removing the applicant.

[27] The applicant seeks an interdict. He is required to show:

[27.1] A clear right, or at least a prima facie right though open to doubt;

[27.2] That the applicant would suffer irreparable harm should the relief not be granted;

[27.3] No alternative relief;

[28] The applicant certainly does not show that he has a clear right to be re-appointed. I have some doubt, also, whether the applicant has shown a prima facie right to be re-appointed. It seems to me, that prima facie, the proper procedure was followed in his removal.

[29] As far as irreparable harm is concerned, the applicant's original allegation was that the company would suffer harm in that the applicant fulfilled essential functions within the company. I have already rejected that contention. The applicant also says that there is inherent irreparable

harm in the fact that he is not able to fulfil his duties as director. I see no merit to this argument.

[30] In *City of Tshwane Metropolitan Municipality v Afriforum*[2] the Court said:

> "[55] Before an interim interdict may be granted, one of the most crucial requirements to meet is that the applicant must have a reasonable apprehension of irreparable and imminent harm eventuating should the order not be granted. The harm must be anticipated or ongoing. It must not have taken place already. . .
>
> [59] Irreparable implies that the effects or consequences cannot be reversed or undone. Irreparable therefore highlights the irreversibility or permanency of the injury or harm. That would mean that a favourable outcome by the court reviewing allegedly objectionable conduct cannot make an order that would effectively undo the harm that would ensue should the interim order not be granted.""

[31] The harm that the applicant alleges is that the company cannot function properly or adequately without him. That is, in my view, questionable. He also says that he would be deprived of exercising his powers as director. The applicant has not said how such deprivation would harm him.

[32] Irreparable harm should not be intangible, or as it is put in Tshwane (*supra*), the applicant is obliged to show that harm that is not "too

complex or mysterious to understand would befall them and others should the interim order not be granted."

[33] Here below I address the fact that there are alternative remedies to address whatever concerns the applicant may have regarding his removal. In view thereof, I see no irreparable harm in the interim.

[34] There are alternative remedies available to the applicant. In the first place, he could have chosen to take part in the meeting on 10 December 2025, and he could possibly have resolved the matter there. Moreover, on the applicant's own version this is the type of matter that could (and should) be resolved by the Companies Tribunal. There is no reason why this matter could not have been referred to the Tribunal. The applicant could also have sought an order to set aside the determination of the CIPC to remove his name from their records.

[35] Finally, even if I believed that the applicant had at least a prima facie right to be re-appointed, then one would have to consider the balance of convenience. The effect of re-appointing the applicant would be that he would be cloaked with all the authority of a director. The allegations against the applicant are of an extremely serious nature. I cannot, and I do not express any view as to the truth thereof. However, even if there were only a kernel of truth to the averments, more especially given the apparent conflict of interest between the applicant's fiduciary duties and his alleged relationship with a major debtor of the company, it would be inappropriate to re-appoint the applicant for what may only be

an interim period. Furthermore, the relationship between the applicant and the deponent has clearly broken down. It would be ill-advised, to seek to restore the relationship before there is clarity on the lawfulness of the applicant's removal.

[36] In my view the balance of convenience does not favour the granting of the relief sought.

[37] The applicant has also sought relief against the CIPC in terms of PAIA. The parties are in agreement that the relief should be granted and I shall do so.

[38] Finally, there was an application for the striking out of certain new material in the replying affidavit. I pointed out to the parties that they all came to the matter with hat in hand, in that the respondents had also sought to admit supplementary affidavits. It seems that the parties agree that all the evidence should be admitted, and that no costs should be ordered in regard thereto.

[39] A final issue is that the applicant requires an order referring the matter to mediation. Mediation is a voluntary process, save in the event of there being live litigation pending in the Gauteng High Court, in which case the Mediation Directive prescribes compulsory mediation. Once I have made an order in this case, there is no remaining live litigation between the parties, and the Mediation Directive does not apply. A Court cannot force a party to mediate in order to resolve a dispute that is not

before the court. For that reason the order sought by the applicant is not competent.

[40] Consequently, I make the following order:

> **[40.1] The first respondent is ordered to provide all documents requested by the applicant in terms of the Promotion of Access to Information Act 2 of 2000 on 19 December 2025.**
>
> **[40.2] In respect of the order in paragraph [~~36.1~~ 40,1] above, there is no order as to costs.**
>
> **[40.3] The application to strike out portions of the replying affidavit is dismissed with no order as to costs.**
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> **[40.4] Save for the aforesaid, the application is dismissed with costs on Scale C.**

[redacted]

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

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[1] Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)
[2] City of Tshwane Metropolitan Municipality v Afriforum and Another 2016 (6) SA 279 (CC) at para [55]

Counsel for the applicant:	Adv. S Wagener SC
Instructed by:	WDT Attorneys Inc
Counsel for the second and third respondents:	Adv. W Bava
Instructed by:	Dentons Attorneys
Heard on:	13 March 2026
Judgment on:	25 March 2026