IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 074500/2023

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: ***NO***
(2)	OF INTEREST TO OTHER JUDGES: ***NO***
(3)	REVISED.
(4)	Date: 07 April 2026
Signature: [redacted]	

In the matter between:

SAMUEL MORAKE TSIANE	First Applicant
SELAKI EB CONSULTANTS	Second Applicant
And	
WILSON MOKGOTHO	First Respondent
MOGATLADI TRADING ENTERPRISE (PTY) LTD	Second Respondent
DONALD MATIME MOKGOTHO	Third Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] Before this Court are numerous interrelated applications arising from a protracted dispute between the applicants and the respondents concerning a purported "Dividend Agreement," the alleged creation of a new company, the governance of the brick-manufacturing division of Mogatladi Trading Enterprise (Pty) Ltd, and serious allegations of reckless conduct in the running of the business.

[2] The first applicant, Mr Samuel Morake Tsiane, appeared in person. The second applicant is a company of which he is the sole director. The first respondent appeared with legal representation. The papers are extensive, and the first applicant has filed multiple affidavits, several of which are irregular in form or sequence.

[3] Given this background, the Court is required to determine:

i. a series of interlocutory issues;

ii. the applicants' amended main application; and

iii. the respondents' counter-application.

B. BACKGROUND AND PROCEDURAL HISTORY

[4] The procedural chronology is largely uncontentious and is set out fully in the respondents' updated practice note filed on 7 October 2025. The applicants launched the initial application on 8 August 2023 seeking five forms of relief, all tied to enforcement of the Dividend Agreement and the governance of Mogatladi Trading Enterprise.

[5] An answering affidavit was filed on 1 September 2023, in which the respondents denied the existence of any agreement entitling the first applicant to 30% shareholding, accused him of reckless management, and contended that the matter ought to have been referred to arbitration.

[6] The sequence thereafter included a replying affidavit (with a condonation application), a Rule 23 strike-out application, a notice to amend, an application for leave to amend, objections, Rule 30 and 30A notices, an uncommissioned answering affidavit to the counter-application, an application for leave to represent the second applicant, and ultimately the reinstatement of the

deregistered second applicant. All of this is captured between paragraphs 5.4 and 5.24 of the practice note.

[7] On 16 August 2024 the Court granted the applicants leave to amend their notice of motion. They then filed an amended notice of motion on 5 September 2024 together with a completely new supporting affidavit, without seeking leave to do so.

[8] On 19 September 2024 the respondents launched a counter-application seeking cancellation of the Dividend Agreement and ancillary relief to facilitate “fair compensation” for any value due to the applicants.

C. ISSUES FOR DETERMINATION

(a) Whether the first applicant may represent the second applicant (a juristic person).

(b) Whether portions of the replying affidavit should be struck out.

(c) Whether the further affidavit filed in support of the amended notice of motion is irregular and inadmissible.

(d) Whether the amended relief is competent in law.

(e) Whether the applicants are entitled to the substantive relief sought.

(f) Whether the counter-application should be granted.

D. INTERLOCUTORY ISSUES

A. Representation of the Second Applicant

[9] It is trite that a juristic person may not be represented in legal proceedings by a layperson. The first applicant sought leave, by affidavit, to represent the second applicant. The respondents did not oppose, but the Court is required to consider the interests of justice.

[10] The Supreme Court of Appeal has repeatedly held that only a qualified legal practitioner may represent a company, unless exceptional circumstances justify deviation. No such exceptional circumstances exist here. The fact that the first applicant is the sole director does not, in itself, constitute sufficient reason. (See: *Corwil Investments Holdings (Pty) Ltd and Another v Investec Securities (Pty) Ltd* (GJ) (unreported case no 11126/2022, 5-4-2022) (Manoim J) and *Manong and Associates (Pty) Ltd v Minister of Public Works and Another* 2010 (2) SA 167 (SCA).

[11] The application must therefore be dismissed.

Finding: The first applicant may not represent the second applicant. The second applicant's participation is therefore irregular unless legally represented.

B. Application to strike out portions of the replying affidavit

[12] The respondents' Rule 23 application seeks to strike out large sections of the replying affidavit on grounds of scandal, vexation, irrelevance, and the introduction of new matter.

[13] The replying affidavit indeed contains extensive new allegations, including WhatsApp screenshots mentioning individuals not joined to the proceedings. These constitute impermissible new matter and, further, are not properly authenticated.

[14] The test is whether the offending matter is scandalous or irrelevant and whether the other party will be prejudiced.

[15] Both requirements are satisfied. The application succeeds.

Finding: The identified passages in the replying affidavit are struck out.

C. Further affidavit filed without leave

[16] After being granted leave to amend the notice of motion, the applicants filed an entirely new supporting affidavit without seeking leave to do so.

[17] Rule 6(5)(e) is explicit: no further affidavits may be filed without leave of the Court.

[18] The supporting affidavit is therefore inadmissible and is struck from the record.

E. MAIN APPLICATION

A. Existence and Enforceability of the "Dividend Agreement"

[19] The applicants rely on a written document titled "Memorandum of Understanding (Dividend Agreement)" signed on 4 November 2021.

[20] Two features are immediately apparent:

i. The agreement is between Selaki EB Consultants (Pty) Ltd and Mogatladi Trading Enterprise (Pty) Ltd. The first applicant is not a party.

ii. The agreement contemplates 30% of profits from the brick-manufacturing division, not 30% shareholding in Mogatladi Trading Enterprise.

[21] Even if it were enforceable, the agreement does not confer shareholding rights on the first applicant.

[22] The applicants also rely on an alleged verbal agreement to register a new legal entity. This alleged oral agreement contradicts the integrated written MOU and violates the parol evidence rule.

[23] Thus, the applicants are not entitled to an order compelling registration of a new entity or transfer of shareholding.

B. Relief Relating to Governance and Interdicts

[24] The applicants seek wide-ranging orders restraining the respondents from "reckless and disruptive behaviour," compelling establishment of a board, and authorising the first applicant to "run the company properly."

[25] These orders sought are:

i. impermissibly vague;

ii. amount to judicial management of a company without a statutory basis;

iii. inconsistent with section 66 of the Companies Act 71 of 2008, which vests control of the company in its board.

[26] The applicant, as CEO, cannot obtain interdictory relief amounting to control of the company against the wishes of the board or the sole shareholder.

[27] The relief is incompetent and must be refused.

C. Arbitration Clause

[28] Clause 7 of the Dividend Agreement requires disputes to be referred to arbitration. The respondents raised this point consistently. The applicants argue that the first respondent refused to cooperate.

[29] Whether the first respondent had reservations is irrelevant. An arbitration clause constitutes a bar to proceedings unless the resisting party waives it.

[30] The respondents have not waived arbitration. Section 6 of the Arbitration Act mandates a stay of proceedings.

Finding: The dispute is subject to arbitration. The Court lacks jurisdiction to grant the substantive relief.

F. COUNTER-APPLICATION

[31] The respondents seek cancellation of the Dividend Agreement and an order for payment of "fair compensation."

[32] However, the respondents did not file a claim in reconvention in the manner prescribed by Rule 24. The relief sought is not properly formulated, and the applicants were unable to meaningfully answer the case.

[33] Moreover, the arbitration clause applies equally to the respondents.

Finding: The counter-application must be stayed pending arbitration.

G. COSTS

[34] The applicants have requested each party to pay its own costs. They are lay litigants, and the litigation shows a clear lack of understanding of legal procedure, but not *mala fides*.

[35] The respondents have succeeded on most issues, but the interests of justice favour fairness over punishment.

Order: Each party should pay its own costs.

ORDER

In the result, the following order is made:

1. The first applicant's application for leave to represent the second applicant is dismissed.

2. The respondents' Rule 23 application is upheld, and the identified portions of the replying affidavit are struck out.

3. The applicants' further affidavit filed on 5 September 2024 without leave of the Court is struck from the record.

4. The applicants' amended main application is dismissed.

5. The dispute between the parties is referred to arbitration in accordance with clause 7 of the Memorandum of Understanding (Dividend Agreement).

6. The respondents' counter-application is stayed pending arbitration.

7. Each party is to pay its own costs.

[redacted]

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of Judgment: 07 April 2026

Appearances:

On behalf of the Applicants: In person

Applicants' attorneys: None, in person.

On behalf of the Respondents: Adv. N.G. Louw

Attorneys for the Respondents: Albert Hibbert Attorneys, Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 07 April 2026.