IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

1. REPORTABLE: YES.
2. OF INTEREST TO OTHER JUDGES: YES.
3. REVISED: NO.

SIGNATURE:

Case number: 2026-039448

In the matter between:

MAMOKEBE INVESTMENTS (PTY) LTD	Applicant
and	
SOKHELA, PROTUS FRANCIS MHAWUKELWA	First respondent
BEY, INAYAT ALI	Second respondent
JORDAAN, JOHANNES PETRUS	Third respondent
ADAM, MOHAMED	Fourth respondent
COMPANIES AND IP COMMISSION	Fifth respondent

Delivered: *This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 10 April 2026.*

Summary: Company law – Mining law – Contract law – Directors – Appointment – Purported shareholders' agreement relied upon to justify appointment and CIPC recordal of directors – Agreement void *ab initio* for contravening s.11 of the MPRDA – Purported agreement in any event never implemented in accordance with Companies Act – Non-shareholder lacking standing to convene shareholders' meeting – Appointments and recordals null and void – Admissions and common-cause forgery dispositive – Urgent interim interdict granted restraining respondents from acting as directors of applicant company.

JUDGMENT

F.J. LABUSCHAGNE, AJ

[1] This matter came before me in the Dedicated Insolvency Court as one of three inter-related urgent applications, set down to be heard together. The order set out at the conclusion of these reasons was granted on 26 March 2026, with an indication at the time that reasons would follow. These are those reasons.[1]

[2] In essence, the order interdicted *pendente lite* the first, second and fourth respondents (the opposing respondents) from acting or purporting to act on behalf of the applicant company.

[3] The essential basis of the application was the allegation that the opposing respondents were illegitimate directors of the applicant, appointed and recorded through an unlawful process: unlawfulness in respect of their

[1] This matter was heard first, with the winding-up application by an alleged creditor, *2 Seam (Pty) Ltd*, under case number **2026-033992** being postponed *sine die.* The applicant in the aforesaid winding-up application served a rule 7 notice in respect of the applicant company herein, *Mamokebe Investments (Pty) Ltd* (the respondent in the winding-up application). Ultimately, no winding-up application could proceed pending the determination of the issues in this application as the question in the winding-up application would have been, who is entitled to oppose the relief sought? The deponent to the founding affidavit herein, as director of Mamokebe on the one hand (sole director on his version) or the persons reflected as the first, second and fourth respondents herein on the other hand? In my view, the rule 7 notice filed by *2 Seam* would have impacted its urgency negatively in any event (although I make no finding it that regard). Be that as it may, ultimately, absent a ruling as to who may represent *Mamokebe* proper, proceeding with the winding-up application would have been premature, and would have negated *audi alteram partem* and section 34 of the *Constitution of the Republic of South Africa*, 1996. The other urgent application, launched by *Mamokebe* (through the first, second and fourth respondents herein) under case number **2025-028369** was also postponed *sine die* as it could not proceed pending the adjudication of this application and the issues raised herein.

purported election, and fraud in respect of their subsequent recordal with the Companies and Intellectual Property Commission (CIPC). The allegation of illegitimacy was premised on the assertion that a non-shareholder convened and conducted a purported shareholders' meeting at which resolutions were taken appointing the impugned directors.

[4] It is common cause that the subsequent CIPC recordal of those directors was tainted by forged signatures of the legitimate directors.

[5] Although the papers are extensive and the factual background complex, the dispute ultimately crystallises around three interrelated questions:

(a) first, the legal status and effect of the 2016 Alcucento agreement and the purported shareholders' meeting of 5 October 2022: in particular, whether Alcucento ever lawfully acquired shares in the applicant and whether the resolutions adopted at that meeting it purported to convene, validly appointed the impugned directors.

(b) Second, the effect of the order granted by Raubenheimer AJ on 7 March 2025, and whether that order, granted by agreement, had the consequence of constituting or confirming the composition of the applicant’s board, notwithstanding the alleged invalidity of the earlier appointments.

(c) Third, the procedural challenge raised under Rule 7(1), namely whether the applicant is properly before court and whether its attorneys were duly authorised to institute these proceedings in light of the disputed composition of the board.

[6] The opposing respondents’ opposition is directed principally at the second and third of these issues. They contend that the Rule 7 challenge and the proper interpretation of the Raubenheimer order are dispositive, and that the application falls to be dismissed on those grounds without the court reaching the merits of the share issuance, the validity of the impugned shareholders’ meeting, or the doctrine of *de facto* directorship.

Urgency

[7] The applicant is a company regulated by the Companies Act 71 of 2008 (the “Companies Act”) and the common law.

[8] I held that the matter was urgent as it concerned issues of corporate governance and unlawfulness, with an ostensible creditor poised to pursue an urgent winding-up application premised, *inter alia*, on just and equitable grounds and allegations that the company was rudderless.

[9] The procedure contemplated in Rule 6(12) is not there for the taking. An applicant must explicitly set forth the circumstances alleged to render the matter urgent and, more importantly, must demonstrate the absence of substantial redress at a hearing in due course.

[10] The enquiry into urgency is therefore inseparably linked to whether substantial redress would be available in the ordinary course.[2]

[11] In ***Apleni v President of the Republic of South Africa***,[3] Fabricius J held that where allegations of abuse of power are made (particularly where such allegations may impact the rule of law) the relief sought may warrant urgent consideration.

[12] Section 5 of the Companies Act provides for its interpretation in light of section 7, which sets out the purposes of the Act. Those purposes include promoting the Bill of Rights, encouraging transparency and high standards of corporate governance, and fostering efficient and responsible management of companies.

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2 See ***East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and Others*** (2012) JOL 28244 (GSJ) at paras 6 and 7 and ***Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and Others*** (2014) JOL 32103 (GP) at paras 63 – 64.

3 ***Apleni v President of the Republic of South Africa*** 2018 1 All SA 728 (GP) para 10. Although in the context of State conduct, the principle finds application in respect of companies regulated by the Companies Act as well.

[13] Allegations of ongoing contraventions of legislation that affect corporate governance and implicate the rule of law may denote urgency, particularly where such contraventions entail the continued usurpation of corporate control with ongoing prejudicial effect. In such circumstances, substantial redress will not ordinarily be obtainable in due course, warranting urgent judicial intervention.

[14] This matter concerns allegations of unlawful conduct resulting in a usurpation of corporate control. Such conduct has inevitable external consequences, potentially prejudicing third parties who engage with the company in good faith in the commercial sphere.

[15] Although a term such as “corporate hijacking” is sometimes used colloquially to describe disputes of this nature, it is not a strict legal term. The legal enquiry turns not on terminology, but on whether the facts disclose an unlawful or fraudulent assumption of corporate control, or related forms of misconduct recognised in law.[4]

[16] For these reasons, and in circumstances where the governance of a company is allegedly usurped through ongoing illegality, I found that the matter was urgent, as the applicant would not obtain substantial redress in due course absent immediate judicial intervention.

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[4] If someone improperly assumes control, it may be described as a usurpation of corporate control or a fraudulent takeover, or corporate control fraud. If the wrongdoing involves misuse of company assets, it may be characterized as misappropriation, embezzlement, or asset stripping.

The role players

[17] The applicant, Mamokebe Investments (Pty) Ltd ("**Mamokebe**"), is a company with its registered address in Centurion, Gauteng.

[18] The deponent to the founding affidavit, Mr Kgaapu Stanley Mphahlele ("**Stanley**"), stated that he is the sole director of the applicant and a shareholder.

[19] The first, second and fourth respondents, Mr Sokhela, Mr Bey and Mr Adam, opposed the relief sought and contended that they are directors of the applicant. They are referred to herein as the opposing respondents or the illegitimate directors.

[20] The fifth respondent, the Companies and Intellectual Property Commission ("**CIPC**"), did not oppose the relief sought.

[21] The third respondent, an attorney, resigned as a purported director of the applicant and likewise did not oppose the relief sought.

Incorporation of the applicant

[22] In corporate matters, it is necessary to consider the incorporation of the company, its shareholding and any transfer thereof,[5] together with the resultant appointment of directors, as related but discrete enquiries in order to ascertain the complete factual position.

[23] Corporate law is inherently complex. In ***Ex Parte NBSA Centre Ltd***,[6] Coetzee DJP emphasised that company law is not confined to the statute applicable at any given time, but has its own internal logic and developed principles, including aspects of an underlying common law, which must be understood to properly analyse corporate disputes.

[24] In this matter, a fundamental disregard for established principles of corporate law, particularly those governing corporate governance and the separate juristic personality of a company, lies at the heart of the disputes that arose and the defences that were subsequently advanced.

[25] The applicant was incorporated as ***Adzam Trading 161 (Pty) Ltd*** on 12 September 2006 as an inactive shelf company. The incorporator, Mr Stephanus Andries Gouws ("**Gouws**"), was its sole shareholder.

5 Transfer of shareholding is a legal term. Shareholding in a company can only be obtained through shares which have been authorised. Once authorized, shares remain unissued, until issued. Typically, the incorporator will take up shareholding. In this instance, 1000 authorized (but unissued) shares were provided for (as par value shares at the time) and of those, the incorporator, Mr. Gouws allotted himself 100 shares (100 issued authorized shares) with 900 authorized but unissued shares remaining). A person can acquire title to shares in one of two ways. Either directly from the company, which can then allot and issue the shares to him, or usually by way of purchase, with result that the shares will be transferred. In the former, the company is a party to the subscription agreement, and in the latter, the company is not a party as the agreement is one of sale between the holder of the shares and the purchaser (subject to any rights of pre-emption or other restrictions such as provided for in the Memorandum of Incorporation, or Chapter 4 of the Companies Act).

6 ***Ex Parte NBSA Centre Ltd*** 1987 (2) SA 783 (T) at 787.

[26] The applicant's name was changed to its current name on 7 November 2006. On 9 November 2006, the entire issued shareholding was transferred by Gouws, with 49 shares transferred to Stanley and 51 shares to Ms Motjoadi Ramatsimele Francina ("**Francina**").

[27] Stanley and Francina were appointed as directors of the applicant on 14 November 2006.[7]

The Alcucento agreement

[28] For ten years the *status quo* in the applicant remained uncontentious. On 13 September 2016, an agreement was concluded between the two shareholders, Stanley and Francina on the one hand, the applicant as company on the other hand, and also a third party, **Alcucento (Pty) Ltd** t/a Rubicon Consortium Mining, represented by the fourth respondent (the **Alcucento agreement**).

[29] The document is described as a shareholders' agreement. In substance, it contemplated that Alcucento would acquire a shareholding in the applicant and exercise shareholder rights.

Alcucento agreement void or voidable?

[7] Ms. Motjoadi Ramatsimele Francina has since passed away (her shareholding vesting in her deceased estate to be dealt with by her executor).

[30] At the time the Alcucento agreement was concluded, the applicant was the holder of a prospecting right (the mining right was subsequently granted). Section 11(1) of the Minerals and Petroleum Resources Development Act 28 of 2002 ("MPRDA") provides that a prospecting or mining right, or a controlling interest in a company holding such a right, may not be ceded or disposed of without the written consent of the Minister, save in the case of listed companies.

[31] The Alcucento agreement plainly fell within the ambit of section 11, as it contemplated the transfer of a controlling interest in a non-listed company. Notably, the agreement contained no suspensive condition making its operation subject to ministerial consent, and no such consent was ever obtained.

[32] The applicant contended that the Alcucento agreement is void as it contravenes legislation. While *pacta sunt servanda* underpins the enforcement of agreements seriously entered into, agreements contrary to public policy will not be enforced.[8]

8 ***Sasfin (Pty) Ltd v Beukes*** 1989 (1) SA 1 (A) where it was held that agreements which are clearly inimical to the interests of the community, whether contrary to law, or morality, or run counter to social or economic expedience, will accordingly, on the grounds of public policy, not be enforced. Usually, an indication that the Legislator intended the agreement to be void (unless the sanction provides suitable protection against the mischief). If public interest stands to be protected, it would be an indicator that the legislator intended the agreement to be void. A

[33] Public policy is informed by legislation, the common law, good morals, and the public interest. In determining whether a statutory contravention renders an agreement void, the relevant statute must be interpreted holistically, having regard to its object, the mischief it is directed against, whether criminal sanctions are imposed, the protection of individual or public interests, and the consequences of recognising or invalidating the agreement.[9]

[34] Section 11 does not expressly stipulate the civil consequences of non-compliance, beyond the criminal sanctions in sections 98 and 99. However, its language is peremptory and couched as a direct prohibition.[10] Section 11(4) further obliges transactions contemplated in subsection (1) to be lodged for registration within 30 days. The peremptory nature of

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balance-of-convenience test is employed that questions whether the nullity of the contract would cause greater inconvenience and injustice that allowing the illegal conduct to stand. The following factors usually stand to be considered: the object of the statute and the mischief it is directed against, whether a criminal sanction is imposed the protection of an individual or public interest and the consequences of a particular interpretation of an agreement. These factors will give rise, if present, to an agreement being void *ab initio* for want of statutory compliance.

9 ***Metro Western Cape (Pty) Ltd v Ross*** 1986 (3) SA 191 (A); ***Absa Insurance Brokers (Pty) Ltd v Luttig*** 1997 (4) SA 229 (SCA).

10 Directory language is advisory or procedural in nature whereas peremptory language is mandatory or compulsory. The purpose of the latter is to protect rights or enforce law whilst the effect of the former is generally to guide procedure.

section 11 must be interpreted within the broader statutory scheme and objects of the MPRDA.

[35] Sections 2, 3 and 4 of the MPRDA emphasise the State's custodianship of South Africa's mineral and petroleum resources for the benefit of all South Africans, and require that the Act be interpreted in a manner consistent with those objects.[11]

[36] Section 11 ensures that any proposed acquirer of a prospecting or mining right, or a controlling interest in a right-holding company, is assessed by the Minister to confirm compliance with the statutory eligibility criteria.[12] Absent ministerial oversight, the regulatory framework governing the allocation and retention of such rights would be undermined.

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11 Restraints against the transfer, alienation or disposal of prospecting or mining rights also occur in other mineral law systems. For instance, similar prohibitions against assignment, sub-letting or transfer of mining rights or interests in mining rights without ministerial permission or approval, occur in the mining laws of some Australian states (section 300 Mineral Resources Act 1989 (Qld); section 83(1) of the Mining Act 1971 (SA); section 33 Mineral Resources Development Act 1990 (Vic); and section 83(1)(d) of the Mining Act 1978 (WA)). Before approval is granted in the state of Victoria, the Minister must be satisfied that the applicant is a fit and proper person to hold the mining licence, intends to comply with the Act, genuinely intends to do the work, has an appropriate work programme, and is likely to be able to finance the proposed work and rehabilitation of the land (section 15(6)) (see PJ Bandenhorst & JJ du Plessis ***De Jure*** 45 Volume 2 2012 pp. 388 – 404 Case Note on ***Mogale Alloys (Pty) Ltd v Nuco Chrome Boputhatswana (Pty) Ltd*** 2011 (6) SA 96 (GSJ): *Alienation or disposal of a "controlling interest" in a prospecting company.)*

12 Section 11(2) provides that the consent referred to in subsection (1) must be granted if the cessionary, transferee, lessee, sublessee, assignee or the person to whom the right will be alienated or disposed of (a) is capable of carrying out and complying with the obligations and the terms and conditions of the right in question; and (b) satisfies the requirements contemplated in section 17 (which in respect of a prospecting right, refers to the section 17 requirements).

[37] In ***Vantage Goldfields SA (Pty) Ltd v Arqomanzi (Pty) Ltd***,[13] the Supreme Court of Appeal held that section 11(1) must be interpreted in light of the objects of the MPRDA, particularly State custodianship and regulatory oversight. In ***Mogale Alloys (Pty) Ltd v Nuco Chrome Boputhatswana (Pty) Ltd***,[14] Coppin J explained that ministerial consent is required where a transaction results in a change of control, even if no single party acquires that control. These authorities confirm that transactions such as the Alcucento agreement fall squarely within the regulatory purview of section 11.

[38] There is an uncommenced amendment to section 11 of the MPRDA (as of date of this judgment).[15] Section 11(5) will provide that any cession, transfer, letting, subletting, assignment, alienation or disposal of prospecting or mining right or an interest in a corporation or company made in contravention of subsection (1) is void. The amendment underscores the intention of the Legislator in respect of section 11.

13 ***Vantage Goldfields SA (Pty) Ltd v Arqomanzi (Pty) Ltd*** (733/2022) [2023] ZASCA 106; [2023] 3 All SA 667 (SCA) (27 June 2023) [48] and [50]. The objects of the MPRDA in section 2 must be borne in mind and that the provisions of section 2*(a)* and *(b)* are particularly relevant, which are buttressed by sections 3 and 4. It was further held that the section 11(1) prohibition seeks to enhance the objects in section 2 *(a)* and *(b)*.

14 ***Mogale Alloys (Pty) Ltd v Nuco Chrome Boputhatswana (Pty) Ltd*** 2011 (6) SA 96 (GSJ).

15 Section 11(5) inserted by section 8(c) of Act 49 of 2008 with effect of date to be proclaimed.

[39] Illegality may render an agreement either void *ab initio* or merely unenforceable. Section 11 is directed at the protection of the public interest, employs peremptory language, and is reinforced by criminal sanctions for contravention. In such circumstances, recognising the validity of a transaction entered into in breach of section 11 would give legal sanction to the very mischief the Legislature sought to prevent.

[40] It is a fundamental principle of our law, as stated in ***Schierhout v Minister of Justice***,[16] that conduct undertaken in direct contravention of a statutory prohibition is void. In ***De Faria v Sheriff, Witbank***,[17] the court identified peremptory wording, negative formulation, criminal sanctions, and legislative purpose as indicators that non-compliance renders an agreement void.

[41] ***Sutter v Scheepers***,[18] confirms that, where a provision is mandatory and sanctioned, the presumption in favour of mere directory compliance falls away.

[42] These principles are consistent with ***Maharaj v Rampersad***,[19] where the Appellate Division held that the decisive enquiry is whether the object of the statute has been achieved.

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16 ***Schierhout v Minister of Justice*** 1926 AD 99 109.

17 ***De Faria v Sheriff, High Court, Witbank*** 2005 3 SA 375 (T).

18 ***Sutter v Scheepers*** 1932 AD 165 173–174.

19 ***Maharaj and Others v Rampersad*** 1964 (4) SA 638 (A) at 646C.

[43] Having regard to the objects of the MPRDA and the centrality of ministerial consent under section 11, the Alcucento agreement could not validly achieve its intended purpose absent compliance with the Act.

[44] It follows that the Alcucento agreement contravened section 11 of the MPRDA and was void *ab initio*.

Alcucento agreement never implemented

[45] The applicant also contended that the Alcucento agreement was never implemented, in that none of the juristic acts required to give effect to the envisaged transaction were performed, most notably the increase of the applicant’s share capital and the issuing of shares to Alcucento.

[46] Even if Alcucento had purportedly become a shareholder (which it did not, for reasons set out below), such shareholding would in any event have been void, as the underlying agreement itself was void, with the consequence that the *causa* for any increase in share capital or issue of shares thereafter would have fallen away. I deal with what follows on that basis.

[47] Clause 3 of the Alcucento agreement recorded that the “founder members”, being Stanley, Francina and Alcucento (the latter not being a shareholder), would ensure that the applicant’s share capital was increased to 50 million ordinary shares of 0.1 cent each, with 10 million shares to be issued to the founder members in the proportions reflected in annexure A.

[48] It is common cause that nothing whatsoever was done to give effect to these provisions, with the result that Alcucento never became a shareholder in the applicant.

[49] Apart from expressly recognising the 100 issued shares held by Stanley and Francina, the Alcucento agreement failed to provide how the envisaged transaction would deal with the existing shareholding (apart from "ensuring" an increase in share capital).[20]

[50] Where the Alcucento agreement referred to Alcucento as a shareholder, it referred to an objective impossibility. In terms of section 35(4) of the Companies Act, authorised shares confer no rights until issued by the board. No authorised but unissued shares capable of supporting the structure envisaged in the agreement (being 50 million shares) existed at the time of concluding the Alcucento agreement.

[51] Although the Alcucento agreement recognised the shareholding of Stanley and Francina, it merely recorded an intention that the parties would ensure an increase in authorised share capital and the issuing of shares to Alcucento. For that to have occurred, the applicant's Memorandum of

[20] In an agreement as envisaged, typically there would be a mechanism dealing with the existing shareholding, especially where there are shareholders, with a third party to enter the fray after an increase of the authorised (but unissued) shares. It is evident *ex facie* annexure A to the impugned agreement that Stanley and Francina's shareholding will be diminished in terms of percentage from their shareholding at the time of concluding the impugned agreement.

Incorporation had to be amended, which could only have been done by Stanley and Francina in their capacities as shareholders and/or directors.

[52] The Memorandum of Incorporation (MOI) of a company must set out the classes of shares and number of shares of each class that the company is authorised to issue.[21] This may only be changed (i.e., increased) by an amendment of the MOI by special resolution or the board if it files a Notice of Amendment of the MOI.[22]

[53] It follows that even if the Alcucento agreement was not void for statutory illegality, it was in any event never implemented. A company cannot issue shares that are not authorised by its MOI, nor can shareholding arise absent the required juristic acts of subscription, board allotment, and lawful issue.

[54] It is also evident from the papers that the board as aforesaid never resolved to issue any authorised shares to Alcucento or to any other party; never resolved to convert the applicant's par-value shares as contemplated in Regulation 31(3); never offered authorised shares to existing shareholders

21 Section 36(1)(a) of the Companies Act requires an MOI to specify the classes and number of authorised shares, which may be altered only by amendment in terms of section 36(2) or (3), with notice to the CIPC as required by section 36(4). Section 38(1), an unalterable provision, vests the power to issue authorised shares exclusively in the board, and only within the limits authorised by the MOI. No resolution was ever taken in terms of section 38(1), nor could one validly have been taken, as no amendment to the MOI occurred and Alcucento was not, and could not have been, a shareholder at the time of the impugned shareholders' meeting referred to below.

22 Section 36(2), (3) and (4) of the Companies Act.

as required by section 39(2); and never determined the consideration or terms upon which any shares would be issued.[23]

[55] There is, in any event, no evidence that Alcucento or any other party paid for shares as contemplated in the purported agreement, nor could there be, as the share capital of the applicant was never increased and the shares contemplated in the agreement remained a fiction.

[56] Against this statutory and factual backdrop, the attempt by Alcucento and the fourth respondent to proceed via a purported shareholders' meeting to obtain control of the applicant was manifestly unlawful. I deal with the impugned shareholders' meeting below.

[57] In respect of implementation, the opposing respondents merely alleged, in paragraph 6.7 of the answering affidavit, that at a "duly convened Special General Meeting" the existing shares were converted and the share capital increased.

[58] The opposing respondents conveniently did not state when this supposedly occurred, nor did they attach any agenda or minutes. This omission is explained by the fact that the allegation is contradicted by the documentary evidence attached to the founding affidavit in relation to the impugned

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23 As a pre-existing company, the applicant was further prohibited by Regulation 31(3)(a) from issuing par-value shares without prior conversion. In addition, section 39(2) preserved the shareholders' right of pre-emption, which was neither waived nor limited by the MOI; sections 40(1) and (2) required the board to determine adequate consideration and the terms of any issue; and section 41(3) required shareholder approval by special resolution where the issue would exceed 30% of voting power. None of these statutory requirements was met.

meeting of 5 October 2022.[24] The version proffered by the opposing respondents is palpably implausible, far-fetched and untenable. It is thus rejected.

[59] On 31 March 2018, Stanley and Francina accordingly resolved to cancel the Alcucento agreement following the unexplained disappearance of the fourth respondent, described in the resolution as having gone "AWOL" (a military term denoting an abbreviation of absent without official leave). I do not find that this resolution has any bearing on the matter save to provide contextual history.

The admission and concession

[60] In respect of shareholding, the opposing respondents contend that Alcucento acquired no more than an expectation that it would be vested with shares in the applicant.

[61] There is a clear distinction between a mere *spes* and the completion of the requisite jural acts necessary to implement the Alcucento agreement. To that end, the applicant's MOI would first have had to be amended to provide for

24 Agenda and minutes in relation to the impugned meeting at annexures SM26 and SM27.

the envisaged shareholding, followed by a resolution of the board authorising the allotment of shares to Alcucento against payment of adequate consideration. There is no evidence that any of these steps occurred.

[62] There ought not, in any event, to be any such evidence, as the impugned directors expressly stated at paragraph 7.5 of their answering affidavit that Alcucento ***"expected to be vested with shares and directorships as set out in the agreement."*** This constitutes a formal admission on the record that no vesting of shares in Alcucento ever occurred.

[63] The legal consequence of such an admission is governed by section 15 of the Civil Proceedings Evidence Act 25 of 1965, which provides that it is unnecessary to prove, and impermissible to disprove, any fact admitted on the record.

[64] The admitted fact is that no vesting took place. Absent vesting, Alcucento could not have acquired shareholder status and therefore lacked standing to convene or participate in the impugned shareholders' meeting.

[65] The consequence of a formal admission is that it becomes unnecessary to prove the admitted fact and that such fact may not be disproved,[25] and the court is entitled to adjudicate a matter simply on an admitted fact.[26]

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25 Civil Proceedings Evidence Act 25 of 1965, section 15. See also ***Gordon v Tarnow*** 1947 3 SA 525 (A) 531.

26 ***Dinath v Breedt*** 1966 3 SA 712 (T) 717. See also ***Gordon v Tarnow*** *supra* and ***Van Deventer v De Villiers*** 1953 4 SA 72 (C) 75-76.

[66] Further, the doctrines of estoppel and approbation and reprobation preclude the opposing respondents from resiling from, or contradicting, that admission.[27]

[67] The impugned directors further conceded that Stanley and Francina owned all of the issued shares in the applicant,[28] albeit attempting to draw a distinction between ownership of a share and status as a shareholder.

[68] Such a concession is dispositive in respect of share ownership. The attempted distinction is misplaced in law,[29] and I deal later with the inability of the opposing respondents (who themselves lacked standing) to mount any challenge to the shareholding of Stanley and Francina, when I deal with the opposing respondents' defence concerning the ostensible invalidity of the share certificates and the company register.

The impugned "shareholders' meeting"

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27 A party who has adopted a particular legal position, and acted upon it, cannot later adopt an inconsistent position to the prejudice of another.

See ***Hlatshwayo v Mare & Deas*** 1912 AD 242 where the Appellate Division (as it then was) held as follows: *"...the doctrine is based upon the application of the principle that no person can be allowed to take up two positions inconsistent with one another, or as it is commonly expressed to blow hot and cold, to approbate and reprobate."*

28 Answering affidavit paragraph 6.26 (CL011-44): *"At best, they are the owners of the shares, but they are certainly not shareholders in Mamokebe Investments. There is a significant difference between the owner of a share and a shareholder in a company. It is not the same thing."*

29 It is not explained by the opposing respondents. Ostensibly a divide in respect of rights is vied for in respect of a person who has acquired shares, but who has not yet been recorded in the register or issued with a share certificate. Such contention is incorrect and misplaced.

[69] Despite these insurmountable hurdles, and six years after the conclusion of the impugned Alcucento agreement in terms of which it took no further steps, Alcucento it suddenly purported to act as a shareholder and gave notice of a shareholders' meeting in the applicant.

[70] It is trite that, under the Companies Act, a shareholder is not empowered to convene a shareholders' meeting, let alone to conduct company business. The business and affairs of a company are to be conducted by its board in terms of section 66(1). A shareholders' meeting may be convened only by the board, or by a person authorised in the MOI or the company's rules, as contemplated in section 61(1). A shareholder may at most request the board to convene such a meeting in terms of sections 61(2) and (3).

[71] Alcucento was not a shareholder. Nevertheless, it proceeded to convene a shareholders' meeting, propose resolutions, appoint directors, and purport to convert and increase the applicant's share capital, doing so as if it were the board of the applicant.

[72] The purported meeting of 5 October 2022 is common cause, although the legality of it is not. It was ostensibly convened pursuant to the Alcucento agreement, which the opposing respondents expressly rely upon.[30]

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30 Answering affidavit paragraph 6.7.

[73] The notice and agenda emanated from the fourth respondent, who described himself (without any lawful basis) as chair of the applicant and purported to act on behalf of unidentified "first" and "second" shareholders.

[74] The minutes reflect a meeting of shareholders, not of the board. Alcucento is recorded as an ostensible 70% shareholder, yet no basis exists for this assertion. The notice and agenda further failed to identify the "first" and "second" shareholders relied upon.

[75] In any event, only Stanley and Francina could lawfully have attended to shareholder business (had a shareholders' meeting been validly convened), as they were the only shareholders.

[76] To the extent that the resolutions purported to increase or convert the applicant's share capital, this was impermissible. Any such change required an amendment of the applicant's MOI in terms of section 16, read with section 36 of the Companies Act. No such amendment was evinced, nor was any proof adduced that notice was delivered to the CIPC.

[77] The unlawfulness was compounded when Alcucento, through the fourth respondent, caused statutory documents to be lodged with the CIPC recording the impugned directors. It is common cause that the signatures of Stanley and Francina on those documents were forged. Despite this, the opposing respondents did not resign and persisted in holding themselves out as directors of the applicant.

[78] The opposing respondents' contention that Stanley was aware of the meeting and did not object thereto is without merit. No obligation rested upon Stanley to attend or object to a meeting convened by a non-shareholder. To hold otherwise would permit any person to convene a meeting under the guise of shareholder authority and bind a company merely because the true shareholders declined to participate, a proposition inconsistent with the Companies Act and with basic principles of corporate governance.

[79] Even if Alcucento had been a shareholder, the meeting would nonetheless have contravened the Companies Act. Section 64(3)(a) of the Companies Act provides that if a company has more than two shareholders, a meeting may not begin, or a matter debated, unless at least three shareholders are present.[31] In those circumstances, the convenor was obliged to adjourn the meeting as contemplated in section 64(4). This was not done.

[80] Further, section 65(3) provides that in a company with more than one shareholder, at least two shareholders are required to propose a shareholder resolution. The resolutions recorded, including the appointment of directors,

31 The meeting thus, had it been validly convened, had to be adjourned for 7 days, after the requisite 1 hour waiting time in respect of attendance.

were purportedly proposed by a single "first shareholder" and were therefore impermissible.[32]

[81] The minutes further record that the resolutions purported to equate electronic signatures with manual signatures, a circumstance that assumes significance when viewed against the subsequent fraudulent filing of documents with the CIPC.

[82] At the time of the impugned meeting, the only shareholders of the applicant were Stanley and Francina (the latter represented by her deceased estate), and Alcucento had no standing to convene or participate in the applicant's shareholder governance. The purported shareholder governance processes at the hands of Alcucento (represented by the fourth respondent) were therefore unlawful at their inception.

[83] In the absence of any lawful basis to disturb the long-standing shareholding and directorship which existed for a decade prior to the Alcucento agreement, and in the face of the opposing respondents' own admissions and concessions, the purported shareholders' meeting of 5 October 2022, and all resolutions adopted thereat, were null and void *ab initio* and of no force or effect**.**

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32 See the judgment of Vally J in ***Foxvest Group (Pty) Ltd and Another v Rocky Park Holdings (Pty) Ltd and Others*** (2022/2807) [2023] ZAGPJHC 63 (27 January 2023) where a resolution proposed by one shareholder in a multi-shareholder company was set aside *inter alia* due to the fact that the proposed resolution contravened section 65(3) of the Companies Act.

The common cause fraud

[84] I turn to the issues relating to the recordal of directors following the impugned shareholders' meeting. It bears repeating that fraud unravels all within its compass. The onus of proving fraud rests on the party alleging it and is the ordinary civil onus, mindful that fraud is not lightly inferred.[33]

[85] The essential elements of fraud include a false representation (whether by commission or omission), knowledge of falsity, intent that the representee act thereon, and causation in the form of inducement.[34]

[86] The applicant alleged that Alcucento, acting in a fraudulent manner, caused the CIPC to record the purported directors of the applicant.

[87] I have already dealt with the patent facts underlying the conclusion that Alcucento was never a shareholder of the applicant, whether by reason of the voidness of the agreement or the failure to implement it, and with the illegality attendant upon both the calling and conduct of the purported shareholders' meeting.

[88] Armed with the ostensible outcomes of that meeting, a Form CoR39 (Notice of Change of Directors) was lodged with the CIPC on 21 October 2022. The

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33 ***Gilbey Distillers & Vintners (Pty) Ltd v Morris NO*** 1990 (2) SA 217 (SE).

34 If reliance is placed on fraudulent non-disclosure, facts given rise to the duty to disclose must be set out. It must also be shown that the breach of the duty to disclose was deliberate and intended to deceive.

evidence indicates that it was the fourth respondent who caused these recordals to be effected.

[89] It is common cause that Stanley's signature appears on the Form CoR39 and that he did not sign it. The Form was accompanied by minutes of a meeting purportedly held on 28 October 2022, ostensibly attended by Stanley and Francina, which Stanley denied. I further have no reason not to accept his version.

[90] The founding papers further contain the expert testimony of a handwriting analyst, Ms Lourika Bukley, who concluded that the signatures of Stanley and Francina on both the Form CoR39 and the purported minutes were forgeries.

[91] Following a criminal complaint laid by Stanley with the South African Police Service under case number 123/6/2023 (Olifantsfontein SAPS), the fourth respondent was summoned to provide a statement. Responsibility was initially shifted to one Mr Thabo Moloto, who was paid to effect the changes at the CIPC, although the fourth respondent later conceded that Mr Moloto was the forger and apologised.[35]

[92] Despite knowledge of the impugned recordals, none of the impugned directors (save for the third respondent) resigned or ceased to hold themselves out as directors of the applicant.

[35] Answering Affidavit para 30 at CL035-15 to 035-16.

[93] In calling for and holding the purported shareholders' and board meetings, and in procuring the lodgement of changes in directorship with the CIPC, representations necessarily had to be made as to the legitimacy of those changes.

[94] The fourth respondent, as the representative of Alcucento and the driving force behind the impugned processes, knew that Alcucento was not a shareholder and therefore lacked any authority to convene meetings or procure appointments. Notwithstanding this, representations were made to the CIPC upon which it acted.

[95] I do not consider it necessary to make a definitive finding on fraud for purposes of the relief sought, save for the common cause fraudulent recordal of the impugned directors with the CIPC.

The effect of the voidness and the lack of implementation

[96] The applicant has established a strong *prima facie* case entitling it to interim interdictory relief.

[97] The Alcucento agreement was void. Even if it were not void, it was never implemented in accordance with the Companies Act.

[98] The consequence is that the recordal of the impugned directors with the CIPC pursuant to the Form CoR39 was unlawful, independently of the fact that it was tainted by the common-cause forgery of signatures.

The rule 7(1) challenge and defences

[99] The opposing respondents raised a rule 7(1) challenge and further defences concerning the alleged invalidity of the share certificates of Stanley and Francina, the company register, and alleged contempt of court. I deal with those defences, insofar as necessary, under the subheadings that follow.

[100] I reiterate that the opposing respondents are precluded from attacking the shareholding of Stanley and Francina, or any consequent directorship of Stanley, by reason of their admissions and concessions.

[101] Even absent such admissions, the applicant has established a clear case that Alcucento was never a shareholder, with the result that the opposing respondents lack standing to raise collateral challenges to the applicant's shareholding or governance.

<u>Rule 7(1)</u>

[102] The opposing respondents delivered a notice in terms of Rule 7(1) disputing the authority of the applicant's attorneys to act. They contend that no valid board resolution authorised the institution of these proceedings and that the deponent, Stanley, lacked authority to represent the applicant.

[103] Rule 7 is not a vehicle for determining the substantive merits of disputes relating to corporate governance. It cannot convert a procedural challenge into a forum for adjudicating contested internal disputes where the very subject matter of the litigation concerns alleged unlawful usurpation of corporate control.

[104] The opposing respondents' Rule 7 challenge rests on the premise that the applicant's board consists of the respondents and Stanley, and that no majority resolution authorised the litigation. That premise presupposes the lawfulness of the opposing respondents' appointment as directors, which is the very issue in dispute in this application.

[105] A Rule 7 enquiry cannot logically be determined by first assuming the correctness of the impugned appointments. Where the litigation itself concerns the alleged unlawful assumption of corporate control, the persons alleged to have usurped control cannot rely on their contested status to paralyse the company's ability to seek relief.

[106] For purposes of Rule 7, the undisputed facts demonstrate that the opposing respondents' recordal as directors flowed from a purported shareholders' meeting convened by Alcucento; Alcucento was never a shareholder of the applicant; the Form CoR39 lodged with the CIPC bore forged signatures of Stanley and Francina; and the opposing respondents have conceded that Alcucento merely "expected" to be vested with shares and did not in fact acquire them.

[107] On the facts established, the opposing respondents' appointments were not defective appointments; they were no appointments at all. A person cannot derive authority from an act which is *void ab initio*. In circumstances where a person asserts that others have unlawfully procured their own appointment as directors through a void process and forged filings, that person is entitled to approach court to protect the company's corporate integrity. To hold otherwise would mean that a company could be rendered incapable of protecting itself precisely because control was unlawfully seized.

[108] The enquiry under Rule 7 is therefore whether sufficient facts exist to satisfy the court that the company itself, and not an unauthorised stranger, is litigating. I am satisfied that the applicant is properly before court based on the long-standing and undisputed position from 2006 until 2022 where Stanley and Francina were the sole shareholders and directors; the opposing respondents' purported appointment arising from a void and

unimplemented agreement and an unlawful meeting; and the respondents' recordal with the CIPC being tainted by common-cause forgery.

[109] In these circumstances, Stanley's authority to act on behalf of the applicant does not depend on a resolution of a board unlawfully constituted through void acts. Section 57(3) of the Companies Act provides that where a profit company has only one director, that director may exercise any power or perform any function of the board at any time without notice or compliance with internal formalities.

[110] Even if there were doubt as to the precise composition of the board pending final determination, it would be impermissible to permit persons whose authority is impugned as void to rely on majority rule to defeat the company's ability to seek judicial protection. The Rule 7 challenge accordingly fails. The applicant is properly before court and the attorneys were duly authorised to institute these proceedings.

[111] *Locus standi* concerns the sufficiency and directness of a party's interest in the litigation.[36] The onus lies on the party instituting proceedings to establish standing *ex facie* the founding papers.[37] The applicant has done so. I am satisfied that Stanley, as director of the applicant, was duly authorised to

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36 ***Jacobs v Waks*** 1992 (1) SA 521 (A) p. 534D and ***Gross v Pentz*** [1996] 4 All SA 63 (A), 1996 (4) SA 617 (A).

37 ***Mars Inc v Candy World (Pty) Ltd*** 1991 (1) SA 567 (A) p. 575. ***Kommissaris van Binnelandse Inkomste v Van der Heever*** [1999] 3 All SA 115 (A), 1999 (3) SA 1051 (SCA) para. 10.

represent it, as contemplated in section 57(3) of the Companies Act. No resolution was required in the circumstances.[38]

[112] Even if authority had not been established *ex facie* the founding papers, this would have been an appropriate case for the lifting of the corporate veil under section 20(9) of the Companies Act. That provision empowers a court, where the juristic personality of a company has been unconscionably abused, to disregard that personality for specific purposes.

[113] The principles articulated in ***Ex parte Gore NO***,[39] ***Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd***,[40] and ***Atlas Maritime Co SA v Avalon Maritime Ltd,***[41] underscore that reliance on majority rule to perpetuate illegality and conceal unlawful control constitutes such abuse. Insofar as it may be necessary, I would lift the corporate veil to determine authority and *locus standi*.

[114] The learned authors Cassim et al in *Contemporary Company Law*,[42] describe that upon company formation a veil is drawn between the company and its shareholders and directors. When the veil is pierced (or lifted) the

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38 Section 57(3) provides *inter alia* that where a profit company only has one director, that director may exercise any power or perform any function of the board at any time, without notice or compliance with any other internal formalities.

39 ***Ex parte: Gore NO and Others*** (18127/2012) [2013] ZAWCHC 21; [2013] 2 All SA 437 (WCC) (13 February 2013) (with appreciation recorded by the court to counsel for the applicants, *Mr Newdigate SC* for his assistance provided in the written argument).

40 ***Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd*** 1995 (4) SA 790 (A) 804.

41 ***Atlas Maritime Co SA v Avalon Maritime Ltd*** [1991] 4 All ER 769 at 779.

42 Cassim et al *Contemporary Company Law* 3rd Ed. Juta, p. 54.

protection afforded to shareholders and directors is removed and the substance of the company is examined, rather than the form it has been cast.[43]

[115] Courts have shown an acute appreciation that juristic personality is a statutory creation and that "*their separate existence remains a figment of law, liable to be curtailed or withdrawn when the objects of their creation are abused or thwarted.*"[44]

[116] The opposing respondents relied on ***Tattersall v Nedcor Bank Ltd***,[45] which in fact supports the conclusion reached. That authority confirms that a court may, on the facts of a given case, investigate whether a company is properly before it.

[117] Although Rule 7 does not require a court to investigate past acts as a matter of course, nothing precludes it from doing so. In this matter, it was unnecessary, as the undisputed facts, admissions, concessions, and patent illegality established beyond doubt that the applicant was properly before court and duly authorised to litigate.

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43 *Ibid* 59-60. In ***Tladi Holdings (Pty) Ltd v Modise*** (40449/2008) [2015] ZAGPJHC 331 (9 September 2015), para 22, the court acknowledged that it may be necessary in some circumstances to pierce the veil, but in other cases it will only be necessary to lift it.

44 In ***ADT Security (Pty) Ltd v Botha and Others*** [2010] ZAWCHC 563 at paragraphs 16-18, the court remarked upon what it considered to be the "*generally flexible approach*" indicated in the ***Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others*** 1995 (4) SA 790 (A) judgment as being applicable when piercing of the corporate veil falls to be considered and determined; an observation illustrated with reference to Scott JA's remark in *Hülse-Reutter v Gödde* 2001 (4) SA 1336 (SCA), at paragraph 20 that "*Much will depend on a close analysis of the facts of each case, considerations of policy and judicial judgment*."

45 ***Tattersal v Nedcor Bank Ltd*** 1995 (3) SA 222 (A) at 228F-H.

Alleged invalidity of share certificates and the company register

[118] The opposing respondents attacked the shareholding of Stanley and Francina on the basis of alleged defects in the share certificates and securities register, including the absence of multiple signatures and references to par-value conversion.[46] These contentions are of no moment. Based on the admissions and concessions already dealt with, neither Alcucento nor the opposing respondents have standing to impugn the shareholding of Stanley and Francina.

[119] The opposing respondents' reliance on section 94 of the 1973 Companies Act is misplaced. That Act has been repealed by section 224 of the 2008 Companies Act. In any event, Schedule 5, paragraph 6(4) provides that any failure by a pre-existing company's share certificate to comply with section 51(1) to (4) is not a contravention and does not invalidate the certificate.[47]

[120] In terms of section 51(1)(c) of the Companies Act 71 of 2008, a certificate evidencing a certificated security constitutes *prima facie* proof that the named security holder owns the securities, in the absence of evidence to the

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[46] Share certificates are *prima facie* evidence in that section 51(1)(c) of the 2008 Companies Act provides that a certificate evidencing any certificated security of a company is proof that the named security holder owns the securities in the absence of evidence to the contrary.

[47] Section 94 of the 1973 Companies Act dealt with the certificate of shares or securities and is couched in non-peremptory language. It provided for the certificate to be *prima facie* proof where signed by two signatures by directors (unless one signed, authorised as such, or where there was only one director). Thus, the validity of the share certificates ought not to be impacted.

contrary. The relevant share certificates of Stanley and Francina accordingly constitute prima facie evidence of their shareholding.

[121] The impugned directors' attack on Stanley and Francina's shareholding (framed as allegations of fraud or failure of proof of acquisition) amounts to an impermissible attempt to equate a share certificate or securities register with a negotiable instrument, reflecting a misunderstanding of basic principles of securities law.[48]

[122] A share issued is movable property, transferable in any manner provided for or recognised by the Companies Act or other legislation (an authorised share as part of the authorised share capital has no rights associated with it until issued to a person who has subscribed for an allotment of shares).[49]

[123] A share is a unit of proprietary interest in a company, and a shareholder is the holder of an issued share entered in the securities register.[50] A share certificate and the securities register are evidentiary in nature: they evince an underlying juristic act by which rights of voting and participation in dividends

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48 ***United South African Association Ltd v Cohn*** 1904 TS 733 [109]: a share certificate is only evidence on a *prima facie* basis of shareholding, and is not a negotiable instrument, with ownership transferred by an agreement. See further JL Yeats et al Volume 1, Juta (***Blackman***) at 2-785 to 787 and ***Off-Beat Holiday Club v Sanbonani Holiday Spa Shareblock Ltd*** 2016 (6) SA 181 (SCA) para 11.

49 Section 35 of the Companies Act.

50 Section 1 of the Companies Act. In respect of a shareholder, the definition is subject to section 57(1) which expands the definition to a person entitled to exercise any voting rights in relation to a company.

are acquired. Sections 50 and 51 of the Companies Act do not constitute mechanisms by which shareholder status is conferred or denied.[51]

[124] It is settled law that property in shares transfers by cession and independently of registration in the securities register (***Farrar's Estate v CIR***).[52] Ownership does not depend on delivery of the share certificate (***Jeffery v Pollak and Freemantle***),[53] and a court is entitled to go behind the register to ascertain true ownership (***Standard Bank of SA Ltd v Ocean Commodities Inc***).[54]

51 In terms of section 38, shares may only be issued by the board from the authorised shares and if not, such issuance may be authorised in terms of section 36 within 60 business days after the issuance. Prior to the issuing of shares, there ought to be a subscription for such shares to be issued. This is regulated by section 39 with the right of pre-emption provided for in subsection (2). Section 40 completes the transactional line-up in that authorised shares can only be issued for *inter alia* adequate consideration as determined by the board. Section 50 provides for the securities register as sufficient proof of the facts recorded in it, in the absence of evidence to the contrary. Section 51 deals with certificated securities and the requirements in respect of what is to be reflected on a share certificate and that same constitutes proof of what is recorded therein.

52 ***Farrar's Estate v Commissioner for Inland Revenue*** 1926 TPD 50 per Stratford J [508]): *…Apart from the clear doctrine that property in shares passes under the ordinary principles of cession…registration in the case of shares undoubtedly has important effects on the rights of the owner in his relation with the company and in relation to all other persons other than the transferred.*

53 ***Jeffery v Pollak and Freemantle*** 1938 AD 1 [22]: per Stratford JA *…Ownership passes by cession in due form (*referring to Innes CJ in ***Liquidators, Union Share Agency v Hatton*** 1927 AD 240 at 251*).*

54 ***Standard Bank of SA Ltd v Ocean Commodities Inc*** 1980 (2) SA 175 (T) at 181 (also in terms of the rights and obligations of the parties prior to perfecting the cession).

[125] The cumulative effect of the aforesaid is that the opposing respondents are precluded, by admission, estoppel, lack of proof, and lack of standing, from challenging the shareholding of Stanley and Francina or asserting any derivative authority premised on Alcucento's purported shareholding.

[126] The opposing respondents failed to engage meaningfully with the factual allegations raised, relying instead on technical formalities that do not withstand scrutiny. In ***Botha v Fick***,[55] the Appellate Division confirmed that share certificates are not negotiable instruments and should not be accorded formalistic significance divorced from underlying substance.

Alleged contempt of court

[127] The opposing respondents contended that Stanley and the Department of Mineral Resources and Energy (DMRE) were in contempt of the order granted by Millar J, in which an undertaking was recorded not to pass registration and transfer of the applicant's mining right pending finalisation of the proceedings under case number 2025-066783.

[128] What was sought to be interdicted in the DMRE urgent application was not the registration of the mining right itself in the Mining Titles Office (MTO), but the registration of the cession of the mining right from the applicant to Mamokebe Colliery.

55 ***Botha v Fick*** 1995 (2) SA 750 (A) at [107].

[129] The transfer of a mining right entails a sequential process: first, the conclusion of a cession agreement; second, an application for ministerial consent in terms of section 11 of the MPRDA; and third, following such consent, the preparation and registration of a notarial deed in the MTO.

[130] In terms of section 12(2) of the Mining Titles Registration Act 16 of 1967, registration is deemed to occur upon endorsement by the MTO, which endorsement is effected by the Director-General in terms of section 5(1)(c) of that Act. It was this final act of registration that was sought to be interdicted.

[131] The registration process in respect of the mining right commenced after the granting of the right in May 2004, in circumstances where section 25(2)(a) of the MPRDA imposed a duty on the applicant to effect registration within 60 days.

[132] The applicant explained that this process was protracted and administratively challenging. When the Millar J order was granted, Stanley was unaware that the registration process was ongoing or that the mining right had subsequently been registered in the MTO on 4 June 2025, becoming aware thereof only upon obtaining a copy of the registered right in January 2026.

[133] In any event, this contention does not advance the opposing respondents' case. Even if the factual assertions relied upon were accepted, they do not answer the decisive issues in this matter, namely the admissions made by the opposing respondents, the failure of Alcucento to establish any shareholding in the applicant, and the consequent unlawfulness of the appointment of the impugned directors. The alleged contempt accordingly constitutes a collateral issue and does not afford the opposing respondents any defence to the relief sought.

Litigious background

[134] Considerable reliance was placed by the opposing respondents on the order granted by Raubenheimer AJ on 7 March 2025 under case number 2025-028369.[56] They contend that the order constituted a binding settlement that created or confirmed an interim board comprising Stanley and the respondents, and that the subsequent withdrawal of related proceedings does not alter that position.

56 The CIPC was ordered, *inter alia*, to restore *pendente lite* the records of the applicant to reflect the directorships as they appeared on 12 February 2025, inclusive of Stanley's directorship. The order operated, in terms of paragraph 11 thereof, as an interim interdict pending the final adjudication of the applications under case numbers 2023-100053, 2023-067386 and 2023-071300.

[135] It is correct that the order was granted "by agreement". A consent order, once made an order of court, acquires the status of a judicial decree.[57] However, it is equally well-established that a court cannot, by consent, validate that which is unlawful, nor can parties, by agreement, confer legality upon acts that are *void ab initio*.

[136] The interpretation of a court order is governed by the principles articulated in ***Natal Joint Municipal Pension Fund v Endumeni Municipality***.[58] Interpretation requires consideration of the language used, the context, and the apparent purpose of the order. Paragraph 11 of the Raubenheimer order expressly provided that certain relief operated *pendente lite* pending final adjudication of specified applications. Paragraph 12 further recorded that the order was not to be construed as a definitive or final pronouncement on the disputed issues.

[137] The order restored the CIPC records to reflect the position as at 12 February 2025. Restoration of a public record is an administrative act. It does not constitute an election of directors in terms of section 68 of the Companies Act, nor does it validate appointments that were void at inception.

[138] The opposing respondents' submission that the Raubenheimer order "constituted" the board conflates restoration of record with lawful appointment. The Companies Act prescribes the exclusive mechanisms by

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[57] ***Eke v Parsons*** 2016 (3) SA 37 (CC).

[58] ***Natal Joint Municipal Pension Fund v Endumeni Municipality*** 2012 (4) SA 593 (SCA).

which directors are elected or appointed. A court order restoring a record cannot substitute for compliance with those statutory requirements.

[139] Importantly, the Raubenheimer order did not determine the validity of the Alcucento agreement, nor the validity of the purported shareholders' meeting of 5 October 2022, nor the legality of the respondents' appointments. Those issues were expressly left open.

[140] The opposing respondents ostensibly contend that the withdrawal of the earlier applications transformed the interim order into a final settlement with enduring effect. That argument cannot be sustained. An interim order granted pending the finalisation of specified proceedings cannot be converted into a final determination of substantive rights by the unilateral withdrawal of those proceedings. The withdrawal of litigation does not create rights; it merely terminates that litigation.

[141] The Raubenheimer order did not and could not: confer shareholder status upon Alcucento where none existed; validate resolutions adopted at an unlawful meeting; legitimise forged filings with the CIPC; constitute an election of directors under section 68.

[142] To interpret the order as having created or confirmed a board notwithstanding the voidness of the underlying acts would produce an insensible result and undermine the statutory framework governing corporate governance. The proper interpretation of the Raubenheimer order is that it

restored the *status quo* on a provisional basis pending litigation. It did not determine, and was not capable of determining, the legality of the opposing respondents' appointments.

[143] Counsel for the applicant referred me to ***Dowjee Co Ltd v Waja***,[59] where a director was appointed by a majority shareholder without the participation of the minority. The court held that the meeting was not validly convened and that the resolutions adopted thereat were void.[60] The court further held that the *de facto* status of the impugned director did not cure the illegality of the appointment or confer authority to act.

[144] Although the Companies Act 71 of 2008 does not expressly refer to *de facto* directors, the concept remains recognised in our law.[61] A distinction must be drawn, as explained in ***R v Mall***,[62] between directors whose appointment suffers from a defect or irregularity, and persons who act without any colour of authority.[63] The latter cannot acquire authority merely by acting.

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59 ***Dowjee Co Ltd v Waja*** 1929 TPD 66 to 79.

60 Section 26 of the Companies Act 46 of 1926 (the predecessor to the 1973 Companies Act), same provided that the acts of a director are valid not withstanding any defects that may afterwards be discovered in his appointment. The court in ***Dowjee Co Ltd*** held that the *de facto* directorship of the impugned director is not sufficient to cover up the irregularity now known, and not sufficient to give the attorney authority to continue proceedings. The first South African company legislation was the Companies Act of 1926, which was based on the Transvaal Companies Act 31 of 1909 which was in turn based on the British Companies (Consolidation) Act 1908. The next major South African legislation, following the recommendations of the Van Wyk De Vries Commission of Enquiry into the Companies Act, was the Companies Act of 1973, which remained in force until 31 April 2011.

61 Cassim et al *Contemporary Company Law* 3rd Ed. Juta pg. 546.

62 ***R v Mall*** 1959 (4) SA 607 NPD.

63 The distinction is drawn by Lord Simmonds in ***Morris v Kanssen*** 1946 A.C. 459 at p. 471, namely: "*There is, as it appears to me, a vital distinction between (a) an appointment in which there is a defect or, in other words, a defective appointment, and (b) no appointment at all. In the first case it is implied that some act is done which purports to be an appointment but*

[145] Similarly, the concept of a prescribed officer in terms of section 66(10) and regulation 38 presupposes appointment by the company.[64] An unlawful or non-existent appointment cannot confer prescribed-officer status or any derivative authority. The impugned directors accordingly cannot be characterised as *de facto* directors or even prescribed officers.

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is by reason of some defect inadequate for the purpose; in the second case there is not a defect, there is no act at all. The section does not say that the acts of a person acting as director shall be valid notwithstanding that it is afterwards discovered that he was not appointed a director. Even if it did, it might well be contended that at least a purported appointment was postulated. But it does not do so, and it would, I think, be doing violence to plain language to construe the section as covering a case in which there has been no genuine attempt to appoint at all. These observations apply equally where the term of office of a director has expired, but he nevertheless continues to act as a director, and where the office has been from the outset usurped without the colour of authority." In ***S v Vandenberg*** 1979(1) SA 208 (D&CLD), the Court (per Hefer J as he was) accepted that the decision in ***Mall*** was correct. The above distinction is known to English Law. In ***BMF Assets No.1 Ltd v Sanne Group Plc*** [2021] EWHC 3306 (Ch) the Court considered the validity of acts of a Company taken by a director whose identity could not be verified and who was never appointed by the Company. In the course of his judgment, Miles J stated the following: *"49. The concept of a de facto director is one that is used in law for a person who actually acts as a director and participates at the relevant level in the governing structure of a company. It is a label used when seeking to establish the liability against such a person, notwithstanding that that person has not, strictly speaking and formally, been appointed as a director. Although some of the case law talks of persons assuming the position of a director, that is only part of a multifactorial test which requires the court to look at what has actually happened, whether that person has been allowed access to information, whether he or she has been allowed to take part in meetings or decision making in relation to the company, how that person has been presented by the company, and so forth. The aim is to determine whether in substance and reality the person is to be regarded as a director. 50. What is entirely clear is that people cannot make themselves directors of a company simply by saying that they are prepared to assume that position. It is legally nonsensical to think that a stranger to a company could – by a unilateral act of saying they are prepared to assume the position - become a director of a company. It would mean that anyone could become a director of any company simply by saying so, regardless of the constitutional, regulatory and corporate governance requirements. That is legally absurd. What it seems to me has happened here is that the four de facto directors, as they call themselves, are* ***corporate cuckoos****, trying to push themselves into the Issuers and Holdings and forcing out the true directors. There is no basis in law for that."* (Own emphasis).

64 Regulation 38(1) refers to a person being a "prescribed officer" of the company (denoting lawful involvement in the company) for all purposes of the Act if that person exercises control or regularly participates as envisaged in paragraphs (a) and (b). Regulation 38(2) confirms the lawfulness requirement in terms of the Legislator using the wording that the regulation applies to a person irrespective of title given, in respect of an office held by the person; or a function performed by the person for the company.

[146] Alcucento proceeded to convene the purported shareholders' meeting and implement resolutions to which it had no entitlement. The persons purportedly appointed pursuant thereto likewise lacked any authority to act. In ***BMF Assets No. 1 Ltd v Sanne Group Plc***,[65] such persons were described as "cuckoo directors", having displaced the legitimate board without lawful authority. That description is apposite on the facts of this case.

[147] The respondents' reliance on the Raubenheimer order as a shield against scrutiny of the legality of their appointments is accordingly misplaced.

[148] Following the withdrawal of the earlier applications, the opposing respondents launched an urgent application under case number 2025-066783, ostensibly on behalf of the applicant, against, *inter alia*, the Minister of Mineral Resources and Energy and the Director-General. That application was brought in circumstances where the impugned directors attempted to thwart the transfer of the applicant's mining right to Mamokebe Colliery, a transaction effected on the applicant's version by its legitimate director.

[149] On 12 June 2025, Van Niekerk AJ (as he then was) issued a rule *nisi* by agreement between the parties, pending an internal appeal in terms of section 96 of the MPRDA, and the withdrawal of the prior applications.

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65 ***BMF Assets No.1 Ltd v Sanne Group Plc*** [2021] EWHC 3306 (Ch).

[150] The rule was extended to 4 November 2025, when Brand AJ heard the special motion and reserved judgment without extending the rule.

[151] It is trite that when a rule *nisi* lapses, the order lapses.[66] The rule accordingly lapsed on 4 November 2025 and was never reinstated.

[152] In these circumstances, the Department of Mineral Resources and Energy registered the transfer of the mining right to Mamokebe Colliery on 30 January 2026.

[153] The opposing respondents further contended that this matter is *lis pendens* by reason of the judgment reserved by Brand AJ. That contention is without merit. Any judgment by Brand AJ could, at most, concern interim relief relating to the transfer of the mining right in proceedings that are no longer extant. It could not determine the identity of the lawful directors of the applicant. There is accordingly no *lis pendens*, particularly having regard to the relief sought in this matter and the impugned conduct giving rise to the unlawful usurpation of corporate control.

Requirements for an interim interdict

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66 ***Serva Ship Limited v Discount Tonnage Limited*** (263/98) [2000] ZASCA 169; [2000] 4 All SA 400 (A); 2000 (4) SA 746 (SCA) (31 August 2000). See also ***Fisher v Fisher*** 1965 (4) SA 644 (W), Kotze AJ (as he then was) stated *inter alia* that a rule is an order of court to which a limited operation is afforded. When lapsed, the order lapses. I know that based on ***Fisher***, rule 27 was amended to provide for reinstatement. That is not the issue, the lapsing of the rule and the effect it has on the order granted is the issue.

[154] The applicant seeks interim interdictory relief. The requirements for an interim interdict are trite: a *prima facie* right, even if open to some doubt; a well-grounded apprehension of irreparable harm if the relief is not granted and the ultimate relief is eventually obtained; that the balance of convenience favours the granting of interim relief; and the absence of a satisfactory alternative remedy.[67]

[155] It is important to emphasise that, at the interim stage, the court does not finally determine disputed rights. The enquiry is whether the applicant has established a right *prima facie* and whether interim protection is warranted pending proper ventilation of the issues in due course.

[156] For the reasons already set out, Alcucento was never vested with shares in the applicant; the Alcucento agreement was void for non-compliance with section 11 of the MPRDA; the statutory requirements for increasing authorised share capital and issuing shares were never met; the purported shareholders' meeting of 5 October 2022 was convened by a non-shareholder and contravened the Companies Act; the subsequent Form CoR39 lodged with the CIPC bore forged signatures.

[157] On these facts, the applicant has established, at minimum, a strong *prima facie* right to contend that the opposing respondents were never lawfully appointed as directors and have no authority to act on its behalf.

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[67] ***Setlogelo v Setlogelo*** 1914 AD 221.

[158] Reliance on *de facto* directorship cannot avail the opposing respondents. The doctrine does not validate acts where there was no appointment at all, but only a purported assumption of office without colour of authority.[68] A person cannot acquire authority by acting in defiance of statutory requirements.

[159] The Raubenheimer order, properly interpreted, does not create or confirm authority in circumstances where the underlying appointments are impugned as void. Restoration of a record does not substitute for compliance with section 68 of the Companies Act.

[160] The applicant has accordingly established a *prima facie* right of sufficient strength to justify interim protection.

[161] The opposing respondents continue to hold themselves out as directors of the applicant. The harm apprehended is not speculative. Where there is a live dispute as to lawful authority, continued representation by persons whose appointment is *prima facie* unlawful exposes the company to the risk of unauthorised transactions; regulatory prejudice; duplication of litigation; reputational damage; and potential personal prejudice to shareholders.

[162] Such harm would not be readily reversible. Once a company is bound to third parties acting in good faith, the consequences may not be capable of being undone merely because authority is later found lacking. In matters of

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68 ***R v Mall*** 1959 (4) SA 607 (N); ***Morris v Kanssen*** [1946] AC 459.

corporate governance, the continued exercise of contested authority itself constitutes ongoing prejudice. The law does not require the applicant to await the consummation of unlawful acts before seeking protection. A well-grounded apprehension of irreparable harm has therefore been established.

[163] The balance of convenience overwhelmingly favours preserving corporate integrity pending final determination. The interim relief does not finally determine the opposing respondents' status. It merely restrains them from acting on behalf of the applicant until the lawfulness of their appointment is properly adjudicated.

[164] If the respondents ultimately establish that they were lawfully appointed, the interim restraint will have caused no irreparable prejudice. They will simply resume lawful office. By contrast, if the relief is refused and the respondents continue to act without authority, the potential prejudice to the applicant may be extensive and not fully remediable.

[165] Preservation of the *status quo ante*, being governance by those who were directors prior to the impugned events is the least intrusive means of protecting the company pending final adjudication.

[166] The applicant has no satisfactory alternative remedy. A damages claim would not prevent continued unauthorised representation. An application to the CIPC to amend its records would not resolve the underlying dispute of authority and would not prevent continued misrepresentation in the interim. Only an interim interdict can effectively prevent the ongoing exercise of contested authority pending final determination.

[167] The relief granted is strictly interim. The function of the order is limited to preserving corporate governance integrity and preventing the continued exercise of *prima facie* unlawful authority pending that determination. In these circumstances, all requirements for interim interdictory relief have been satisfied.

Order

[168] I accordingly granted the relief on the aforesaid bases. In the result the order as granted:

1. Pending the finalisation of the application under case number 2025-066783 and/or the finalisation of the proceedings contemplated in paragraph 2 below, the first, second and fourth respondents are interdicted and prohibited:

1.1 from acting or purporting to act on behalf of the applicant; and/or

1.2 from causing any third person to act or purporting to act on behalf of the applicant; and/or

1.3 from giving themselves out and/or from representing in any manner whatsoever that they (either individually or as collective) has authority to act on behalf of the applicant in any capacity whatsoever.

2. The relief in paragraph 1 shall have immediate interim effect and shall lapse unless the applicant institutes action, alternatively makes application, within 30 days from date of this order, wherein the applicant substantially seeks relief in the following terms:

2.1 The fifth respondent (CIPC) is ordered to amend the records of the applicant as follows:

2.1.1 by removing and no longer reflecting the first, second, third and fourth respondents (and/or the third respondent) as directors of the applicant; and

2.1.2 to reflect STANLEY KGAAPU MPAHLELE as the applicant's sole director.

3. The first, second and fourth respondents are to pay the applicant's costs herein jointly and severally, the one paying the other to be absolved on scale C, inclusive of the costs of senior counsel.

F.J. LABUSCHAGNE

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Electronically delivered and signed.

Date heard:	20 March 2026
Date of order:	26 March 2026
Date of reasons:	10 April 2026
For the applicant:	Adv. BC Stoop SC
Instructed by:	Hajibey Bhyat Mayet & Stein Inc.
For the 1st, 2nd and 4th respondents:	Adv. JG Naudé SC Adv. FC Lamprecht
Instructed by:	Jaffer Inc.