IN THE COMPANIES TRIBUNAL
OF SOUTH AFRICA

Case Number: CT02581ADJ2026

In the matter between:

Gcobisa Silwana	Applicant
and	
Buyisiwe Khayalethu Ngqabavu	Respondent

Presiding Tribunal Member: D Terblanche
Date of Decision: 24 April 2026

RULING – DECISION AND REASONS

PARTIES

[1] The Applicant is Gcobisa Silwana.

[2] The Respondent is Buyisiwe Khayalethu Ngqabavu.

[3] The parties are the only directors of Flow State Innovations (Pty) Ltd ("the Company"), registered under registration number 2025/615631/07.

THE APPLICATION

[4] The Applicant seeks an order removing the Respondent as a director of the Company under section 71(8) of the Companies Act, 2008 (Act No. 71 of 2008) ("the Act"), read with section 71(3)(b) of the Act. Relying on the allegations that the Respondent has neglected, or been derelict in the performance of, the functions of a director, the Applicant submits that the Respondent's removal is necessary to resolve a governance deadlock and to enable the Company to operate in a lawful and effective manner.

PROCEDURAL BACKGROUND

[5] On 30 January 2026, the Applicant submitted an application to the Companies Tribunal ("the Tribunal") on Form CTR142, seeking the removal of the Respondent as director. The Tribunal date-stamped the application on 4 February 2026.

[6] The Applicant alleged that she served the application documents on the Respondent electronically to the Respondent's email address recorded in the Company's MOI on 4 February 2026. The Applicant attached proof of service to her default order application.

[7] According to the Applicant, the Respondent has not filed any answering affidavit, nor has any response been received from the Respondent in relation to the application. The Tribunal's records contain no notice of opposition or answering affidavit from the Respondent.

THE APPLICANT'S FACTUAL SUBMISSIONS

[8] The Applicant's submissions are set out in the Applicant's founding affidavit filed in support of the application, together with:

(a) THE COMPANY'S MEMORANDUM OF INCORPORATION (FORM COR 15.1A), issued by the CIPC;
(b) THE REGISTRATION CERTIFICATE OF THE COMPANY (FORM COR 14.3) issued by the CIPC which reflect the details of the two directors (i.e., the Applicant and the Respondent) of the company, including the parties addresses;
(c) NOTICE OF INTENTION TO REMOVE A DIRECTOR (Issued In terms of section 71(3) Of The Companies Act 71 Of 2008). Date: 18 January 2026;

(d) MINUTES OF A DIRECTORS' MEETING HELD FOR THE PURPOSE OF CONSIDERING THE REMOVAL OF A DIRECTOR. Date: 26 January 2026;

(e) RESOLUTION TO REMOVE A DIRECTOR (Adopted in terms of section 71 of the Companies Act 71 of 2008);

(f) SHAREHOLDER RESOLUTION / STATEMENT OF SHARE ALLOCATION STATUS; and

(g) PROVISIONAL SHARE REGISTER / STATEMENT.

[9] In July 2025, the Applicant and the Respondent agreed to register the Company for the purpose of applying for funding under the SEDFA Township and Rural Entrepreneurs Programme (TREP) to establish a laundromat under the Eazi Laundromat Franchise at Eyabantu Mall, Zwelitsha. The Company was registered on 5 August 2025.

[10] From the inception of the Company, the Applicant assumed primary responsibility for conceptualising, developing and advancing the business project. The Applicant independently sourced funding requirements, prepared the business plan, compiled all supporting documentation, and managed all communications with SEDFA, the franchisor and other relevant stakeholders.

[11] Despite repeated invitations to contribute meaningfully, the Respondent limited his involvement to signing documents where required. The Respondent provided no substantive intellectual input, strategic direction or operational support. The Respondent's participation was sporadic and did not reflect the responsibilities ordinarily expected of a director.

[12] The pattern of non-participation continued during engagement with external stakeholders. Although the Respondent attended three meetings with Novate Property Investments and a virtual meeting with SEDFA on 21 November 2025, the Respondent did not make substantive contributions. At a further meeting with SEDFA and the franchisor on 26 November 2025, the Respondent's participation was intermittent and limited.

[13] On 17 December 2025, Novate Property Investments informed the Company that the proposed premises were no longer available. The Applicant informed the Respondent and requested the Respondent's input on identifying alternative premises or proposing alternative

strategies. No proposals or meaningful assistance were forthcoming. The Applicant independently approached the Eastern Cape Development Corporation (ECDC) to explore alternative premises, and when none were available, the Applicant informed the Respondent accordingly.

[14] On 11 January 2026, the Applicant requested a meeting to discuss the future of the Company. A telephonic meeting scheduled for 12 January 2026 was postponed at the Respondent's request. On 13 January 2026, a virtual meeting with SEDFA was held, but the Respondent did not attend. When the Applicant subsequently invited the Respondent to propose alternative business initiatives, the Respondent indicated that he had none.

[15] In light of the Respondent's continued non-participation, the Applicant requested that the Respondent consider resigning as director to avoid ongoing operational paralysis. The Respondent initially agreed, and the Applicant initiated the CIPC resignation process. However, on 17 January 2026, the Respondent informed the Applicant that he had changed his mind and would not resign.

[16] The Respondent refused to cooperate with efforts to regularise the Company's governance and advised that the Applicant should instead register a new company.

[17] On 18 January 2026, the Applicant issued a formal notice of intention to remove the Respondent as director and invited him to make representations at a meeting scheduled for 26 January 2026. The Respondent declined to attend the meeting and refused to step down.

[18] As a result of the Respondent's refusal to resign and his persistent lack of participation in the affairs of the Company, a governance deadlock has arisen. The Company is unable to function effectively, pursue funding opportunities or conduct business in an orderly manner. The Respondent's conduct has effectively constrained the Company's ability to move forward with viable projects and has placed the Company at a standstill.

[19] The Applicant further notes that no formal share allocation has ever been concluded, no share certificates have ever been issued, and no shareholders' agreement exists, which has further complicated efforts to resolve the current dispute.

[20] The Applicant submits that the Respondent's conduct demonstrates an inability or unwillingness to fulfil the duties of a director. The Applicant accordingly requests the Tribunal to grant appropriate relief to resolve the deadlock and enable the Company to operate in a lawful and effective manner.

ANALYSIS AND ASSESSMENT

Jurisdiction

[21] The application is properly brought under section 71(8) of the Act, which provides that a director or shareholder of a company with fewer than three directors may apply directly to the Companies Tribunal for an order to remove a director. The Company has only two directors, as is evident from the CIPC records, namely the Applicant and the Respondent. The Tribunal accordingly has jurisdiction to hear this matter.

Default Application

[22] Companies Regulation 153 of 2011 provides for default orders:

> "(1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.
> (2) On an application in terms of subregulation (1), the Tribunal may make an appropriate order – (a) … (b) if it is satisfied that the notice or application was adequately served."

[23] Table CR3 in the Companies Regulations provides that insofar as delivery of documents by electronic mail is concerned, sending the notice or copy of the document by electronic mail is a valid method of delivery if the person has an address for receiving electronic mail.

[24] The Applicant attached proof of service of the main application and accompanying documents. According to the Applicant, the Respondent has not filed any opposing papers. There is no record of a notice of opposition or answering affidavit on file with the Tribunal.

The Tribunal has considered the proof of service and is satisfied that the application and accompanying documents were served on the Respondent.

Assessment of Service

[25] Having regard to the uncontroverted proof of service done electronically, in accordance with the Companies Regulations 2011, to the Respondent's email address recorded in the Company's MOI, the Tribunal finds that the application was adequately served on the Respondent. The Respondent has not filed any response within the prescribed period. The Applicant is therefore entitled to apply for a default order in terms of Regulation 153.

Substantive Grounds for Removal

[26] Once jurisdiction is established and the procedural requirements are met, the Applicant must prove the substantive grounds for removal. The Tribunal must therefore examine the Applicant's founding affidavit to determine whether a proper case for removal has been made out. The applicable provision is section 71(3)(b) of the Act, which provides that a director may be removed if that director "*has neglected, or been derelict in the performance of, the functions of director.*"

[27] The Act does not provide an exhaustive list of what constitutes neglect or dereliction, leaving it to the Tribunal to determine on a case-by-case basis.

[28] The Tribunal has defined the terms 'neglect' and 'dereliction' in earlier decisions. In *Spineco Medical International (Pty) Ltd & Another v Webb* (Companies Tribunal, Case Number: CT021NOV2014, 11 August 2015) *(Spineco),* the Tribunal defined 'dereliction' as:

> "*desertion or abandonment and, consequently, the involved conduct has a connotation of being deliberate, purposeful or even intentional about it, and … dereliction … would require something more than negligence, at least as recklessness or even intent.*"

[29] The decision of *Spineco* (or some of the dicta therein) appears relevant and persuasive for the issues to be determined in this matter, including the following passage:

"…[in] the context of section 71(3)(b) a director would be neglecting to perform his or her functions as a director of a company if he or she had given insufficient attention to his or her actions. Therefore, when regard is had to the standards of directors' duties and fiduciary duties of directors, the particular director would have failed to adhere to the standards legally required of him, when a reasonable person under the same circumstances would have acted to the contrary." (See *Spineco* at para [57].)

[30] That a director, the Respondent in this instance, has failed the requirements of section 71(3)(b) of the Act, has to be proved on a balance of probabilities, even when an application is considered by default.

[31] In *Mtshali v Lefutso* (CT00482ADJ2020) [2020] COMPTRI 9 (17 December 2020) (*Mtshali)* the Tribunal held that an application alleging neglect or dereliction:

"ought to establish (on the basis of specific acts or omissions in the respondent's conduct relating to the business or affairs of the company) that the impugned director has neglected or has been in derelict of his or her functions as a director, as envisaged by section 71(3)(b) of the Companies Act, for example, by the director's non-performance or defective performance of tasks or functions allocated or expected from him or her."

[32] Where in *Mtshali* the removal of the director was based on two sentences, "[*I] request to remove Tshepo Lefutso as director as I am unable to get hold of him" and "I [have] last seen him on the 16 March 2020 [after] I tried looking for him to no avail"* (See para 4), the Tribunal held that "*mere allegations of physical absence from the company … or inaccessibility … without more, does not suffice."*

[33] The Applicant's grounds for seeking the Respondent's removal are that the Respondent:

(a) has neglected and is derelict in his director's duties under section 71(3)(b);
(b) has persistently failed to participate meaningfully in the Company's affairs; and
(c) has refused to resign, causing a governance deadlock that paralyzes the Company.

[34] The Applicant's founding affidavit alleges specific conduct on the part of the Respondent:

(a) The Respondent missed two key meetings on 12 and 13 January 2026, including a virtual meeting with SEDFA.

(b) When he did attend meetings, he made no substantive contribution.

(c) He provided no strategic, business or operational input.

(d) He limited his involvement to signing documents only.

(e) After initially agreeing to resign, he reversed his decision and refused to step down.

(f) He declined to attend the formal removal meeting on 26 January 2026 and failed to make any representations.

[35] These are not vague allegations of inaccessibility or mere conclusions. They are specific acts or omissions of the kind the Tribunal in *Mtshali* requires. The Applicant's sworn affidavit serves as evidence unless contradicted. Since the Respondent has not filed any opposing papers, there is no evidence before the Tribunal contradicting the Applicant's version of events.

[36] The Tribunal has already held that similar conduct constitutes neglect or dereliction within the meaning of section 71(3)(b). In *Bishop v Bishop* (CT01037/ADJ/2022) [2022] COMPTRI 61 (25 August 2022) *(Bishop),* the Tribunal determined that the Respondent had failed to perform his directorial responsibilities, including relocating to Dubai without notice and ceasing to participate in company operations, thereby posing a financial risk.

[37] In *Shirinda v Shirinda* (CT00654ADJ2021) [2021] COMPTRI 32 (31 May 2021) *(Shirinda),* the Tribunal granted an unopposed application for removal where the respondent was alleged to have neglected to fulfil his role and perform his duties as a director, thus hindering the conduct of the business of the company.

[38] The Respondent's conduct in the present matter closely mirrors the factual matrices of both *Bishop* and *Shirinda*. Like the respondent in *Bishop*, the Respondent here has not

partaken in the substantive operations of the Company, leaving the Applicant to carry all strategic and operational burdens alone. Like the respondent in *Shirinda*, his failure to perform his duties has hindered the conduct of the Company's business.

[39] The deliberate nature of the Respondent's conduct is demonstrated by his initial agreement to resign, followed by his decision to reverse that agreement and refuse to step down. This conduct constitutes the "deliberate, purposeful or even intentional" conduct required for dereliction, as defined in *Spineco*. His refusal to attend the formal removal meeting or make any representations confirms his abandonment of director duties.

Prejudice to the Company

[40] The Applicant has established that the Respondent's conduct has resulted in actual prejudice to the Company. The Company is unable to function effectively, pursue funding opportunities or conduct business in an orderly manner. The Respondent's continued presence as an inactive director has placed the Company at a standstill, preventing it from progressing with viable projects.

Shareholding Position

[41] The Applicant notes that no formal share allocation has ever been concluded, no share certificates have ever been issued, and no shareholders' agreement exists. While this is not itself a ground for removal, it reinforces why Tribunal intervention is necessary: there is no alternative mechanism within the Company's governance structures to resolve the deadlock.

FINDINGS

[42] The Applicant's founding affidavit contains specific, dated and detailed allegations of the Respondent's conduct. These allegations go well beyond the "*mere allegations*" found insufficient in *Mtshali*.

[43] The Respondent has missed two key meetings – on 12 and 13 January 2026 – and has attended other meetings without making substantive contribution. He has provided no

strategic, business or operational input, limiting his involvement to signing documents only. After initially agreeing to resign, he reversed his decision and refused to step down. He declined to attend the formal removal meeting scheduled for 26 January 2026 and failed to make any representations.

[44] This pattern of conduct demonstrates:

(a) Non-performance of director functions, as evidenced by the Respondent's failure to attend scheduled meetings without justification (falling within the definition of neglect);
(b) Defective performance of director functions, as evidenced by his attendance at meetings without substantive contribution; and
(c) Dereliction (desertion or abandonment of director responsibilities), as evidenced by his deliberate reversal of his agreement to resign, his refusal to attend the removal meeting, and his failure to make any representations.

[45] The Respondent's conduct has caused a governance deadlock that has paralysed the Company's operations. The Company is unable to pursue funding opportunities or conduct business in an orderly manner.

[46] The Tribunal accordingly finds that the Applicant has made out a proper case for the removal of the Respondent as a director of the Company under section 71(8), read with section 71(3)(b), of the Companies Act, 2008.

ORDER

[47] The Tribunal issues this order:

(a) Buyisiwe Khayalethu Ngqabavu is removed as a director of Flow State Innovations (Pty) Ltd (Registration Number: 2025/615631/07), effective immediately; and
(b) No costs order is made.

DATED ON 24th OF APRIL 2026.

D Terblanche

TRIBUNAL MEMBER