



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case no.: **CT02443ADJ2025**

In the matter between:

JOHANNES HERMANUM CORNELIUS IZAK KRITZINGER

First Applicant

nREACH CAPITIS LAYSAN (PTY) LTD

Second Applicant

and

CREDE INVESTOR 1 BRIDGE TO BOND (RF) LTD

Respondent

In re:

RHEA SPV 4 (PTY) LTD

Presiding member: Richard Bradstreet

Date of decision: 5 May 2026

DECISION (Reasons and Order)

1. This is an application in which the Applicants seek declaratory and restorative relief arising from the Respondent's purported acquisition of 69% of the shares in Rhea SPV 4 (Pty) Ltd ("**the Company**"), and the corporate acts undertaken on the strength of that purported acquisition – in particular, the appointment of two new directors and the removal of the First Applicant as a director.

2. The Respondent contends that it lawfully acquired the shares pursuant to enforcement rights arising from a Share Pledge Agreement, following an event of default, and that it was entitled to act as it did on that basis. The Applicants dispute both the occurrence of a default and the Respondent's entitlement to act as it did, and submit that the purported transfer of shares was invalid, that the Respondent never became a shareholder, and that all subsequent corporate acts are accordingly without legal effect.
3. A hearing was held on 16 March 2026, at which the Applicants were represented by Mr E Kromhout and the Respondent by Mr K Iles. Both made detailed and helpful submissions, for which I am indebted to them. As the first of six points, the Respondent objected that the Tribunal lacks jurisdiction to determine the application as framed. That objection must, for the reasons that follow, succeed. My conclusion on jurisdiction is dispositive, and it would not be appropriate for me to address the further submissions on the merits.

BACKGROUND

4. The background may be set out briefly, and only to the extent necessary to identify the nature of the dispute:
 - 4.1. On 20 September 2023, the Respondent, the Company and its shareholders entered into a written Loan Agreement and a related package of security, which included a Share Pledge Agreement in terms of which the Second Applicant pledged its 69% shareholding in the Company to the Respondent *in securitatem debiti*. In connection with that pledge, an instrument of transfer in respect of the pledged shares was signed on behalf of the Second Applicant. At the time of

signature, the instrument was incomplete in material respects – including the identity of the transferee, the date and the consideration – this being expressly contemplated by clause 4.1.1 of the Share Pledge Agreement.

- 4.2. During February 2025 the Respondent issued a notice of default, which the Company, through the First Applicant, disputed.
- 4.3. On 4 June 2025 the Company was placed in business rescue.
- 4.4. Subsequently, the Respondent completed the previously signed transfer instrument by inserting itself as transferee, dating it 23 July 2025, and recording a consideration of “Nil”.
- 4.5. On 1 August 2025, the Respondent – acting on the footing that it had thereby acquired the shares – purported to adopt a written resolution as “sole shareholder”, appointing Mr Sandile Sokhela and Mr Gregory Hoffman as directors of the Company.
- 4.6. On 5 August 2025, the Respondent wrote to the business rescue practitioner instructing him to give effect to those appointments and to the removal of the First Applicant.
5. The present application arises directly from those steps. The relief sought includes the reinstatement of the Second Applicant as a 69% shareholder, the setting aside of the First Applicant’s removal and his reappointment, the setting aside of the appointments of Mr Sokhela and Mr Hoffman, an investigative referral to the National Director of Public Prosecutions (alternatively a complaint under regulation 141), and costs.

THE OBJECTION TO JURISDICTION

6. The Respondent submits that the Tribunal's jurisdiction is strictly limited by the Companies Act 71 of 2008 ("**the Act**"), and cannot be exercised in the absence of an express statutory basis. It relies on regulation 142, which permits applications only in respect of "*any matter contemplated by the Act, or these regulations*", and which requires the application to "*indicate the basis of the application, stating the section of the Act or these regulations in terms of which the Application is made*".
7. The Respondent submits further that section 156 of the Act does not confer a general jurisdiction on the Tribunal, but rather allocates particular categories of dispute either to the Tribunal or to the courts. Whereas section 156(c) provides generally for applications "*for appropriate relief to the division of the High Court that has jurisdiction over the matter*", section 156(b) permits a person to apply to the Tribunal "*for adjudication in respect of any matter for which such an application is permitted in terms of this Act*".
8. In support of its submission, the Respondent points to the manner in which the Act allocates jurisdiction. Where the legislature intends a matter to be brought to the Tribunal, it says so expressly: examples include section 72(5) (exemption from the Social and Ethics Committee requirement), section 160 (name disputes) and section 71(8)(b) (removal of a director where the company has fewer than three directors). Similarly, where the legislature intends matters to be brought before a court – in, for example, sections 161 (declaratory relief on the rights of a securities holder), 162 (delinquency and probation) and 163 (oppression remedies) – it says so equally clearly. The Respondent submits that, in the absence of any provision of the Act that

authorises the Tribunal to determine the present dispute, the application falls outside its jurisdiction.

9. The Respondent further points to the implicit distinction drawn in section 158. While section 158(a) imposes on a court the duty to develop the common law as necessary to improve the realisation and enjoyment of rights established by the Act, section 158(b), which applies to the Tribunal, contains no such provision. The Respondent submits that this confirms what is, in any event, plain on a reading of section 156: the Tribunal is not empowered to determine common-law questions.
10. The Applicants resist the objection on the basis that section 156 read with regulation 142 confers a sufficiently broad jurisdiction. They submit that the relief they seek concerns “*a transaction or agreement contemplated in this Act*” – a transfer of shares being plainly contemplated by, for example, sections 35, 37, 49 and 51 of the Act – and that the Tribunal is therefore empowered to adjudicate on the validity of that transaction. They rely, in particular, on the decision of the Tribunal in *Mohlamonyane v Nxumalo* (Case No. CT00721ADJ2021, 30 August 2021), in which the Tribunal entertained, on the merits, an application concerning the alleged unlawful removal of a director and a disputed transfer of shares.
11. They further submit that, although the founding affidavit contains allegations of fraud, the case is not only a fraud case: it is also a case about the validity, under the Act, of a purported transfer of shares and of the consequent corporate acts.

DISCUSSION

12. The question of jurisdiction goes to the very competence of the Tribunal to determine the present dispute at all: if it lacks jurisdiction, that is the end of the matter, regardless of how the merits might otherwise appear.

13. The Tribunal is, as the Respondent correctly emphasised, a creature of statute. It has no inherent jurisdiction. It has only such powers as are conferred upon it by the Act, by other legislation referred to in the Act, or by regulation made under it. This much is clear from section 195(1), which provides that the Tribunal may:

“(a) adjudicate in relation to any application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application;

(b) assist in the resolution of disputes as contemplated in Part C of Chapter 7; and

(c) perform any other function assigned to it by or in terms of this Act, or any law mentioned in Schedule 4.”

14. Most relevant to the question of determining the ambit of the Tribunal's jurisdiction is section 195(1)(a), which comprises two components:

14.1. the Tribunal may adjudicate only in relation to an application *“that may be made to it in terms of this Act”*, and

14.2. it may make orders *“provided for in this Act in respect of such an application”*.

15. Both components are anchored in the Act. The section does not confer a general adjudicative competence over disputes that touch upon the Act; the

application must itself be one which the Act permits to be brought, and the order must itself be one which the Act provides for.

16. Section 156 is to a similar effect. It is headed “*Alternative procedures for addressing complaints or securing rights*”, and a person seeking to address an alleged contravention of the Act, or to enforce any right or transaction or agreement contemplated by the Act, may, in addition to the alternatives in sub-paragraphs (a), (c) and (d), apply “*to the Companies Tribunal for adjudication in respect of any matter for which such an application is permitted in terms of this Act*” (section 156(b)).
17. Section 156 is not itself a free-standing source of jurisdiction; it is a sign-posting provision in that it directs a litigant to one of four prescribed routes, the Tribunal being one of them, while expressly preserving the Act’s allocation of subject-matter jurisdiction among those fora. That allocation is deliberate.
18. Where the legislature intends that a matter be capable of determination by the Tribunal, the Act says so in terms. Where the legislature intends matters to be brought to a court, it says so equally clearly. This is clear from the Respondent’s examples, which have already been identified. The structure of the Act thus reflects a considered demarcation by Parliament of the forum competent to determine each category of dispute.
19. The distinction in section 158 between the development of the common law by a court, and the absence of any such provision in respect of the Tribunal, reinforces the same point. The Tribunal is not equipped – and was clearly not intended – to determine common-law disputes.

20. The Applicants' case is that the Tribunal's jurisdiction is engaged because the Act regulates the transfer of shares, and the application concerns a transfer of shares. The question, however, cannot be whether the dispute touches upon provisions of the Act – most, in not all, company-law disputes will do so to some degree. The question is rather two-fold: whether the application is one that “*may be made*” to the Tribunal in terms of the Act, and whether the order sought is one “provided for” in the Act.
21. Regulation 142(3)(a), which requires the applicant to identify the section of the Act under which the application is made, gives concrete expression to that requirement. No such section has been identified, nor does any such section appear to exist. Section 161 (declaratory relief on the rights of a securities holder) would be the natural home of the claim that the Second Applicant remains the holder of 69% of the issued shares; but section 161 is a court jurisdiction. Section 71(8), which empowers the Tribunal to determine the removal of a director where the company has fewer than three directors, is not invoked and would not, in any event, fit the case the Applicants advance – their case being not that the First Applicant has become ineligible, disqualified, incapacitated, negligent or derelict, but that he was never validly removed because the Respondent was never validly a shareholder.
22. The Applicants' reliance on *Mohlamonyane* does not assist them. Jurisdiction was not raised in that matter, and the Tribunal's decision to determine it on the merits is not authority on jurisdiction one way or the other. In any event, even were the Tribunal to be assumed to have jurisdiction in a case of that kind, the Applicants' case here goes considerably beyond it: it requires, as anterior questions, the resolution of contractual and common-law disputes.

23. In order to grant the Applicant the relief sought, the Tribunal would have to determine whether a *bona fide* dispute as to default existed; whether the Respondent's exercise of its rights under the Share Pledge Agreement was contractually permitted; and whether the principles set out in the decisions of *Bock and Others v Duburoro Investments (Pty) Ltd* 2004 (2) SA 242 (SCA) and *Delpech v Holloway and Others* 2011 (2) SA 194 (GSJ) prohibit what was done. Whatever the ultimate answer to those questions may be, they are not questions which the Tribunal is empowered to answer.

CONCLUSION

24. Stripped to its essentials, what the Applicants ask the Tribunal to do is to traverse what is, in substance, a contractual and common-law dispute about the lawfulness of a creditor's perfection of its security, and then to grant Companies Act consequences to the conclusion they invite. Section 156(b), section 158(b) and section 195(1) do not, individually or collectively, confer jurisdiction on the Tribunal to undertake that exercise. The proper forum is the High Court, where the full ambit of the dispute can be coherently determined.
25. In the circumstances, it is unnecessary – and would be inappropriate – to consider the Respondent's further objections, or to express any view on the merits of the underlying dispute. Whether or not those further objections have merit, they do not arise; and the substantive matters between the parties remain to be determined in the proper forum.

COSTS

26. Both parties sought their costs. In Tribunal proceedings, costs are not awarded as a matter of course, and there is no general rule that costs follow

the result. The Tribunal's practice is to refrain from making costs orders save where the conduct of a party has been such as to warrant one. This is not such a case.

27. Although the application has not succeeded on the jurisdictional point, the question of jurisdiction was properly arguable and was ably argued on both sides. It would not be appropriate, in the circumstances, to make a costs order.

ORDER

28. Accordingly, it is ordered that:

- (a) The application is dismissed for want of jurisdiction.
- (b) There is no order as to costs.

Richard Bradstreet

Member of the Companies Tribunal

5 May 2026