IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02689/ADJ/2026

In the matter between:

JEFFREY GAMA	**FIRST APPLICANT**
PATRICK VUSUMUI SIFUNDZA	**SECOND APPLICANT**
FARADAY INVESTMENT HOLDINGS PTY LTD	**THIRD APPLICANT**

And

ZAKHELE THOKOZANI THANGO	**FIRST RESPONDENT**
WELCOME SHADRACK MABUZA	**SECOND RESPONDENT**
CELUKUTHULA ERICK MBATHA	**THIRD RESPONDENT**

Presiding Member H.K Dlepu

Date of Decision: 18th MAY 2026

Decision and Reasons

A. INTRODUCTION

1. The First Applicant is bringing this application as a shareholder and a director of Faraday Investment Holding (Pty) Ltd with registration number 2024/085787/07 ("herein referred to a "FIH") and is employed by the third applicant at 255 Cnr 5th Street and Johannesburg Road, La Rochelle, Johannesburg Gauteng, 2190

2. The Second Applicant is employed by the third applicant as the Bookkeeper at 255 Cnr 5th Street and Johannesburg Road, La Rochelle, Johannesburg 2190

3. The Third Applicant is Faraday Investment Holding (Pty) Ltd a company duly incorporated by the Company Laws and regulations of the Republic of South Africa with registration number 2024/085787/07 with its business address being 255 Cnr 5th Street and Johannesburg Road, Johannesburg, Gauteng, 2190.

4. The First Respondent is Zakhele Thokozani Thango, an adult male South African, citizen and at all material times a member and executive of Faraday Taxi Association in Johannesburg, Gauteng.

5. The Second Respondent is Welcome Shadrack Mabuza an adult male South African citizen at all material times and at all material times male member and executive member of Faraday Taxi Association, Johannesburg, Gauteng

6. The Third Respondent is Celukuthula Erick Mbatha an adult male South African citizen and a member and executive of Faraday Taxi Association, Johannesburg, Gauteng.

B. REASONS FOR THE APPLICATION

7. The Applicant brought the Application on an urgent basis requesting the Companies Tribunal in terms of Section 180 to 184 of the Companies Act and Regulation 147 of the Companies Regulations 2011 to be allowed a reduction of time for filling of Application documents to be adjudicated by the Companies Tribunal.

8. The Applicant further sought the Company Tribunal to adjudicate on an urgent basis the unlawful appointment of the Respondents as the Directors of the Third Applicant, Faraday Investment Holdings (Pty) Ltd

9. The Main Application is filed in compliance with procedure as provided for in the Companies Act of 2008 accompanied by Form CTR 142, wherein the Applicants seek an order in the terms of Section 71(3) and 71(8) of the Companies Act on the following terms:

    9.1 The declaration that the purported appointment of the Respondents as directors of the Third Respondent is unlawful and fraudulent.

    9.2 The removal of the said unlawfully and or fraudulently appointed directors of the Third Respondent with retrospective effect.

    9.3 An order directing that the records of the CIPC be corrected to reflect the true and lawful position, namely that the First Applicant is the sole Director of the Third Applicant

10. The Third Applicant is incorporated in terms of the company laws of South Africa and in accordance with the requirements as set out in the Companies Act 71 of 2008, and it is regulated in terms of its Memorandum of Incorporated filed in the CIPC.

11. The issues to be determined are whether the First, Second and Third, Respondents are lawfully appointed as the directors of the Faraday Investment Holding (Third Respondent) in compliance with its Memorandum of Incorporation, its governance document which was filed in the CIPC

C. BACKGROUND

12. The Applicants submit that on or about February 2026 the Respondents unlawfully and without any authority or/ alternatively fraudulently caused

themselves to be reflected as directors of Faraday Investment Holding (Pty) Ltd, (the Third Applicant) in the Companies Intellectual Property Commission (CIPC) despite having no legal standing to do so.

13. The urgency of the application was underpinned by the fact that the Applicants operate within the transport industry and require a steady cash flow daily to meet their operational obligations.

14. On the 7th of April 2026, the Applicants discovered that they were unable to transact as the authorized signatories on Third Applicants bank account they then attended to the Third Applicants Bank to make enquiries regarding their inability to transact on their primary banking account, the interruption caused the Applicants in their capacity as authorized signatories unable to transact on the Third Applicants' bank account, the debit orders could not be honored and that position put the Third Respondent (the Company) in an untenable financial situation and unable to operate..

15. Upon enquiry from the Third Applicants' Bank manager/employee, about their inability to transact on the primary account, the bank manager /employee subsequently informed the Applicants that it received an email on the 2nd April 2026 regarding the restriction on the Companies primary account, in other words freezing of the company's bank account which resulted in the Applicant unable to transact, the freezing of the account had an immediate impact on Faraday Investment Holdings' company operations.

16. Due to the reasons above, the Company found itself in an untenable situation. The Third Applicant is still unable to perform in terms of its financial obligations to their creditors and employees due to its inability to transact as they could not access funds to pay salaries and wages to the employees, contribute to the Compensation fund and could not honor its employees tax obligations. The unavailability of funds could jeopardize the company's future dealings with these creditors.

17. The Respondents, on the other hand, although they had not filed their papers opposing the application, were present at the hearing and were granted an opportunity by the Tribunal Member to respond from the bar, the Respondents raised a point in limine that the Tribunal had no jurisdiction to adjudicate the matter.

18. Having considered the issues advanced by the Applicants and what the Respondents had raised from the bar ,the Tribunal was satisfied that the issues raised by the Applicants warrant thorough ventilation before the Tribunal and that the Applicants have shown good cause for urgency and that the papers before the Tribunal did not justify the exclusion of the Tribunal on the basis of lack of jurisdiction to adjudicate the matter as the Applicant's Notice of Motion clearly indicated that the Application was brought before the Tribunal in terms of Section 71(3) and 71(8) of the Companies Act .

19. The Tribunal made the following order: -

(i)The Respondents were ordered to file their Answering or opposing Affidavit by the end of business the 28th of April 2026.

(ii) The Applicants to were ordered to file their Replying Affidavit to advance their argument on record and in writing by the 29th of April 2026.

(iii) The Applicants were ordered to file their Replying Affidavit by the 29th of April 2026.

(iv)The Applicants were ordered to index and paginate the bundle of the submissions by the 3rd of May 2026

20. The matter is set down for argument for the 7$^{th\ of}$ May 2026 at 10h00am virtually. The parties complied with the directive.

D. THE APPLICANT'S SUBMISSIONS

21. On the 20th of June 2017 Faraday Investment Holding (Pty)Ltd with registration number 2017/274291/07 was incorporated, The Company was established and

incorporated by Mr. Gama and Mr. Xaba as initial directors, together with approximately other (20) twenty additional directors.

22. On the 25th yes December 2021, the company was deregistered, the deregistration processes arose largely due to the administrative inaction of having approximately (32) directors which resulted in inaction and governance issues difficulties associated with the large number of directors.

23. On the 20th of February 2024 a new Faraday Investment Company (Pty) was re-registered with registration number 2024/085787/07 the two incorporators were Mr Jeffrey Gama and Mr Caiphas Snothi Xaba (who is now deceased). Following Mr Xabas' passing, Mr Gama remained the sole director and shareholder of Faraday Investment Holding Company. The Directors and shareholders adopted and filed its Memorandum of Incorporation with the CIPC. Directors and shareholders had on material times acknowledged that they derived their mandate, governance and operations from the Memorandum of Incorporation (MOI) which was attached to the Applicants affidavit. The MOI became the sole governance document, in that it sets out the rights, duties and responsibilities of directors and shareholders.

24. Mr Gama remained the sole director and shareholder of Faraday Investment Holding (Pty) Ltd and Mr Gama has been operating on the affairs of the Company as a sole director and shareholder duly assisted by the Second Applicant Mr Sifundza the Third Applicants' Accountant.

25. Historically Mr Gama previously a General Secretary of Faraday Taxi Association in terms of their Constitution and he conducted the affairs of the Association in accordance with its Constitution. He was voted out of his position on the 9th of October 2025. He alleges that his position as the General Secretary of the Faraday Taxi Association had no impact on his directorship at Faraday Investment Holding the two had always been two separate entities and operated independently. Faraday Taxi Association and Faraday Investment Holding have always operated independently of each other and both entities are governed by their own founding governance documents.

26. It is alleged that on the 20th of February 2026 the Faraday Taxi Association appointed the Respondents to be the directors of Faraday Investment Holdings (Pty) unlawfully and fraudulently, without the First and the Second Applicants' knowledge or resolution from and by the Third Applicant or its directors and shareholders more especially the First Applicant who at all in turns and purposes was the sole director and shareholder; a copy of the First Applicant's share certificate was attached to the First Applicants' affidavit.

27. Faraday Taxi Association was neither a director nor shareholder of Faraday Investment Holding (Pty)Ltd .The Applicants became aware that the Respondents caused themselves to be registered as directors of the Third Respondent on the 23rd February 2026 .Following the discovery of the registration of the three Respondents as directors of the Third Applicant, the Applicants immediately engaged the CIPC, lodged a dispute with the CIPC and requested that the fraudulent appointments be reversed and /or removed ,the attempt was unsuccessful due to the Company profile being frozen at the CIPC, a dispute was lodged with the CIPC. The Applicants opened a fraud case

28. The Applicants alleges that they were directed by the CIPC to undertake a process of removal of the Respondents as directors and were advised to make an application in terms of Notice No 42 of 2019 titled "Processing Requirements for the Removal of Directors", the Applicants proceeded with the prescribed process while pursuing their objections and appeals with the CIPC.

29. The Applicants then, following the advice of the CIPC, to expedite the process of the removal, The Applicants called a board meeting to remove illegitimate directors, the three Respondents. as directors of the Third Applicant .The meeting was called by the First Applicant in his capacity as the sole director and shareholder ,the meeting was scheduled for the 20th March 2026, the meeting notice was circulated and sent by email to the three Respondents for purposes of removing the them as they were as unlawfully /fraudulently appointed as Directors of the Third Applicant, this was done in accordance with the CIPC Notice 42 of 2019,

30. The Applicants submitted a further query to the CIPC to challenge the validity of the appointments of the Three Respondents, and the Applicants called a notice of a special meeting to remove the Respondents as directors.

31. The shareholder's meeting was called for the 20th of March 2026 in terms of Section 71(1) for the removal of the Respondents as directors of the Third Respondent, it is alleged that the Respondent failed to attend and thus the Applicant passed and adopted a resolution for the removal of the First, Second. Third Respondent as Directors of the Third Applicant. The Applicant submitted that he followed the procedure as prescribed in terms of Section 71 removal of Directors by a shareholder.

32. Unbeknown to the Applicant, the Respondents on the other hand issued a notice of a special meeting to remove the Applicant as a sole Director. On the 27th of March 2026 the Respondents allegedly convened a board meeting purporting to be the Directors of the Third Applicant to remove a sole legitimate director of the Third Applicant.

33. All these to all activities resulted in the Applicants being informed by the Third Applicants bank that the Third Applicants Primary Banking account was frozen and none of the parties could transact on the account until the matter is resolved. This situation was to the detriment of the employees and creditors.

34. The Applicant submits that the Respondents appointed themselves fraudulently as they had no capacity to do so, the alleged appointment of Respondents by as Directors, by Faraday Taxi Association had no basis in law and was invalid. Faraday Taxi Association as the alleged appointer was not a shareholder nor had any capacity to interfere with the affairs of the Third Applicant. as they were never appointed by the sole Shareholder nor the Director of the Third Respondent. The Applicant brought the application in terms Section 71 (1) and 71(3) of the Companies Act

E. <u>THE RESPONDENTS' SUBMISSIONS</u>.

35. The Respondents in their answering affidavit raised a Point in Limine as follows:

35.1. The Respondent contended that the Tribunal lacked jurisdiction in terms of Section 71 of the Companies Act as it alleges that at the time when the Application was brought to the Tribunal, Faraday Investment Holdings (Pty) Ltd had more than 3(three) directors.

35.2. The Respondents further contented that the determination sought by the Applicants can be only made by order of Court as contemplated by the provisions of Section 71(6) of the Companies Act and the Application ought to be refused.

36. The Respondents proceeded to respond to the Applicants merits that should the Respondents Point in Limine not be upheld ,the Applicants submitted that the First Applicant was a member of Faraday Taxi Association ,and that he was previously elected as a General Secretary of the Executive Committee of the Association and was voted out of the position in an Annual General Meeting of the Association on the 9th October 2025.

37. The Respondents contended that the First Applicant was appointed as a director of the Third Applicant by virtue of his position as a General Secretary, and upon his removal he supposed to cease being a director of Faraday Investment Holding (Third Applicant). The Respondent further alleged that the Faraday Taxi Association had the authority to appoint directors to Faraday Investment Holding (Pty) Ltd as it was an investment arm of the Taxi Association.

38. The Faraday Taxi Association is governed by a constitution, the constitution was attached to the Respondents' affidavit, The Associations' Constitution's described the Associations mandate amongst others as to ;

40.1 protect, secure and promote the interests of the members of the Association and to.

40.2 be Effective and be efficient in running the Association and,

40.3 Fostering good working relationships with government, which includes engaging actively in discussions and negotiations, to make representations and appeals to various states, provinces, committees, Composition of the Executive Committee local authorities in the interest of its members.

40.4 Fostering good working relationships with other Associations

39. The Constitution further provides amongst others, to regulate rights and duties of its members, the membership fees paid by its members, it provides for all the duties of its Executive Members and compliance with its rules and procedures of its members, term of office of its Executive Committee, Eligibility, nomination and election of the Executive Committee ,the duties of all the Committees and names of other committees of the Association which include the Finance committee comprising of Treasurer and two other members elected at the Annual General Meeting, Training and Development Committee, Disciplinary Committee, Grievance Committees and all other procedures governing the relationship between the Association and its members.

40. The Respondents allege that the Third Applicant is the company of the Association and is entitled to appoint directors.

41. The Respondents submitted that Faraday Investment Holding has always been the Company of the Association and that the First Applicant was appointed as a director by virtue of having been the General Secretary of the Association .and that since the Applicant was no longer a member of the Executive Committee of the Association he had to cease being a director of the Third Applicant.

42. The Respondents submitted that ,they were legally and duly appointed as Directors of the Third Application by virtue of the office they held, and that the

Constitution of the of the Association under clause 7.5 provides that upon expiry of the term of office of any office bearer or in the event that his or her term of office is terminated for any reason in terms of the Constitution of the Association, such office bearer must automatically cease to hold such office, and that the provisions of Section 70(1)(b)(ii)of the Companies Act are engaged.

43. The Respondents in conclusion stated that as envisaged by Section 70 (1)(b)(ii) of the Companies Act a vacancy arose on the Board in relation to the directorship of the First Applicant following the latter ceasing to hold office that entitled him to be an ex-officio director of the Third Applicant.

F. THE APPLICABLE LAW

REMOVAL AND APPOINTMENT OF DIRECTORS OF A COMPANY

44. Section 71 refers to the removal of directors it is the applicable section of the Act.

Section 71 of the Act provides as follows:

a. Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director subject to subsection (2).
b. Before the shareholders of a company may consider a resolution contemplated in subsection (1).
c. The director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and
d. The director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.
e. If a company has more than two directors, and a shareholder or director has alleged that a director of the company has become:
   i. Ineligible or disqualified in terms of Section 69, other than on the grounds contemplated in Section 69(8)(a); or
   ii. Incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

iii. Has neglected, or been derelict in the performance of, the functions of director, the board, other than the director concerned, must determine the matter by resolution, may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

f. Before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given:

i. Notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonable permit the director to prepare and present a response; and

ii. A reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

45. If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66(4)(a)(i), if applicable, may apply within 20 business days to a court to review the determination of the board.

46. If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be:

(i) any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director, may apply to a court to review the determination of the board, and

(ii) the court, on application in terms of paragraph (a), may confirm the determination of the board; or remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated, or has been negligent or derelict.

47. An Applicant in terms of subsection (6) must compensate the company, and any other party, for the costs incurred in relation to the application, unless the court reverse the decision of the board.

48. If a company has fewer than 3 directors:

Subsection 3 does not apply to the company. In any circumstances contemplated in subsection 3, any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection; and

49. Subsections (4), (5) and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.

50. Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have a common law or otherwise to apply to a court for damages or other compensation for:

52.1 loss of office as a director; or

52.2 loss of any other office as a consequence of being removed as a director.

51. This section is in addition to the right of a person, in terms of section 162, to apply to a court for an order declaring delinquent or placing a director on probation.

G. EVALUATION

52. During the hearing the Respondents' Representative referred the Tribunal to the decision of the Tribunal in the matter of **Xolani Gumede v Baby Mahlangu case No CT02072ADJ2024** wherein the Presiding Tribunal Member adjudicated an Application wherein the issue was whether the Applicant in the matter had a the legal standing to bring the application, and if he did, whether or not the case has been made for such removal order.

53. The Applicant relied on Section 71(8) and for one to rely on this section, the test to be applied is whether the Respondents conduct warrant such removal. The

staring point in this is to assess whether this section "is fit for purpose" and whether the purported directors' conduct is *"serious enough to warrant such removal such as dishonesty, criminal behavior, breach of fiduciary duty of a director of the company."*

54. In my opinion the basis of removing Respondents as directors in this matter is justified under this section as they had no legal basis nor have, they demonstrated the legal basis of their appointment as the directors. The Association was neither shareholder of the Third Applicant. More so that there is no documentary proof that is a connection between the Association and the Company or that the Association was legally entitled to appoint they are not directors of the Company (Third Respondent). The resolution to appoint them was taken by an entity which had no legal standing to appoint the directors and nothing in the Association's Constitution mentioned any relation to the Third Applicant. The appointment and removal of director of another entity cannot be assumed. Company law is regulated by an Act with specific procedural prescripts and the procedure is well codified ..It cannot be free for all otherwise Companies will be usurped without justification or just cause .Company law is the cornerstone of any countries economy that is why the procedural requirements and its governance is strictly protected and has to be adhered to.

55. Even if one sympathizes with the Association, they should have regularized the relationship between the two entities by having shareholders agreement in place alternatively apply to court to set aside the Memorandum of Incorporation. The Tribunal is a creature of statute and cannot adjudicate matters or impose shareholding on another entity

56. The Respondents also referred to Supreme Court the matter of **Mawerco(Pty)Ltd v Sithole and Others (322/2023[2024]] ZASCA** which analyzed whether Section 71 of the Companies Act 71 of 2008 provides a mandatory process that ought to be followed in the circumstance where two directors ,who were appointed by the Companies Board as a representative of the majority shareholder in terms of the shareholders agreement(the majority shareholder being a communal Property Association).The Court was

approached seeking relief on the basis that Section 71 of the Act provides for the removal of directors and, the said directors were entitled to the declaratory relief sought .The SCA found that the two directors served in the Company in their capacity as the representatives of the Association and because they failed in their haste to challenge the Association's resolution(which had the effect of declaring that they could no longer serve as directors of the Company they had not laid a basis for the relief that they sought, which was granted by the High Court. The SCA held that the two directors' application for a declaratory relief had to fail because there was no claim for the review and setting aside of a particular, the Association's decision to remove the respondents as the two directors. The SCA found that the provisions of Section 71 of the Act could not be relied upon in isolation to grant the blanket declaratory relief sought.

57. Unfortunately, this matter does support the Respondents case in that in both cases there was documentary proof of a relationship between the two entities for instance in both cases there was a shareholder's agreement between the two entities that regulated their relationship. Unfortunately, this was not the case in the matter being adjudicated

58. The Respondents were appointed by an entity with no legal standing in the Third Applicants governance and there was no evidentiary relationship between the two entities. It is evident that the Association had no legal standing to appoint directors of the Third Applicant therefore the Third Respondents were unlawfully appointed as directors of the Faraday Investment Holding (Pty) Ltd and ought to be removed in term of Section 71 of the Companies Act 71 of 2008 and the directive issued by the CIPC as they were unlawfully and illegally appointed.

59. Faraday Taxi Association must follow proper channels to regularize their relationship with Faraday Investment Holding (Pty) Ltd as the matter stands there is no relationship between the two entities that justifies their interference with the affairs of the Third Applicant as a separate entity.to

60. Faraday Investment Holding (Pty) Ltd is governed by its Memorandum of Incorporation. Interestingly the resolution of the Association was signed by the very Respondents and other members of the Association. Without any documentary proof to the Tribunal of its locus standi. It is for this reasons that the Tribunal has no alternative but to give an order declaring that the Respondents were illegally appointed and issue an order removing the Respondents as Directors Faraday Investment Company (Pty) Ltd.

H. CONCLUSION

61. The main issue before me is whether the Faraday Taxi Association had authority to appoint the Respondents as directors of another entity which is incorporated and governed by its Memorandum of Incorporation which specifically directed how directors of the Company ought to be appointed.

62. These are two entities and ought to be treated as such. Faraday Investment Holding (Pty) Ltd is a Company incorporated in terms of the Company Laws of South Africa and Faraday Taxi Association is an Association which is governed by a detailed Constitution governing amongst others, its right duties and obligations. Both entities governance documents do not refer to the other and both entities have been conducting their business independently of each other for since 2017.The situation could have been dealt with as far back when the reregistration occurred. The Third Applicant was deregistered and re-registered again in 2024 without entering into a shareholders agreement alternatively applying to Court to set aside the Memorandum of Association of the Faraday Investment Holding (Pty) Ltd ,and seek to regularise their purported relationship by the other imposing itself on the governance of the other cannot be acceptable.

63. The two entities are governed by two different instruments that do not refer to each other. The Respondent rightfully submitted that the Company Tribunal is a creature of statute and cannot confer to itself powers outside the statute The Company Tribunal can only adjudicate on issues that fall within its conferred powers. It can only limit itself to the issues that calls upon it to adjudicate in

terms of those Sections of the Companies act more especially Section 71 which relates to the removal of directors who were appointed legitimately in line with Section 70(3) which governs the appointment of a director by a Board Resolution or shareholders resolution and having complied with the requirements of the Companies Act, The Company Tribunal cannot condone nor confer deemed provision of the Act. The Association created its own misfortune. It ought to appreciate the processes to be followed by the Association if it regarded the Thid Applicant as its entity.

(i) The Removal of the First Applicant has to be done in accordance with the procedure as contemplated in the Companies Act or MOI of the Company

64. The respondents relied solely on the provisions of the Constitution to appoint the directors; however, the Constitution was silent on its relationship with the Faraday Investment Holding Company, nor did the Respondents offer any explanation why the Memorandum of Incorporation is silent on the shareholding of the Faraday Taxi Association.

65. It was evident that the Respondent was determined to exclude the jurisdiction of the Tribunal from determining the matter, it also failed to prove that the Tribunal had no jurisdiction, instead it raised all the technical arguments whilst on the other hand the Applicant cited the relevant sections of the Companies Act that the Respondent had failed to comply with.

66. The removal of a director has been illustrated in various Companies Tribunal judgements. I also found the High Court Judgement of **Justices Daffue and Daniso in the Free State Division of the High Court Case Number 434/2022 in the matter between *Michael Nkepe Litabe and Di Thabeng Wholesale Fuel Supply (PTY) LTD*** *and others* delivered on the 9th October 2023 very relevant in that it re-emphasised the decision in ***Steenkamp and Another v Central Energy Fund Soc Ltd and Others (13599/2017) [2017] ZAWCHC 107;2018(1)SA 311 (WCC) (*22** *September section 2017)* wherein it was held that Section 71(1) and 71(2) deal only with shareholders' meetings whereas

71(3) to 71(7) deals with only company's board of directors in the case where the company has more than two directors which is not applicable in casu.

67. Unfortunately the Respondent did not do justice to its case and instead in his quest to exclude the companies Tribunal 's jurisdiction confused the relevant sections he relied on, it interchangeably referred to sections that suited its narrative to justify its treatment of the Applicants status in the Company and of how the events unfolded.

68. The Companies act is very clear in sections that deals with removal of Directors, it provides that If a company has less than three directors Section 71(8) applies .In such a case a determination of whether there is cause for the removal of a director cannot be left to the board, but must be referred to the Companies Tribunal.

69. My challenge is that the Respondents failed to advance a coherent and convincing evidence to support its argument that they complied with the Companies Act when Appointing the Respondents as directors or that the Association had any relationship with the Third Applicant..

70. The Respondent was determined at all costs to exclude or defeat the provisions of the Companies Act in relation to both the removal of the First Applicant and appointment of the Three Respondents.

71. What puzzled the Tribunal was the non-denial by the Respondents that the Applicant was a shareholder of the Third Applicant .Respondent without explaining why the relationship of the Faraday Taxi Association and Faraday Investment Holding (Pty) Ltd was never regularised either by amending the Memorandum of Incorporation of the Third Applicant or entering into a shareholders agreement between the two entities.

72. The Respondents treated the Memorandum of Incorporation of the Third Applicant as "*non pro scripto* "as if it does not exist. But opted to rely on the Faraday Taxi Associations Constitution which had no relevance to the Applicants case.

73. Having considered the Applicants' and the Respondents' submissions I am convinced that the Respondents was deliberately misleading the Tribunal to believe that the Applicant was lawfully removed.

74. I am further of convinced that without proof of the legitimate or written connection the Applicants version is the most probable version and must be upheld and accepted.

75. I am further convinced that the Respondents' submission is highly improbable and the conduct of the Respondents amounted to corporate bullying by Respondents who hurriedly relied on the Resolutions of the Association to appoint additional directors to exclude the jurisdiction of the Company Tribunal.

I. ORDER

76. I therefore make the following order:

(i) The relief sought by the Applicants is granted.

(ii) The Companies and Intellectual Property Commission is ordered to reinstate the First Applicant **Jeffrey Gama** as the sole director a director of **FARADAY INVESTMENT HOLDING (PTY) LTD** registration number **2024/085787/07** with immediate effect upon receipt of this order.

(iii) The Companies and Intellectual Property Commission is hereby ordered to deregister and remove **Zakhele Thokozani Thango** and **Welcome Shadrack Mabuza** and **Celukuthula Erick Mbatha** as directors of **FARADAY INVESTMENT HOLDING (PTY) LTD** registration number **2024/085787/07 24** with immediate effect upon receipt of this order.

(iv) The Registrar of the Tribunal is hereby directed to deliver a copy of this order to the Commissioner of Companies and Intellectual Property Commission within 5 (five) days from the date of handing down this order.

(v) The costs of effecting the reinstatement and deregistration if any shall be borne by the Respondents.

____

HLALELENI KATHLEEN DLEPU