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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

REASONS

Not Reportable
Case No: 2026/079300

In the matter between:

SOBEGA PROPERTIES (PTY) LTD

APPLICANT

and

FAAIEK ABADER T/A WASH QUICK

RESPONDENT

Coram: MGENGWANA AJ

REASONS FOR ORDER GRANTED ON 14 APRIL 2026

MGENGWANA, AJ

Introduction

[1] This urgent eviction application served before me on 14 April 2026. The application was dealt with in terms of Rule 6(12)(a) of the Uniform Rules of Court but was dismissed on the merits. A month after the dismissal thereof, the Court was requested to furnish the parties with reasons for the dismissal. These reasons follow hereunder.

[2] On 7 April 2026, the Applicant instituted an urgent application in this Court for an order in the following terms:

- (a) Dispensing with the ordinary forms, service, and time periods provided for in the Rules of this Honourable Court and allowing this matter to be heard as one of urgency in terms of Rule 6(12)(a).
- (b) The respondent and all persons holding by, through, or under it, are evicted from the leased premises situated at 2[...] L[...] M[...] Road, Observatory, Cape Town (the leased premises), and shall vacate the leased premises on or before 16 April 2026.
- (c) Failing compliance with the order in paragraph (b) above, the Sheriff or his/her lawfully appointed deputy is authorised and directed to evict the Respondent and all those occupying the leased premises by, through, or under it, from the leased premises on or after 17 April 2026.

(d) The Respondent shall pay the costs of this application on attorney and client scale, alternatively on Scale C in terms of Rule 67A of the Uniform Rules of Court.

Facts relevant to the reasons for the dismissal of the application

[3] Waleed Ras, who deposed to the Applicant's founding affidavit, avers, *inter alia*, as follows therein:

(a) That he is a male property practitioner, registered as such with the Property Practitioners Regulatory Authority.

(b) That he deposes to the founding affidavit, in support of the relief claimed in the notice of motion and reflected in paragraph 2 of this judgement, on behalf of the Applicant on the strength of a resolution which was passed by the board of the Applicant on 7 April 2026 (My underlining).

(c) That the knowledge he attests to, surrounding the content of his founding affidavit, has been acquired by him through his handling of the property portfolio of the Applicant and which includes the property which is the subject of these proceedings.

[4] Faiek Abader (Faiek), who deposed to an answering affidavit on behalf of the Respondent, avers, *inter alia*, as follows therein:

(a) Faiek and his brother, Ebrahim, are equal shareholders in an entity called Sobega Equity Holdings (Pty) Ltd. In turn, Sobega Equity Holdings (Pty) Ltd is the sole shareholder of all issued class A shares in Sobega Property Holdings (Pty) Ltd, and Sobega Property Holdings (Pty) Ltd is the sole shareholder of the Applicant.

(b) Faiek and his brother constitute two-thirds of the board of the Applicant in that they are two of the three directors of the Applicant. The only other director of the Applicant is the signatory to the resolution passed on 7 April 2026 as mentioned paragraph (3)(b) of this judgement, Salie Adams.

(c) As a member of the board of the Applicant, Faiek never received any notice of the decision and/or the anticipated resolution authorising the current application, as prescribed in section 74 of the Companies Act 71 of 2008 (the Act). The decision to bring this application was accordingly made with his deliberate exclusion as one of the three directors and board members of the Applicant.

(d) The lease agreement concluded with Fulela Trade and Invest 83 (Pty) Ltd (Fulela) was itself entered into unlawfully in that the full board of the Applicant never gave the agent authority to conclude such agreement on behalf of the Applicant. If some of the board members did grant the agent such authority, then Faiek, as one of the board members, was never afforded an opportunity to participate in, or vote on such a decision. In these circumstances, the decision to conclude the Fulela lease agreement is invalid and of no force and effect, or alternatively, it is voidable.

[5] From the Court's reading of the above averments, it is apparent that clear that the validity of the resolution authorising the conclusion of the lease agreement with Fulela and the institution of these proceedings is very much disputed by Faiek.

[6] In his replying affidavit, Waleed Ras disputes the above by averring, *inter alia*, the following:

(a) That Faiek fails to mention that on 14 May 2025, at a board meeting held by all three directors of the Applicant, which included Faiek, the Applicant entered into a Rental Management Agreement (the mandate) with Potere Investment Properties (Pty) Ltd (the agent). According to this mandate, the agent was granted the right to institute legal action, defend any legal action, settle a matter, and evict a tenant at the cost of and on behalf of the Applicant, provided that the Applicant has given formal written approval for the agent to proceed with such action (My underlining). According to the same agreement, the agent was also granted a right to negotiate a lease agreement and any amendments and extensions thereof, with the tenant on behalf of the landlord, but subject to the landlord's final approval (My underlining). It is apparent from the papers filed herein that Waleed Ras acted for the agent at all material times before and during these proceedings.

(b) That a meeting of the board of directors appointing the agent as the estate manager of the Applicant with, among other rights, the rights mentioned in paragraph [6](a) hereof, was held on 25 June 2025 and the minutes thereof were attached to Applicant's replying affidavit.

(c) That if recourse is had to the agreement and minutes of the board meeting held on 25 June 2025, no resolutions in terms of section 74 of the Act were required for either the agent, on behalf of the Applicant, to enter into the Fulela lease agreement on 13 March 2026,

or for authorising the agent to institute the current application for the commercial ejection of the Respondent from the premises. The mandate, signed by Ebrahim on behalf of the Applicant and adopted through the minutes, clearly authorises the agent to enter into all lease agreements on behalf of the Applicant and to institute the current application for the commercial ejection of the Respondent from the premises.

Issues for determination

[7] This Court was therefore called upon to make a determination on the following before considering the merits of eviction application:

- (i) whether the agent, Waleed Ras, had the necessary authority to enter into a lease agreement with Fulela; and
- (ii) whether the agent had the necessary authority to institute these urgent legal proceedings against the Respondent.

Applicable law and legal principles

[8] Section 74(1) of the Act states the following:

‘Except to the extent that the Memorandum of Incorporation of a company provides otherwise, a decision that could be voted on at a meeting of the board of that company may instead be adopted by written consent of a majority of the directors, given in person, or by electronic communication, provided that each director has received notice of the matter to be decided.’

[9] In *Moors and Others v Veldskoen Capital (Pty) Ltd and Others*, Bhoopchand AJ stated the following:

[22] Directors can conduct the business of a company by way of a round robin resolution under s74 of the Companies Act. Section 74 of the Act enables “a majority of the directors to pass a round robin resolution to avoid a formal meeting of directors, provided that, if this is to happen, each director has received notice of the matter to be decided”. The proviso enables directors to make an informed decision on the subject matter contained in the resolution.

[23] Our courts have emphasised the importance of giving notice to directors of a meeting so that the participants are aware not only of the existence of a meeting but of the nature of the business. The purpose of the notice is not only to inform directors of the date of the meeting, but also the reason. There can surely be no difference between the importance of a notice where a board meeting is called in terms of s73 of the Act and a notice when the provisions of s74 of the Act are invoked.’¹

[10] In *Msibithi Investments (Pty) Ltd and Others v African Legend Investment (Pty) Ltd and Others*, the Supreme Court of Appeal (SCA) provided that section 74 ‘does not require notice in advance but simply notice of the matter to be decided’.²

Application of the law to the facts

[11] There is no dispute with regard to the following:

(a) Before instituting these proceedings, a resolution authorising the agent to institute these proceedings against the Respondent was

¹ *Moors and Others v Veldskoen Capital Ltd and Others* 2025 JDR 2704 (WCC).

² *Msibithi Investments (Pty) Ltd and Others v African Legend Investment (Pty) Ltd and Others* 2026 (1) SA 394 (SCA) para 70.

adopted on 7 April 2026, and such resolution was signed by Ebrahim and Salie Adams.

(b) That Faiek never received a notice in terms of section 74(1) of the Act notifying him that a meeting in which the resolution, as mentioned above, would be discussed and voted on. The resolution was therefore adopted in his absence and without his knowledge.

(c) That no resolution authorising the agent to enter into a lease agreement with Fulela on behalf of the Applicant was ever adopted.

[12] When the agent was called upon to explain the Applicant's failure to give Faiek a section 74(1) notice in respect of the resolution adopted on 7 April 2026 and deal with his alleged lack of authority to enter into the lease agreement on behalf of the Applicant, he averred that he is empowered by the mandate signed on behalf of the Applicant on 14 May 2025 and the minutes of the board meeting held on 25 June 2025 to enter into a lease agreement with Fulela and to institute the current proceedings against the Respondent. He thereafter reasoned that he did not require any resolution if he is armed with the mandate signed on 14 May 2025 and the minutes of the board meeting of 25 June 2025.

[13] These averments are incorrect. Clause 1.3 of the mandate only grants the agent the right to negotiate a lease agreement and any amendments and extensions thereof with the tenant on behalf of the landlord (which is the Applicant), and subject to the landlord's final approval. Clause 1.3 never gave the agent the right to enter into any lease agreements on behalf of the landlord. Even if it did, this right was always made subject to the landlord's

approval, which, in the context of the filed papers, was neither sought nor granted.

[14] Moreover, the agent's right to institute legal proceedings on behalf of the Applicant regarding leased properties owned by the Applicant, was also subject to the Applicant giving formal written approval thereof. The Applicant sought to give such formal written approval in the form of the resolution dated 7 April 2026. However, that resolution was defective in that it was adopted without complying with the terms of section 74(1) of the Act as Faiek never received a notice from the Applicant as contemplated in that section.

[15] This Court therefore found that the agent neither had the necessary authority to enter into a lease agreement with Fulela nor the necessary authority to bring these eviction proceedings against the Respondent. That having been found, the application for the eviction of the Respondent from the leased premises was bound to fail.

[16] Regarding the issue of estoppel, this Court has neither been furnished with any evidence that Faiek knew of other lease agreements entered into by the agent on behalf of the Applicant despite having no authority to do so, nor that Faiek knew that the agent had previously instituted legal proceedings on behalf of the Applicant without formal written authority to do so and, despite this knowledge, conducted himself as if he acquiesced to the agent's unauthorised conduct. These averments, which were made to fashion a case based on estoppel, are unsubstantiated. Therefore, the Applicant's reliance on estoppel was unsustainable.

Costs

[17] Regarding costs, it is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. The Respondent has succeeded in its defence and is therefore entitled to an award of costs on a party and party scale.

[18] In terms of Rule 67A of the Uniform Rules of Court, counsel's fees in the context of party and party costs in the High Court are awarded on Scales A, B, and C as the case may be, depending on a number of factors set out in Rule 67A(3) to be considered when setting out a scale of costs. Such factors include the importance, value, and complexity of the matter, and any other relevant factors. Given the importance of the matter and the fact that this was an urgent application, I decided to award counsel's fees on Scale B.

TJ MGENGWANA

Acting Judge of the High Court

APPEARANCES:

For the Applicant : Mr. M. Holland

Instructed by : Parkar Attorneys Inc.

Mr. N. Parkar

For the Respondent: Mr. G. Potgieter

Instructed by : O'Reilly Law Inc.

Mr. J. O'Reilly