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**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC  
OF SOUTH AFRICA**

**CASE NUMBER:** CT02616ADJ/2026

**In the matter between:**

**NKOSANA NICODEMUS NYAWUZA**

**APPLICANT**

**and**

**Hendrik Petrus Van Zyl**

**RESPONDENT**

**Tribunal Panel:** D Terblanche

**Date of ruling:** 27 May 2026

**RULING – DECISION AND REASONS**

**THE PARTIES**

1. The Applicant is Mr Nkosana Nicodemus Nyawuza (ID No: 9[...]), an adult male residing at 5[...] R[...] Street, Sasolburg. He is a director and shareholder of Outbound Arms Mossel Bay Pty (Ltd) (registration number 2015/257281/07)
2. The Respondent is Mr Hendrik Petrus Van Zyl, who was purportedly appointed as a director of the same company.

**THE APPLICATION**

3. This is an application brought in terms of section 71(8) of the Companies Act 71 of 2008 (the “Act”). The Applicant seeks the removal of the Respondent as a director of Outbound Arms Mossel Bay Pty (Ltd), or alternatively an order declaring the Respondent’s appointment null and void, and directing the Companies and Intellectual Property Commission (“CIPC”) to amend its records accordingly.

## **BACKGROUND TO THE DISPUTE**

4. During early November 2025, the Applicant was introduced to a Mr Jonathan Stephenson through a mutual acquaintance, Mr Eddie Groenewald. Mr Stephenson expressed interest in establishing a firearm dealership in Mossel Bay and proposed a business collaboration with the Applicant.
5. The parties reached a verbal understanding that the Applicant would provide his identity document and company registration documents to Mr Stephenson’s legal representatives for the purpose of preparing amendments. Critically, this was conditional upon a formal written agreement first being drafted and signed. It was expressly agreed that no binding arrangement or changes to the company’s structure would be made until a written contract had been concluded.

### **The Unauthorised Appointment of the Respondent**

6. On 21 November 2025, Mr Stephenson contacted the Applicant and requested a One Time Pin (“OTP”) that had been sent to the Applicant by the CIPC via email and SMS. The Applicant provided the OTP in the genuine belief that it related only to preparatory administrative work, and that no final changes would be effected without his further consent and signature.
7. Shortly thereafter, the Applicant discovered that the Respondent had been added as a director of Outbound Arms Mossel Bay Pty (Ltd). The Applicant had not signed any board resolution, shareholders’ resolution, mandate, consent to act as director, or any other document authorising this appointment. He was never consulted about the appointment, either before or after the fact.

8. A CIPC certificate dated 20 November 2025 confirms that a COR39 (Notice of change of company directors) was received on that date, giving effect to the appointment of the Respondent as a new director. The same filing also recorded changes to the Applicant's directorship details and the resignation of another director, Mr Enoch Nyawuza.

### **Subsequent Events and Attempts to Resolve the Matter**

9. On 8 December 2025, Mr Groenewald informed the Applicant that he and Mr Stephenson were in dispute and that criminal charges had been laid against Mr Stephenson under case number CAS 171/1/12026, alleging fraudulent conduct and a history of dishonesty. Mr Groenewald advised the Applicant to discontinue all business dealings with Mr Stephenson.
10. The Applicant thereafter attempted to contact Mr Stephenson to terminate any potential agreement and to regularise the company's affairs, specifically by securing the removal of the Respondent as director. Mr Stephenson refused to cooperate.
11. The Applicant believes, on reasonable grounds, that:
  - 11.1 The Respondent is not an independent or bona fide director;
  - 11.2 He is acting merely as a proxy or representative of Mr Stephenson;
  - 11.3 He does not participate in the management, governance, or decision-making processes of the company;
  - 11.4 His continued presence as a director exposes the company and the Applicant to financial, legal, and reputational risks, including the possibility that the Respondent and/or Mr Stephenson may incur liabilities or enter into agreements in the company's name without knowledge or consent.

### **THE APPLICATION TO THE COMPANIES TRIBUNAL**

- 12 On or about 24 February 2026, the Applicant lodged an application with the Companies Tribunal seeking the removal of the Respondent as a director. The application was

brought under section 71(8) of the Act because the company has fewer than three directors and therefore cannot remove a director in terms of section 71(3). The application was assigned case number CT02616ADJ/2026.

13 The grounds for removal set out in the application are –

13.1 The appointment was irregular, unauthorised, and not compliant with the Act or proper governance procedures;

13.2 The appointment was induced by misrepresentation and made without the Applicant's informed consent;

13.3 The Respondent has not demonstrated the independence, good faith, or fiduciary responsibility expected of a director;

13.4 His continued directorship undermines transparency, accountability, and sound corporate governance, and creates a real and ongoing risk to the company's financial and legal stability.

#### **SERVICE AND DEFAULT BY THE RESPONDENT**

14 In compliance with the Tribunal's directives, the Applicant caused the complete set of application documents to be served upon the Respondent. Service was effected physically through the Sheriff at the Respondent's chosen or known address. In addition, electronic service was also made via email.

15 The Applicant submitted proof of both methods of service to the Tribunal. The Tribunal accordingly proceeded on the basis that service was adequately effected.

16 Despite proper service, the Respondent has failed to file any answering affidavit, notice to oppose, or any other response within the period prescribed in Regulation 143 of the Companies Regulations, 2011. The Respondent is therefore in default.

#### **THE RELIEF SOUGHT**

17 The Applicant applies for a default order in terms of Regulation 153 of the Companies Regulations, 2011, requesting that the Tribunal:

17.1 Remove the Respondent as a director of Outbound Arms Mossel Bay Pty (Ltd);  
or, alternatively,

17.2 Declare his appointment null and void; and

17.3 Direct the CIPC to amend its records accordingly.

## **ASSESSMENT AND EVALUATION – LEGAL FRAMEWORK**

### **Jurisdiction of the Tribunal under section 71(8)**

18 Section 71(8)(b) of the Act provides that if a company has fewer than three directors, any director or shareholder of the company may apply to the Companies Tribunal to make a determination regarding the removal of a director. The Applicant has stated under oath that the company has fewer than three directors. Accordingly, the Tribunal has jurisdiction to hear the application, subject to the substantive grounds for removal.

19 The Tribunal may remove a director only on the grounds set out in section 9.

71(3) of the Act, namely:

(a) that the director is ineligible or disqualified in terms of section 69 (other than on the grounds contemplated in section 69(8)(a)); or

(b) that the director is 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

(c) that the director has neglected or been derelict in the performance of the functions of director.

20 The Applicant has advanced two main bases for the removal of the Respondent: (i) invalid appointment (irregular and without consent), and (ii) unfitness for directorship (failure to demonstrate independence, good faith, or fiduciary responsibility, amounting to neglect or dereliction). The Tribunal deals with each in turn.

## **The ground of neglect or dereliction of duties**

- 21 The Applicant contends that the Respondent has failed to participate in the management, governance, or decision-making processes of the company. The Tribunal has previously given guidance on what constitutes “neglect” or “derelict” conduct.
- 22 In **Spineco Medical International (Pty) Ltd and Another v Janice Lilian Webb** (CT021NOV2014) at paras 55 and 57, the Tribunal held:

*“My understanding of the aforesaid is that ‘derelict’ means either deserting or abandoning. In fact it has similar meaning to failure or omission to do something (and dereliction being verwaarlosing or nalatigheid in Afrikaans). However, in my view, derelict has an element of being deliberate or purposeful or intentional about it, whereas neglect is more an omission than an act.”*

*And*

*“Therefore, understanding the above and applying all that to 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.”*

- 23 In **Mtshali v Lefutso (CT00482ADJ2020) [2020] COMPTRI 9 (17 December 2020) at para [13]**, the Tribunal stated:

*“Therefore, it does not suffice to merely state that the one director is looking for the other. The neglect or derelict in the performance of the functions of a director has to be established from specific lapses in the conduct of a director, as envisaged from the provisions of section 71(3)(b). Otherwise, even a purported value judgment call or sweeping statement by the one director that the other*

*director is hindering the conduct of the business of the company would not suffice.”*

24 Similarly, in **Bussack v Davies (CT007FEB2018) [2019] COMPTRI 66 (11 January 2019)**, the Tribunal illustrated its rigorous approach to evidence on neglect and dereliction claims, requiring specific factual allegations rather than vague generalities. The Tribunal granted the application only on the basis of the concrete evidence placed before it. At para [22], the Tribunal stated:

*“The process for the removal of a director requires reasonableness and sufficiency in the allegations made by a director, and affords the impugned director the right to be heard before a determination is made.”* (referencing *Spineco Medical International (Pty) Ltd And Another v Webb, Janice Lilian*).

25 Applying these principles to the present case, the Tribunal finds that the Applicant has not provided specific factual examples of any lapse or omission by the Respondent. The Applicant states that the Respondent “does not participate” and that his presence “exposes the company to risks”, but no concrete instances of neglect or dereliction are identified. The Applicant has not alleged, for example, that the Respondent failed to attend a particular board meeting, refused to sign necessary resolutions, or acted in a manner contrary to the company’s interests. Generalised assertions of non-participation are insufficient to establish neglect or dereliction under section 71(3)(c). Accordingly, the application cannot succeed on this ground.

### **The ground of ineligibility or disqualification**

26 The Applicant argues that the Respondent’s appointment was invalid because it was irregular, unauthorised, and induced by misrepresentation, and that the Respondent was never validly appointed. The question arises whether such circumstances render the Respondent “ineligible or disqualified” within the meaning of section 71(3)(a)(i) read with section 69 of the Act.

27 The Tribunal has previously considered analogous facts. In **Siwisa and Another**

**v Bhimma and Another (CT01094ADJ2022) [2022] COMPTRI 57 (29 August 2022)**, the applicant alleged that the respondent had “inserted” himself into the company’s records without consent or permission, and that the update was fraudulent. The Tribunal held at para [9]:

*“Further, the Tribunal does not have jurisdiction to order the removal of the first respondent, in circumstances where the first respondent fraudulently, without authorisation, consent or a resolution of the Board of the second applicant. The jurisdiction of the Tribunal for the removal of a director under circumstances as stipulated in section 71(8) of the Act. The applicant is advised to bring this matter to the attention of the second respondent for further investigation and to possibly rectify the ‘error’, as alleged by the first respondent, as soon as possible after receipt of this order.”*

The Tribunal ordered that the application be refused on the basis that the Tribunal did not have the requisite jurisdiction.

28 This Tribunal is bound by the same statutory limitations. Section 71(8) does not clothe the Tribunal with authority to remove a director solely on the ground that the appointment was fraudulent or without consent. The Tribunal’s power to remove is confined to the three grounds in section 71(3). Ineligibility under section 69 refers to specific disqualifications (e.g., being an unrehabilitated insolvent, being removed from an office of trust, etc.), not to the irregularity of the appointment process itself. The proper forum to challenge the validity of an appointment on the basis of fraud or lack of consent is the High Court, which has inherent jurisdiction to declare an appointment null and void.

29 This conclusion is reinforced by **Kooldip v Singh and Another (CT01059ADJ2022) [2022] COMPTRI 84 (27 September 2022)**, where the Tribunal held that “section 71(8) does not clothe the Tribunal with authority to order Respondents to remove Applicant as a director” in circumstances beyond its statutory mandate. The Tribunal is a creature of statute and cannot exercise powers that have not been expressly conferred upon it.

30 The Applicant seeks, in the alternative, an order declaring the Respondent's appointment null and void. The Tribunal has no power to grant such declaratory relief. A declaration of invalidity of a director's appointment falls within the jurisdiction of the High Court, not the Companies Tribunal. The Applicant's remedy, if any, lies elsewhere.

### **The discrepancy regarding the company name**

31 The Tribunal observes that the COR39 Certificate submitted by the Applicant reflects the enterprise name as **NSIMBI SECURITY SOLUTIONS (PTY) LTD**, whereas the application is brought in the name of Outbound Arms Mossel Bay Pty (Ltd) (registration number 2015/257281/07). The registration number is the same, but the name differs.

32 The directors listed are NKOSANA NICODEMUS NYAWUZA (appointed 27 July 2015) and HENDRIK PETRUS VAN ZYL (appointed 20 November 2025).

33 This discrepancy raises a fundamental issue: it is unclear whether the entity in respect of which the Respondent was appointed as director is the same legal person as the company on whose behalf the Applicant purports to act. The Applicant has not explained this discrepancy. The Tribunal cannot grant relief in respect of a company when the official CIPC record shows a different name. This, in itself, is a further ground for refusing the application.

### **The prayer to direct the CIPC**

34 The Applicant requests the Tribunal to direct the CIPC to amend its records accordingly. The CIPC is not a party to these proceedings and has not been served with the application. The Tribunal is not empowered to make any order against a non-party. That prayer is therefore incompetent.

## **FINDINGS**

- 35 The Applicant has failed to establish any of the statutory grounds for removal of a director under section 71(3) of the Act. The allegations of neglect or dereliction are unsupported by specific factual evidence, as required by *Mtshali v Lefutso* and *Bussack v Davies*. The allegation that the appointment was irregular and without consent does not fall within the Tribunal's jurisdiction, as confirmed in *Siwisa v Bhimma*. The discrepancy in the company name on the CIPC certificate is unexplained and undermines the application. Finally, the Tribunal cannot grant an order against the CIPC as a non-party.
- 36 The application is therefore dismissed. The Applicant may pursue any appropriate remedy before the High Court, including seeking a declaration that the Respondent's appointment is null and void, and may also consider laying a criminal complaint regarding the alleged fraudulent use of the OTP.

## **ORDER**

37 The Companies Tribunal hereby orders that:

37.1 The application brought by Mr Nkosana Nicodemus Nyawuza under case number CT02616ADJ/2026 is refused.

37.2 There is no order as to costs.

**Dated at Johannesburg on 27<sup>th</sup> day of May 2026.**

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[Signature]

**D Terblanche**

**Member of the Companies Tribunal**