REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number:2020-24661

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
[redacted]	
SIGNATURE	DATE

In the matter between:

RYNHART KRUGER N.O	First Applicant
THOMAS JOHN MEYER	Second Applicant
MERISE MONTEZ VAN WYK N.O	Third Applicant

and

ELECTRO WINNING PRODUCTS (PTY) LTD	First Respondent
JOHN TURNER & SONS ENGINEERING SA (PTY)LTD	Second Respondent
JOHN KENNETH TURNER	Third Respondent
COLIN MICHAEL DE VRIES	Fourth Respondent
THE MASTER OF THE HIGH COURT	Fifth Respondent

JUDGMENT

Mfenyana J:

[1] In 2020, the first and second applicants instituted proceedings against the respondents for a series of relief pertaining, *inter alia*, to payment of certain amounts by the first and second respondents. The applicants further sought an order interdicting the first respondent from paying any remuneration to the third and fourth respondents (the respondents), alternatively, until the first respondent had been authorised by a special resolution of its shareholders.

[2] The applicants further sought an order declaring the third and fourth respondents delinquent directors, as contemplated in section 162(5) of the Companies Act (the Act)[1] alternatively, that they be placed under probation in terms of section 162(7) of the Act. They also sought an order declaring a resolution of the first respondent, passed in May 2019, removing the second applicant as a director of the first respondent, void.

[3] The second (JT & Sons), third (Turner Jr.), and fourth (de Vries) respondents oppose the application. The first respondent has chosen to abide by the court's decision, while the fifth respondent did not participate in these proceedings.

[1] Act 71 of 2008.

[4] The dispute between the parties relates to two family-run companies, namely, Electro Winning Products (Pty) Ltd (EWP) and John Turner and Sons Engineering SA (Pty) Ltd (JT & Sons). Turner Jr. and de Vries are directors of EWP. Turner Jr. is also the sole director of JT & Sons. Jacquie Meyer was a 10% shareholder in EWP and a 30% in JT & Sons. EWP was established by the second applicant (Meyer) and John Thomas Turner (Turner Sr.), Turner Jr.'s father, in 2005, whereas JT & Sons was established by Turner Sr. in 1980. Turner Sr. was Meyer's father-in-law and both Jacquie Meyer and Turner Jr.'s father. Jacquie Meyer and Turner Jr. were later appointed as directors alongside Turner Sr. They were also issued shares in JT & Sons.

[5] Jacquie Meyer and Turner Sr. passed away on 26 March 2019 and 3 August 2019, respectively.

[6] In opposing the application, the respondent, simultaneously with their answering affidavit, filed a counterapplication for the following orders: (1) that the second applicant (Meyer) be ordered to transfer the shares he holds in the first respondent (EWP) and the second respondent (J T & Sons) to the directors alternatively, the shareholders of those companies, (2) that Meyer be ordered to pay EWP, JT & Sons, Turner Jr. and de Vries, collectively an amount of R13 220 475.49;3. (3) that the deceased estate of Jacquie Meyer (administered by the first applicant) is ordered to pay EWP, JT & Sons, Turner Jr. and De Villiers an amount of R300 000.00

[7] In the answering affidavit, the respondents raised two points in *limine*. The first is to the effect that the first and second applicants have no locus standi to institute the proceedings on behalf of the estate of the late Jacquie Meyer. The second is that the applicants have not made out a case for the relief they seek, and thus, the matter should be referred for oral evidence.

[8] In August 2023, the applicants filed an amended notice of motion in terms of which the third applicant was joined to the proceedings. The third applicant is

the executor of the estate of the late Jacquie Meyer, by virtue of letters of executorship issued by the Master on 30 July 2019.

[9] Prior to the hearing of the matter, the respondents made various concessions which culminated in an order, granted by agreement between the parties. Further, the applicants elected not to pursue some aspects of the relief initially sought. The following order was granted by agreement between the parties:

> 9.1 "The first respondent is interdicted from paying any remuneration to the third and fourth respondents.
>
> 9.2 The first respondent is interdicted from paying any distribution to its shareholders, other than in accordance with their proportionate shareholding in the first respondent and in compliance with the Companies Act 2008 (Companies Act).
>
> 9.3 The first and third applicants are granted leave to bring proceedings in the name and on behalf of the first respondent against the third and fourth respondents or any related or inter-related person to the third and fourth respondents (which includes without limitation, any trusts, companies or close corporations affiliated with the third and fourth respondents) from May 2019 without making a demand as contemplated in section 165(2) of the Companies Act without affording the first respondent time to respond to any demand in accordance with section 165(4) of the Companies Act.
>
> 9.4 The shareholders' resolution of the first respondent, purportedly passed in May 2019, removing the second applicant as a director of the first respondent, is declared void.
>
> 9.5 Costs shall stand over pending the final determination of matters not conceded."

[10] Save for the issue of referral to oral evidence, to which I shall revert, none of the points in *limine* were canvassed by the respondents at the hearing of the matter. In particular, the issue of the first and second applicants' *locus standi* was obviated by the joinder of the third applicant, the executor of the estate of the late Jacquie Meyer. Regarding the second applicant, the applicants, in their replying

affidavits, assert that as a 50% owner in the joint estate at the time of Jacquie Meyer's death, by virtue of his marriage in community of property to the deceased, Meyer continues to have an interest and insofar as the assets and claims against the former joint estate are concerned.

[11] The only remaining parts of the relief pertain to the declaration of delinquency against Turner Jr. and de Vries (the respondents), alternatively, that they be placed on probation as contemplated in section 162 of the Companies Act.

[12] The applicants contend that the respondents have looted both EWP and JT & Sons since May 2019, paying themselves exorbitant remuneration without the approval of the shareholders, in contravention of the provisions of the Companies Act. In addition, the applicants aver that the respondents have not been transparent about the management of EWP and JT & Sons and have effectively cut the shareholders off.

[13] The applicants contend further that EWP has not held a shareholders' meeting since May 2019, and as such, no special resolution was passed to approve the payments the respondents made to themselves. Moreover, no resolution was passed authorising them to pay themselves the exorbitant remuneration they have been receiving since May 2019, all in contravention of sections 66(8) and (9) of the Act. The same goes for JT & Sons, they add.

[14] Regarding the requirements of sections 20(4) and 163(1)(c) of the Companies Act, the applicants note that as Jacquie Meyer is a shareholder in both EWP and JT & Sons,(and her estate is a beneficiary thereof) de Vries's conduct in respect of EWP and Turner Jr.'s conduct in respect of JT& Sons amount to them exercising their powers as directors, in a manner that is oppressive and unfairly prejudicial and disregards the interests of Jacquie Meyer's estate as a beneficiary of Jacquie Meyer's shares in both companies.

[15] The applicants aver that the court is enjoined in terms of section 163(2)(a) of the Act to make an interim or final order, including an order restraining the conduct complained of. Thus, Jacquie Meyer's estate is entitled to an order restraining the respondents from unlawfully paying themselves money from EWP and JT & Sons until the shareholders of those companies have issued a resolution approving the payments.

[16] The applicants argue that in terms of section 77(3)(a) and (c) of the Act, 'a director of a company is liable for any loss, damages or costs sustained by the company as a direct consequence of the director having acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company despite knowing that the director lacked the authority to do so'. EWP and JT & Sons, therefore, have claims against Turner Jr. and de Vries for repayment of the amounts they unlawfully paid to themselves, they contend.

[17] Because Jacquie Meyer's estate is a beneficiary in the shares held by Jacquie Meyer in both EWP and JT & Sons, it is entitled to issue a demand in accordance with section 165(2) of the Act to demand that EWP and JT & Sons commence legal proceedings against both Turner Jr. and de Vries to demand payment of the amounts unlawfully paid to them.

[18] In invoking the provisions of section 165(6) of the Act, the applicants contend that it would be futile to issue a demand against EWP and JT & Sons for de Vries and Turner Jr. to sue themselves. They argue that the circumstances of the matter warrant that the applicants be granted leave to bring the proceedings in the name of the companies without making a demand. They further contend that both EWP and JT & Sons are suffering significant losses each month, which may not be fully recovered from Turner Jr. and de Vries. Moreover, Jacquie Meyer's estate is substantially prejudiced as it is not receiving any benefit from her shareholding in EWP and JT & Sons, which benefits are paid to Turner Jr. and de Vries, who are in control of those companies, and will not act against their own

interests. To protect its interests, and the interests of EWP and JT & Sons, Jacquie Meyer’s estate, through its appointed representative, in good faith, is entitled to take the necessary steps to protect its rights, obtain what is due to it and commence proceedings against the respondents.

[19] Arguing for Turner Jr. and de Vries to be declared delinquent directors, the applicants aver that their conduct is prohibited in terms of section 163, and in those circumstances, section 163(2) empowers the court to appoint directors in the place of or in addition to any directors in office or declare any person delinquent or under probation as contemplated in section 162. Notably, the applicants aver that the conduct of the respondents satisfies the prohibited conduct contemplated in section 162(5) read with section 77(3)(c) of the Act. In the alternative, and if this court is not inclined to declare Turner Jr. and de Vries delinquent directors, the applicants aver that they should be placed on probation as their conduct falls within the prohibited conduct contemplated in section 162(7) of the Act.

[20] The applicants further aver that the relief they seek is aimed at correcting the wrongs committed by the respondents and reclaiming the financial benefits they unlawfully extracted from EWP and JT & Sons.

[21] In the answering affidavit, the respondents deny any wrongdoing. In particular, they deny that they unlawfully paid themselves any amounts from EWP and JT & Sons. They aver that EWP was factually insolvent. In their heads of argument filed in November 2023, the applicants opted not to proceed with the relief that EWP and JT& Sons should pay funds into the trust account of van Wyk Auditors and all relief relating to placing EWP and JT & Sons under business rescue or liquidation. Given that JT & Sons was subsequently liquidated, the relief relating to an interdict against JT & Sons and the derivative action against it became moot.

[22] Subsequent to the agreement reached by the parties, JT & Sons did not play any meaningful role in the proceedings. When the matter was heard, I was

advised by Mr Dorning, on behalf of the applicants that the attorney acting on behalf of the liquidators of JT & Sons had advised him that they would be sending counsel to court on a watching brief and would not take part in the proceedings.

[23] On behalf of the third and fourth respondents, Mr Culhane submitted that in light of the disputes of fact, the court should exercise its discretion and place Turner Jr. and de Vries on probation, as opposed to declaring them delinquent. He argued that declaring them delinquent directors would amount to the court shutting the door in their faces in circumstances where there were disputes of fact.

[24] As regards the counter-application filed by the respondents, this relief has been rendered moot by the concessions made by the respondents, including Meyer's reinstatement as a director.

[25] It is essential to, first deal with the issue relating to the referral of the matter for oral evidence and the condonation application. The application by the respondents in this regard was delivered two days before the hearing of the matter. Incorporated in that application is an application for condonation for the short service of the same application. The deponent to the affidavit in support of the condonation application, Turner Jr., asserts that the reason for the short service of the application is that he and de Vries were not able to gather sufficient funds to secure the services of counsel, and ultimately, on 22 August 2025, implored their attorney of record to appear on their behalf despite being out of time.

[26] Notably, Turner Jr. further avers that although he recalls signing the founding affidavit in respect of an application for referral to oral evidence in 2021, he was not aware that the application was not filed until he was informed by their attorney on 22 August 2025. He states that any prejudice which may be suffered by any of the parties may be compensated by an appropriate costs order.

[27] Needless to say, the applicants did not file any papers opposing the application, having received the application a mere two days before the hearing of

the matter. The notice of motion itself provides no timeframes for the applicants or any party who wishes to oppose the application to file their papers.

[28] An applicant for condonation seeks an indulgence from the court. Such applicant must set out fully and comprehensively the reasons for the delay in seeking condonation.[2] From this, it can be ascertained that condonation will not be granted for the mere asking.[3]

[29] The respondents' explanation sheds no light on what steps they took in the four years following the signing of the founding affidavit to advance the intended application for referral to oral evidence. Having failed to do so, the respondents cannot seek to benefit from their shortcomings by filing this application, also out of time. The facile explanation by the respondents falls short of the requirements of rule 27. There is simply no good cause shown for this court to exercise its discretion in favour of the respondents.

[30] I find it absurd that the respondents contend that any prejudice caused to any other party may be remedied by an award of costs against them. The glaring prejudice is that the applicants and any other party's right to be heard has been obliterated by the extreme lateness of the application, with not so much as an opportunity to file opposing papers if they intended to. No amount of costs can compensate for such prejudice. The application for condonation has no merit whatsoever and falls to be dismissed.

[31] Having dismissed the application for condonation, the application for referral to oral evidence is not properly before this court and stands to be struck off.

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[2] *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited* 2017(6) SA 90 (SCA).
[3] *Uitenhage Transitional Local Council v South African Revenue Service 2004*(1) SA 292 (SCA).

[32] I have already dealt with the relevant provisions of section 162. The question to be determined by this court is whether Turner Jr. and de Vries should be declared delinquent directors or placed under probation.

[33] The applicants rely on *Lewis Group Ltd v Woollam and Others*[4], where the court cited with approval the judgment of the Supreme Court of Appeal in *Gihwala and Others v Grancy Property Ltd and Others*[5], where Wallis J observed that gross abuse of the position of director is not a 'trivial misdemeanour or an unfortunate fall from grace'. The learned judge further noted that gross abuse of a director's position involves serious misconduct on the part of a director and 'directors who show themselves unworthy of that trust are declared delinquent and excluded from the office of director.'[6]

[34] Section 162 is therefore aimed at promoting acceptable standards of corporate governance and protecting the shareholders, investors and the public from such directors. The courts have been consistent in stating that only gross abuses of the position of director qualify in terms of the provision.

[35] In addition, section 76(3) outlines the core duties of directors requiring them to act in good faith, for a proper purpose, in the interests of the company, and with the care, skill and diligence reasonably expected of someone in their position, while also ensuring they exercise their powers within authorised limits in line with their duty of accountability. As such, directors must act honestly, in good faith and for legitimate company objectives and not for personal gain. Their duty is to the company and not to themselves, and thus, they have a duty to benefit the collective interests of the shareholders.

[36] Applied to the facts of the present case, the applicants state that Turner Jr. and de Vries:

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[4] 2017(2)SA 547 (WCC)
[5] 2017(3) SA 337 (SCA); [2016] 2 All SA 649; [2016] ZASCA 35.
[6] Ibid, para 144.

36.1 Removed Meyer as a director of EWP without following any lawful process as contemplated in section 71(3), which requires a board resolution and that the affected director must be given notice and an opportunity to respond. The respondents have conceded this. Given the manner in which Meyer was removed as a director, the reasons concocted therefor, as well as the belated concession by the respondents, it is clear that Meyer's removal was not only ill-fated but also a stratagem hatched by the respondents with the sole purpose of running EWP for their sole benefit and looting its assets to the exclusion of its shareholders.

36.2 They paid themselves exorbitant amounts, which they were not entitled to in accordance with the provisions of section 66. In terms of section 66(9), remuneration may only be paid in accordance with a special resolution approved by the shareholders. Ordinarily, payments to directors must be preceded by agreement with the shareholders. Although Turner Jr. and de Vries' defence is a bare denial, they have conceded that no further payments should be made to them by EWP. The evidence provided by the applicants in the form of the bank statements of EWP reveals that, despite there not being a shareholder's resolution or any justification to do so, between 6 December 2019 and 14 March 2020, Turner Jr. and de Vries made the following payments to themselves:

a. R4 684 959.91 to Turner Jr.

b. R2 097 500.00 to de Vries

c. R7 729 236.24 to Christo Maritz

36.3 No shareholders' meetings were convened since 2019.

[37] In *Smuts v Kromelboog Conservation Services (Pty) Ltd and Another*[7], the SCA noted that once a court has found that a person has committed gross misconduct as envisaged in *Gihwala*, such person must be declared a delinquent director. The court has no discretion in this regard.[8]

[38] As I have stated, the respondents offered a bare denial in defence of their errant conduct, without much else, and at the same time allege that a dispute of facts exists. On the strength of *Plascon Evans*[9], the respondents' version is untenable and should be rejected. Their actions amount to gross misconduct and were carried out over an extended period in total disregard of their fiduciary duties and the harm they inflicted on EWP and JT & Sons, including the shareholders.

[39] I was invited to make a finding of perjury against the respondents, Mr Brian Wilken (Wilken), the respondents' erstwhile attorney and Mr Christo Maritz (Maritz), a chartered accountant and auditor. This arises from statements made by Turner Jr. in the answering affidavit, confirmed by de Vries, Maritz and Wilken, which the applicants aver are untrue. Perjury is a criminal offence that requires investigation and the presentation of proper evidence before the court can make a determination. That being so, I am of the view that this issue is best left to the relevant authorities for investigation.

Costs

[40] The applicants contend that the conduct of the respondents alone is sufficient to warrant a punitive cost order on attorney and client scale against the respondents. They aver that this application could have been obviated, however the respondents opted to file a meritless counter-application, and in addition, filed their heads of argument out of time. I agree. While costs are a matter squarely within the province of the court, the manner in which a litigant conducts themselves

[7] (511/2023) 2024 ZASCA 156 (14 November 2024).
[8] *Ibid* para 175.
[9] *Plascon-Evans Paints (TVL) v Van Riebeck Paints (Pty) Ltd*(53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; (21 May 1984).

in a matter is of particular relevance. The respondents' opposition of the application and their conduct in general is nothing short of vexatious and is deserving of sanctioning by this court.

Order

[41] In the result I make the following order:

a. The third and fourth respondents are declared delinquent directors as contemplated in section 162(5) of the Companies Act 71 of 2008.
b. The counter-application is dismissed with costs.
c. The third and fourth respondents shall pay the costs of the application, inclusive of the reserved costs of 1 September 2025.

[redacted]

S Mfenyana
Judge of the High Court

Date of hearing: 01 September 2025

Date of judgment: 21 January 2026

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto Caselines. The date of delivery of the judgment is deemed to be 21 January 2026.

Appearances:

For the applicants:
Counsel: J Dorning
instructed by MJD Law Inc.

For the respondents:
Counsel: GA Culhane
Instructed by Gerard Culhane Attorneys