



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02569ADJ/2026

MELISSA KAY BOONZAAIER-DAVIDS

Applicant

and

MIKHAILA LEIGH GORDON

Respondent

Presiding Member: JUDGE DENNIS DAVIS

Date of Decision: 29 June 2026

DECISION (Reasons and an Order)

INTRODUCTION

1. This is an application for the removal of the respondent as a director of Mella Environmental Consulting (Pty) Ltd brought in terms of s 71 (8) (b) read with s 71 (3) (b) of the Companies Act 71 of 2008 (the Act). Section 71 (3) provides as follows:

‘(3) A company, or any other person entitled to do so, may apply to the Companies Tribunal for an order removing a director, on the grounds that the director –

(a) is –

- (i) ineligible or disqualified in terms of s 69; or
- (ii) incapacitated to the extent of being unable to perform the functions of a director; or

(b) has neglected, or been derelict in, the performance of the functions of director.'

2. Given that in this case there appear to be two directors and two shareholders, it is dispute that falls within the jurisdiction of this Tribunal pursuant to s 71 (8) (b) of the Act.
3. The basis by which the applicant has sought to justify the application is set out in her founding affidavit. The applicant testifies that the company was incorporated with two directors during June 2025, being both the applicant and the respondent. Although no shares have been issued to date and no share register exists and no shareholder agreement has been concluded between the parties, according to the applicant she does not dispute that there is a company in which both parties hold 50% of the shareholding respectively.
4. The affidavit highlights a series of disagreements between the parties. Thus there was a disagreement regarding a proposed hourly rate reflected in a project budget that formed part of bid proposal. There are averments that the respondent unilaterally contacted 'members of my professional network stating that she was stepping away from the project and the company due to alleged governance and procedural failures'. The affidavit avers that the respondents refused to resign as a director, while simultaneously seeking the deregistration of the company despite the express objection of the applicant.
5. In short, the case brought is summarized in the following passage:

'Her (the respondent) continued presence as a director renders the Company unable to operate effectively and exposes it to ongoing operation and reputational risk.'
6. In respondent's answering affidavit there are averments of clear disputes between the parties as to their running of the company. As she states:

'I have been repeatedly subjected to the applicant's workplace sabotage, micromanagement and exclusory conduct.'
7. As a result 'the applicant's conduct had created a hostile business relationship and an irreparable breakdown of trust.' The averment that the respondent has sought to undermine the activities of the company subject to a detailed denial.

EVALUATION

8. Reading the two affidavits there is the difficulty that the onus on the papers rests with the applicant to establish on the balance of probabilities that the conduct of the respondent falls within the scope of the s 71 (3) of the Act. Furthermore given the affidavit evidence provided, (as this is an application) the *Plascon-Evans*, (see *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 620 (A)) applies. Accordingly, apart from the common cause facts, I am obliged to decide the matter on the version provided by the respondent.
9. Taken together the evidence shows that the applicant has not provided evidence on the probabilities to find that the respondent has neglected or had been derelict in the performance of her functions as a director. The core of the applicant's argument and the answer thereto is that there is a deadlock between the parties which has clearly promoted this application and that it appears to be irresolvable.
10. That itself does not permit this Tribunal to apply s 71 (3) and grant the application. As I indicated at the hearing the remedy provided under the Act for such a deadlock is a winding up on just and equitable grounds in terms of s 81 of the Act. That issue is not and cannot be before this Tribunal.
11. Accordingly, given the lack of evidence to sustain an application under s 71 (3) of the Act the application is dismissed. There is no order as to costs.

JUDGE DENNIS DAVIS
MEMBER OF THE COMPANIES TRIBUNAL