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

**CASE NO:** CT02491ADJ/2025

**In the matter between:**

ANDRE ROHLANDT

APPLICANT

And

MOYNENE BOUCHER

RESPONDENT

**Tribunal Panel:**

K Dlepu - Chairperson

D Terblanche – Tribunal Member

N Cawe – Tribunal Member

**Date of decision:** 1 July 2026

**DECISION AND REASONS – POINTS *IN LIMINE***

**1. THE PARTIES**

1.1 The Applicant, André Rohlandt, is a fifty percent (50%) shareholder and a director of Vape Queen (Pty) Ltd (Registration No. 2018/593516/07) ("the Company"). He brings this application in his capacity as a shareholder and director of the Company.

- 1.2 The Respondent, Moynene Boucher (de Jager) ID Number: 8[...], holds the remaining fifty percent (50%) shareholding and is the other director of the Company. She opposes the application in her personal capacity.
- 1.3 The parties were previously in a romantic relationship for approximately twelve years. The relationship ended during late 2022 or early 2023. The breakdown of their personal relationship forms the backdrop to the present commercial dispute.
- 1.4 The Company is a private company duly incorporated in terms of the Companies Act 71 of 2008, with registration number 2018/593516/07. It operates retail vape stores. The Company is not cited as a party to these proceedings, although the relief sought directly affects its assets, governance, and operations.

## **2. THE APPLICATION AND RELIEF SOUGHT**

- 2.1 The Applicant launched the present application before the Companies Tribunal on or about 26 November 2025, seeking relief under section 163 of the Companies Act 71 of 2008.
- 2.2 The Applicant alleges oppressive and unfairly prejudicial conduct by the Respondent, including:
  - 2.2.1 exclusion from governance of the Company, including removal from bank accounts, communication groups, security systems, and the Company's main computer system;

2.2.2 unlawful attempts to remove him as a director of the Company without a valid board or shareholder resolution, in contravention of section 71(2) and (3) of the Companies Act;

2.2.3 financial mismanagement, including unauthorised personal loans totalling R1,600,000 taken by the Respondent from the Company on 1 and 2 April 2025; payments totalling R1,377,649 with reference "TM & MM FEES" without invoices or explanations; and other unexplained payments;

2.2.4 a coercive share purchase offer dated 8 December 2025, which made the withdrawal of a criminal complaint a condition of the purchase of his shares;

2.2.5 the Respondent's unilateral conduct in attempting to exclude him from the financial management and governance of the Company.

2.3 The relief sought by the Applicant includes:

2.3.1 an order directing the Respondent to recognise the Applicant as a director of the Company and to halt her oppressive conduct;

2.3.2 an order directing the Respondent to grant the Applicant access to all Company financial records, computer systems, communication groups, security systems and footage, and bank accounts;

2.3.3 an order restricting the Respondent from making further large withdrawals, payments, or transfers from Company bank accounts without the Applicant's consent, by implementing dual authorisation at the bank;

2.3.4 an order directing the Respondent to repay to the Company the interest lost on the R1,600,000 loan which was withdrawn without board authorisation;

2.3.5 an order for the appointment of an independent auditor to audit all expenses incurred and payments made from October 2024 to the present date, including the "TM & MM FEES" payments and payments to Queen Industries;

2.3.6 an order directing the Company to declare and pay dividends to the shareholders;

2.3.7 an order directing the appointment of an independent valuer to conduct a fair valuation of the Company;

2.3.8 an immediate interdict against the Respondent from taking any further steps to exclude the Applicant from the financial management or governance of the Company.

2.4 The Applicant originally sought urgent relief but subsequently conceded that the matter could proceed in the ordinary course.

### **3. BACKGROUND TO THE APPLICATION**

3.1 The Applicant was employed by the Company as a manager from October 2020. In November 2024, he was suspended following a sexual harassment complaint by a female staff member. A disciplinary hearing was scheduled, but the Applicant, through his attorney, notified the chairperson that he would not

attend. The hearing proceeded in his absence, and he was found guilty and dismissed.

3.2 The Applicant referred the dismissal to the CCMA, which found the dismissal to be both procedurally and substantively fair. The Applicant has since taken the CCMA award on review to the Labour Court.

3.3 Following the Applicant's suspension and dismissal, the Respondent took over the day-to-day management of the Company and identified discrepancies between cash-up sheets signed by the Applicant and amounts deposited into the Company's bank account. The Respondent identified approximately R93,000 in unaccounted cash over the period January to October 2024. After the Applicant made partial payments in late November 2024, the Respondent laid a criminal complaint at the local police station in October 2025.

3.4 The parties attempted to resolve their disputes through attorney correspondence, including a settlement offer by the Respondent in December 2025, which was conditional on the withdrawal of the criminal complaint. The Applicant rejected the offer, characterising it as extortionate.

#### **4. PLEADINGS FILED**

4.1 The following papers and pleadings have been filed in this matter:

4.1.1 Form CTR 142 (Application for Relief) dated 24 November 2025;

- 4.1.2 Form CTR 147 (Application for Condonation) dated 25 November 2025;
- 4.1.3 Founding Affidavit of the Applicant dated 25 November 2025, together with Annexures "A" to "O";
- 4.1.4 Supplementary Affidavit of the Applicant dated 11 December 2025, together with Annexures "Q", "R", and "S";
- 4.1.5 Answering Affidavit of the Respondent dated January 2026, together with Annexures "MB1" to "MB21";
- 4.1.6 The Applicant's Heads of Argument dated 28 May 2026, together with Annexures "T" to "BE";
- 4.1.7 The Respondent's Heads of Argument dated 2 June 2026;
- 4.1.8 The Applicant's Supplementary Affidavit dated 9 June 2026, together with Annexures "BF", "BG", and "BH" (relating to Queen Industries);
- 4.1.9 The Applicant's Updated Heads of Argument dated 17 June 2026;
- 4.1.10 The Applicant's Confirmatory Affidavit (Annexure Z) filed on or about 26 May 2026.
- 4.2 The Tribunal notes that the Form CTR 142 and the supporting affidavits are internally inconsistent regarding whether the Company or the Respondent is the intended respondent. The Form CTR 142 names the Respondent as the respondent. The Company is identified only as the "company" in the "Concerning" section, but it is not cited as a respondent.

4.3 The Tribunal further notes that the Company's Memorandum of Incorporation ("MOI") is not on the record. This hindered a definitive assessment of the Company's governance structure, including the composition of its board.

4.4 The Respondent raised various points *in limine* in opposition to the application.

## **5. PROCEEDINGS BEFORE THE TRIBUNAL**

5.1 The hearing proceeded on 26 June 2026, commencing with the parties' submissions on the points *in limine*.

5.2 The Respondent was represented by Advocate Johan Malan, instructed by Cronje Attorneys Inc. The Applicant appeared in person, self-represented.

5.4 The Tribunal noted that the Form CTR 142 and the supporting affidavits were internally inconsistent about whether the Company or the director was the intended respondent. The admissibility of affidavits and the question of proper citation and jurisdiction remained unresolved at the conclusion of the hearing.

## **6. POINTS *IN LIMINE* RAISED BY THE RESPONDENT**

6.1 Point *in Limine* 1: Invalidity of Affidavits

6.1.1 The Respondent submitted that the Applicant's founding affidavit and supplementary affidavit are inadmissible because they lack the required oaths and commissioner signatures under the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

6.1.2 The Respondent argued that the commissioning certificate does not certify that the oath or affirmation was duly administered, nor that the deponent acknowledged understanding the contents. The Commissioner's designation and area of appointment are not stated with sufficient particularity.

6.1.3 The Respondent further submitted that the Applicant's later filing of a purported "confirmatory affidavit" (Annexure Z) was irregular and could not cure the original defects. The confirmatory affidavit seeks to confirm two documents that are not attached to it. A confirmatory affidavit cannot retroactively supply an oath never administered. Furthermore, it was filed without leave of the Tribunal.

6.1.4 The Respondent relied on the following authorities:

6.1.4.1 ***Moskovitz v Commercial Union Assurance Co of SA Ltd (applied in Dique v Viljoen (14218/2007) [2007] ZAGPHC 206 (14 September 2007))*** – The court held that a document which on its face appears to be an affidavit, but where the deponent had not taken an oath, had not affirmed its contents, and had not acknowledged its correctness before a Commissioner of Oaths, notwithstanding that a Commissioner had signed it, is not an affidavit in law and is not in substantial compliance with the statutory requirements.

6.1.4.2 ***S v Munn 1973 (3) SA 734 (NC)*** – Non-compliance does not automatically invalidate an affidavit where there is substantial compliance with the formalities in such a way as to give effect to the

purpose of the Act. The Respondent submitted that no such substantial compliance exists in this case.

6.1.4.3 ***Nhlanhla Mdakane and Others v Kwadukuza Municipality and Others (2026/040712) [2026] ZALCD 11 (2 March 2026)*** – The Labour Court confirmed that where a founding affidavit is invalid, the court is left with no evidentiary basis upon which to exercise its powers. Problems with how an affidavit is witnessed go to the heart of an application and cannot be dismissed as mere technicalities. The required sequence—that the deponent signs in the presence of the Commissioner and that the Commissioner administers the oath before signature—is not optional.

6.1.5 The Respondent also submitted that the Law of Evidence Amendment Act 45 of 1998 does not assist the Applicant, as it deals with admissibility of evidence, not the validity of affidavits.

## 6.2 Point *in Limine* 2: Wrong Party Cited

6.2.1 The Respondent submitted that the Applicant has cited the wrong party. The Respondent is cited in her personal capacity, yet every substantive order the Applicant seeks binds the Company as a juristic person. The relief sought includes access to company financial records, restriction on company bank transactions, appointment of an auditor at company expense, and the declaration of dividends.

6.2.2 The Respondent argued that a director, in her personal capacity, does not own company assets, does not personally control company bank accounts,

cannot unilaterally implement governance mechanisms, and cannot be compelled by personal order to perform acts that vest in the company.

6.2.3 The Respondent relied, amongst others, on the following authorities:

6.2.3.1 ***Golden Harvest (Pty) Ltd v Zen-Don CC 2002 (2) SA 653 (O)*** –

This case distinguishes between a misnomer (incorrect description of the right party, curable by amendment) and the citation of the wrong party (a fundamentally different legal person, not curable by amendment). The Respondent submitted that this is a case of the wrong party, not a misnomer.

6.2.3.2 ***Pule and Another v Minister of Police (1575/2023) [2025] ZANWHC 104 (20 June 2025)*** –

The High Court held that the non-citation of a party against whom an adverse order is sought is not a matter of form but of substance. It goes to the heart of everyone's right to defend themselves and to access courts. Service on an uncited party does not cure the defect. Only proper citation brings a party before the court.

6.2.4 The Respondent further submitted that section 66(1) of the Companies Act confirms that the business and affairs of a company must be managed by or under the direction of its board, which acts on behalf of the company. Orders affecting governance must be directed at the company itself.

6.3 Point *in Limine* 3: Jurisdiction under Section 163

6.3.1 The Respondent submitted that the Companies Tribunal lacks jurisdiction to consider the application and to grant relief the Applicant seeks under

section 163 of the Companies Act because that section provides that a shareholder "may apply to a court" for relief.

6.3.2 The Respondent argued that the Tribunal is not a "court" within the meaning of the Superior Courts Act and does not possess the inherent jurisdiction or the just-and-equitable remedial discretion that characterises the High Court under section 21 of the Superior Courts Act. The Tribunal's powers are confined to those expressly conferred by sections 180 to 195 of the Act.

6.3.3 When questioned by the Tribunal, counsel confirmed that he was advancing both a jurisdictional objection (that the Tribunal cannot entertain a section 163 application at all) and a competency objection (that the Tribunal cannot grant the specific structural relief sought). He clarified that the two contentions were advanced in the alternative.

6.3.4 The Respondent relied on the following authorities:

6.3.4.1 ***Technology Corporate Management (Pty) Ltd v De Sousa and Another [2024] ZASCA 29; 2024 (5) SA 57 (SCA)*** – The SCA dismissed an oppression claim brought by a director who had been dismissed in acrimonious circumstances, whose CCMA claim had failed, and who alleged systematic exclusion from management. The Respondent submitted that this case demonstrates that section 163 relief is not available where the applicant's exclusion flows from his own conduct.

6.3.4.2 The Respondent also relied on general principles of statutory interpretation, submitting that the Tribunal cannot exercise powers not expressly conferred upon it by the Companies Act.

## **7. SUBMISSIONS BY THE APPLICANT ON POINTS *IN LIMINE***

### 7.1 Submissions on Point *in Limine* 1: Invalidity of Affidavits

7.1.1 The Applicant acknowledged that the founding affidavit was not signed in the presence of the Commissioner of Oaths. He conceded that this was an error on his part.

7.1.2 He asked the Tribunal to accept the affidavit and to waive the commissioning requirement.

7.1.3 He did not, however, provide any explanation for why the documents were not properly commissioned. He did not file a formal application for condonation.

7.1.4 He did not file an explanatory affidavit from the Commissioner. He simply requested that the Tribunal overlook the defect.

7.1.5 The Applicant also relied on his confirmatory affidavit (Annexure Z) to cure the defect, but he did not explain how a confirmatory affidavit could retroactively cure an invalid founding affidavit.

### 7.2 Submissions on Point *in Limine* 2: Wrong Party Cited

7.2.1 The Applicant submitted that he had cited the Company in the Form CTR 142.

7.2.2 He argued that because there are only two directors of the Company, and because it was the Respondent, not the Company, who blocked his access to financial information, he did not regard the failure to cite the Company as fatal to his application.

7.2.3 He submitted that the Company acts through its directors and that naming the Respondent was sufficient.

### 7.3 Submissions on Point *in Limine* 3: Jurisdiction under Section 163

7.3.1 The Applicant submitted that he was self-represented and that he genuinely believed the Tribunal had jurisdiction over his complaint because the Company has only two directors, which matters ought to be dealt with by the Companies Tribunal.

7.3.2 He alleged that when he submitted his complaint to CIPC, he asked for guidance and was not advised about any jurisdictional issues.

7.3.3 He requested that the Tribunal waive his non-compliance with procedural requirements.

7.3.4 He submitted that the Tribunal should exercise its discretion in his favour because he is a layperson who made an honest mistake.

## **8. ANALYSIS AND ASSESSMENT OF PARTIES' SUBMISSIONS**

## 8.1 Point *in Limine* 1: Invalidity of Affidavits

8.1.1 The Tribunal has carefully considered the submissions of both parties on the validity of the Applicant's affidavits.

8.1.2 The requirements for the commissioning of affidavits are set out in the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 and the Regulations promulgated thereunder, in particular Regulation 4 of the Regulations Governing the Administration of an Oath or Affirmation.

8.1.3 Regulation 4 requires, *inter alia*, that:

8.1.3.1 the deponent signs the affidavit in the presence of the Commissioner of Oaths;

8.1.3.2 the Commissioner certifies that the deponent acknowledged understanding the contents of the affidavit;

8.1.3.3 the oath or affirmation be duly administered; and

8.1.3.4 the Commissioner state clearly his or her full name, designation, office held, and area of appointment.

8.1.4 In ***Moskovitz v Commercial Union Assurance Co of SA Ltd (applied in Dique v Viljoen (14218/2007) [2007] ZAGPHC 206 paragraph 14 (14 September 2007))***, the court held that a document which on its face appears to be an affidavit, but where the deponent had not taken an oath, had not affirmed its contents, and had not acknowledged its correctness before a Commissioner of Oaths, notwithstanding that a Commissioner

had signed it, is not an affidavit in law and is not in substantial compliance with the statutory requirements.

8.1.5 The distinction is between a defect in the mechanics of commissioning (which may be curable if substantial compliance is shown) and the complete absence of oath-administration (which is incurable because there is nothing to which substantial compliance can attach).

8.1.6 In this case, there is no commissioning certificate certifying that the oath or affirmation was duly administered, nor that the deponent acknowledged understanding the contents, true and correct and binding on his conscience. The Commissioner's designation and area of appointment are not stated with sufficient particularity. These defects go to the substance of whether any oath was administered at all.

8.1.7 The Applicant has acknowledged the defect. He did not, however, apply for condonation, nor did he file an explanatory affidavit from the Commissioner. He simply asked the Tribunal to "waive" the requirement. The Tribunal cannot do so. The requirements of the Justices of the Peace and Commissioners of Oaths Act are peremptory.

8.1.8 The Applicant's later filing of a document styled "Confirmatory Affidavit" (Annexure Z) does not cure the defect. A confirmatory affidavit cannot retroactively supply an oath that was never administered. The founding affidavit of 25 November 2025 and the supplementary affidavit of 11 December 2025 were not valid affidavits when they were filed. A subsequent affidavit confirming the "truth and correctness" of those invalid documents cannot convert them into valid affidavits.

8.1.9 Furthermore, the confirmatory affidavit is procedurally irregular, having been filed without leave of the Tribunal. The Companies Tribunal Rules permit only a founding affidavit, an answering affidavit, and a replying affidavit. Any further affidavit requires prior leave of the Tribunal, which the Applicant did not obtain.

8.1.10 In ***Nhlanhla Mdakane and Others v Kwadukuza Municipality and Others (2026/040712) [2026] ZALCD 11 (2 March 2026) paragraph 18***, the Labour Court confirmed that where a founding affidavit is invalid, the court is left with no evidentiary basis upon which to exercise its powers. Problems with how an affidavit is witnessed go to the heart of an application and cannot be dismissed as mere technicalities.

8.1.11 The Tribunal finds that the Applicant's founding affidavit and supplementary affidavit are invalid and inadmissible. In the absence of a valid founding affidavit, there is no application properly before the Tribunal.

**This point *in limine* is upheld.**

On the above ground alone the Tribunal can dismiss the application, however the engages Tribunal below with the further points *in limine* the Respondent raised.

8.2 Point *in Limine* 2: Wrong Party Cited

8.2.1 The Tribunal has considered the submissions of both parties on the citation of the wrong party.

8.2.2 The law distinguishes three situations that must not be conflated:

8.2.2.1 Misnomer: an incorrect description of the right party. Misnomers are curable by amendment: ***Golden Harvest (Pty) Ltd v Zen-Don CC 2002 (2) SA 653 (O)***.

8.2.2.2 Non-joinder: where the correct parties are cited but a necessary third party has been omitted. Courts may grant joinder or decline to make orders that would prejudice the absent party.

8.2.2.3 Wrong party: where the entity against whom the substantive orders must operate is an entirely different legal person from the one cited. This is the most serious category.

8.2.3 This case falls within the third category. The entity that owns the bank accounts, employs the auditors, declares dividends, and holds the financial records is the Company—not the Respondent personally. The Respondent cannot be ordered to deliver what she does not own and cannot give.

8.2.4 A director, in her personal capacity, does not own company assets, does not personally control company bank accounts, cannot unilaterally implement governance mechanisms, and cannot be compelled by personal order to perform acts that vest in the company.

8.2.5 The High Court in ***Pule and Another v Minister of Police (1575/2023) [2025] ZANWHC 104 (20 June 2025)*** stated the governing principle: the non-citation of a party against whom an adverse order is sought is not a matter of form but of substance. It goes to the heart of everyone's right to defend themselves and to access courts. The court is in no position to

make an order against a party that was not cited. Service on an uncited party does not cure the defect. Only proper citation does that.

8.2.6 The Applicant's argument that he "cited the company in Form CTR 142" is correct, if the Tribunal considers only the CTR 142 form. The Form CTR 142 names the Company as the respondent. In the affidavit in support of the application the Applicant describes the respondent as De Jager (Boucher). The complete application consists of the CTR 142 and the supporting founding affidavit which reflects an inconsistency on the filing.

8.2.7 Furthermore, the Applicant's own submission that it was the Respondent, not the Company, who blocked his access to information confirms that he sees the dispute as one with a fellow director, not with the Company as a separate legal entity. That is a fundamental misunderstanding of company law. A company is a separate juristic person with its own rights and obligations, distinct from those of its directors.

8.2.8 Introducing the Company as a respondent now would not be an amendment; it would be a substitution of one legal entity for a fundamentally different one. No application for amendment has been made, and no condonation has been sought. The defect stands uncured.

8.2.9 The Tribunal finds that the Applicant has cited the wrong party. The relief sought is relief against the Company, not against the Respondent in her personal capacity. The Company is not properly before the Tribunal. This defect is fatal.

**This point in limine is upheld.**

### 8.3 Point *in Limine* 3: Jurisdiction under Section 163

8.3.1 The Tribunal has considered the submissions of both parties on jurisdiction. This is the most complex of the three points *in limine*.

8.3.2 Section 163(1) of the Companies Act provides:

*"A shareholder or a director of a company may apply to a court for relief if—(a) any act or omission of the company, or a related person, has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant..."*

8.3.3 The Respondent argues that because section 163 refers only to "a court," the Companies Tribunal lacks jurisdiction. The Tribunal agrees that it does not have jurisdiction to entertain a section 163 application or the relief available to an applicant under section 163. The Tribunal is a creature of statute and can only exercise the powers and functions explicitly awarded to it. Section 163(2) describes orders a "court" may make, including structural orders that go to the determines the circumstances under which a Division of the High Court may exercise jurisdiction and They are orders that carry the coercive authority of a court and require the just-and-equitable remedial discretion that attaches to superior court status under section 21 of the *Superior Courts Act*.

8.3.4 The Applicant's reliance on the fact that he is self-represented and that he was not advised about jurisdictional issues does not assist him. Ignorance of the law does not excuse non-compliance with procedural requirements.

## 9. FINDINGS

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- 9.1 The Tribunal finds that the Applicant's founding affidavit dated 25 November 2025 and supplementary affidavit dated 11 December 2025 are invalid and inadmissible by reason of non-compliance with the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. The Applicant has acknowledged the defect but has failed to apply for condonation or provide an explanation. The defects cannot be cured by a belated confirmatory affidavit filed without leave of the Tribunal. In the absence of a valid founding affidavit, there is no application properly before the Tribunal.
- 9.2 The Tribunal finds that the Applicant cited the wrong party. The relief sought lies against the Company, not the Respondent in her personal capacity. Because the Company is not properly before the Tribunal, the Respondent cannot, as a director acting personally, be ordered to perform acts that belong to the Company. This is not a mere misnomer, but the citation of a fundamentally different legal person. No amendment or condonation has been sought, and the defect is fatal.
- 9.3 The Tribunal finds that it lacks jurisdiction to hear the application and has no power to grant the relief sought under section 163 of the Companies Act.

## **10. ORDER**

10.1 The Tribunal makes the following order:

10.1.1 The Application is dismissed; and

10.1.5 The Applicant is ordered to pay the Respondent's costs.

DATED AT PRETORIA ON THIS 30<sup>th</sup> DAY OF JUNE 2026.

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D Terblanche

MEMBER OF THE COMPANIES TRIBUNAL

K Dlepu and N Cawe concurring.