REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-209681

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO

08/06/2026 [redacted]

DATE SIGNATURE

In the matter between:

KYALAMI TSHISANYAMA (PTY) LTD	First Applicant
TSHEPO EVANS SEFOMOLO	Second Applicant
THOMAS CHAUKE	Third Applicant
GRANITE NETWORK (PTY) LTD	Fourth Applicant
and	
NTSHAUPA MOHALE NCHAUPA	Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] This is an application for leave to appeal brought by the respondents in the main application against the judgment and orders of this court delivered on 20 November 2025. The respondents contend that the Court erred in several respects, most notably in granting relief not sought in the notice of motion. The applicant disputes the premise of the application and further submitting that the respondents have failed to demonstrate reasonable prospects of success on the findings and orders in the impugned judgment as required by section 17(1)(a) of the Superior Courts Act 10 of 2013.

Background

[2] The applicant (Respondent in this application) sought declaratory and interdictory relief to prevent the transfer of his 40% shareholding in the first respondent (First Applicant herein). He alleged that his mandate to sell the shares had been lawfully withdrawn at a shareholders meeting on 2 October 2025, and that statutory requirements for transfer under the Companies Act 71 of 2008 had not been complied with.

[3] The respondents opposed the application, contending that a binding Sale of Shares Agreement had been concluded in July 2025, partly performed on in that the applicant had accepted part payment for his shares.

[4] The Court granted final relief, including:

a) An interdict restraining registration of transfer of the applicant's shares;

b) A declarator that the applicant remains the lawful owner of 40% shares;

c) A declaration that the mandate was lawfully withdrawn; and

d) A mandatory order directing restoration of the applicant's name to the CIPC registry.

GROUNDS OF APPEAL

[5] The respondents advanced seven grounds of appeal. The most significant is the contention that the Court granted relief not sought in the notice of motion / pleadings, thereby offending the *audi alteram partem* principle. This contention is addressed hereunder.

THE GOVERNING PRINCIPLES

[6] It is trite that pleadings define the issues between the parties. In *Molusi v Voges N.O.*[1] the Constitutional Court held that:

> "*in application proceedings the notice of motion and affidavits define the issues between the parties... it is a fundamental rule of fair civil proceedings that parties should be apprised of the case which they are required to meet.*"

[7] The Supreme Court of Appeal in *Fischer v Ramahlele*[2] reaffirmed that courts may not raise new issues not traversed in pleadings or affidavits, however interesting they may seem.

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[1] *Molusi v Voges N.O.* 2016 (3) SA 370 (CC) at paras 27–28.

[2] *Fischer v Ramahlele* 2014 (4) SA 614 (SCA) at paras 13–15.

[8] In *Municipal Workers Retirement Fund v Kopanong Local Municipality*[3] , the Court held that final orders not prayed for in the notice of motion are incompetent absent amendment.

[9] However, the jurisprudence also recognises that courts are empowered to grant effective relief where rights are established. In *De Beer NO v North-Central Local Council*[4], the Constitutional Court emphasised that fairness requires opportunity for both parties to be heard, but courts must interpret pleadings purposively to ensure proceedings are fair and remedies effective.

[10] Similarly, in *Slabbert v Slabbert,*[5] the Court held that once the issues are properly before the court, it may craft orders necessary to resolve them, provided they are grounded in the pleaded case.

THE COURT'S DISCRETION TO GRANT THE MOLDED / ALTERNATIVE ORDER

[11] The Respondents' objection is anchored on the technical ground that the exact wording of the relief does not explicitly encapsulate in the Applicant's primary prayers within the Notice of Motion. This formalistic approach is legally flawed and misconstrues the purpose of the general prayer for further and/or alternative relief, *inter alia*. The court has a discretion to grant a moulded relief to protect the substantive rights of litigants where the strict, literal enforcement of the main prayers might fail to provide a practical remedy. In *Johannesburg City Council v Bruma 32 (Pty) Ltd*[6], the Court held that the prayer for alternative relief allows the court to fashion a moulded remedy, stating that:

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[3] *Municipal Workers Retirement Fund v Kopanong Local Municipality* 1978 (4) SA 182 (T).

[4] *De Beer NO v North-Central Local Council* 2002 (1) SA 429 (CC) para 11.

[5] *Slabbert v Slabbert* 2012 (5) SA 1 (SCA).

[6] *Johannesburg City Council v Bruma 32 (Pty) Ltd* 1984 (4) SA 871 (T).

"...it may be invoked to justify the granting of an order other than that specifically requested, where such other order is indicated by the premises and is not altogether of a different nature from that which was asked for."

[12] The courts have consistently held that the standard for granting an alternative or moulded order relies in the fulfilment of three clear prerequisites:

a) Factual Foundation: The facts underpinning the moulded order must be clearly indicated and fully traversed in the affidavits on record;

b) No Alteration of Cause of Action: The order must not introduce an entirely new legal cause of action that alters the nature of the dispute; and

c) Absence of Prejudice: The granting of the order must not cause unfair prejudice or catch the Respondent by surprise, violating the *audi alteram partem* rule.

[13] All of the above three prerequisites are fully satisfied in the present matter:

a) The underlying facts justifying the practical mechanism of the proposed order are fully detailed in the Founding Affidavit;

b) The purportedly impugned orders do not alter the cause of action. They stems directly from the same contractual right / possessory right / statutory obligation] that formed the core of the main application. The orders merely provide a practical vehicle to enforce the applicant's exact rights.

c) There is absence of procedural prejudice to the Respondents who had a full and fair opportunity in their Answering Affidavits to oppose the material facts that form the bedrock of this moulded relief. The issues were completely ventilated before this Court.

[14] To deny the Applicant moulded relief on the ground raised by the respondents would elevate form over substance. As cautioned in *Combustion Technology (Pty) Ltd v Technoburn (Pty) Ltd*[7], the court should not allow procedural technicalities to obstruct the resolution of the true, ventilated dispute between the parties.

ANALYSIS

[15] The respondents argue that the interdict against "registration" was a different species of relief, that the declarator on mandate withdrawal was not sought, and that the restoration order was wholly new.

[16] The applicant counters that these orders were incidental to the pleaded claim of ownership and interdictory relief. Without them, the declaratory relief would have been ineffectual.

[17] The founding affidavit made clear that the applicant disputed the validity of the mandate and sought recognition of his ownership. The annexures included correspondence recording his revocation of mandate. The respondents were thus aware that the issue of mandate withdrawal was central.

[18] The refinement of the interdict to restrain "registration" was a permissible tailoring of relief to the facts, given the respondents' attempt to effect transfer

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[7] *Combustion Technology (Pty) Ltd v Technoburn (Pty) Ltd* 2003 (1) SA 265 (C).

through CIPC. The restoration order was incidental to the declarator of ownership, ensuring that the applicant's rights were practically enforceable.

[19] The jurisprudence cautions against granting wholly new relief. Yet, the orders granted here were not foreign to the case; they were incidental and necessary to render the declaratory and interdictory relief effective. The respondents were not procedurally prejudiced, as the issues emerged fully from the evidence.

OTHER GROUNDS OF APPEAL

[20] The respondents' remaining grounds — relating to revocation of mandate, repayment of consideration, restoration of shares, reliance on *Du Plessis v Pienaar*[8], formulation of order, and ownership based on share certificate — were addressed in the judgment. The respondents fail to demonstrate any error of fact or law.

[21] The statutory requirements for transfer of shares under the Companies Act were not complied with. No valid sale was perfected. The applicant remained the lawful owner of his shares.

CONCLUSION

[22] The respondents have failed to demonstrate reasonable prospects of success on appeal. The contention that the Court granted relief outside the pleadings is without merit. The orders granted were incidental to the pleaded case, grounded in the evidence, and necessary to render the declaratory and interdictory relief effective.

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[8] *Du Plessis v Pienaar NO and Others* 2003 (1) SA 671 (SCA).

ORDER

[23] In the result, the following order is made:

1. The application for leave to appeal is dismissed.

2. The respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, on the party and party Scale C.

[redacted]

MPN MBONGWE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

PRETORIA

APPEARENCES

For Applicant:	**Ms A. Vorster**
Instructed by:	Mothle Jooma Sabdia Inc.
For the Respondent:	**Mr K. Bokaba**
Instructed by:	Thobakgale Attorneys Incorporated
Date of Hearing:	**17 February 2026**
Date of Judgement:	**08 June 2026**

THIS JUDGEMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINE ON 08 JUNE 2026.