IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

Case No: CT02835/ADJ/2026

In the *ex parte* application of

EAGLE CANYON GOLF ESTATE HOMEOWNERS

ASSOCIATION NPC **APPLICANT**

(Registration No: 2003/012328/08)

Presiding Member: Nomagcisa Cawe

Date of Decision: 29 July 2026

DECISION (Reasons and an Order)

A INTRODUCTION

[1] The Applicant is **THE EAGLE CANYON GOLF ESTATE HOMEOWNERS ASSOCIATION NPC**, a non-profit company registered in terms of the company laws of South Africa with registration number 2003/012328/08. The Applicant's physical address is: The Beffry Street, Eagle Canyon Estate, Honeydew, Johannesburg, Gauteng.

[2] The Applicant approached Companies Tribunal ("the Tribunal") to be exempted from establishing a Social and Ethics Committee (SEC), as required by section 72 of the Companies Act 71 of 2008 ("the Act") read with Regulation 43 of the Companies Regulations, 2011. The Tribunal is required to determine whether it is justifiable to exempt the Applicant from establishing a Social and Ethics Committee having regard to the nature and extent of its activities.

[3] This application is brought on behalf of the Applicant by the Applicant's acting manager, who is also one of its directors, Mr. Shaun Selwin Mills (Mr. Mills). He is authorised to do so by the resolution of the Applicant's board of directors dated 01 April 2026.

B PURPOSE OF THE APPLICATION

[4] Mr. Mills deposed to an affidavit wherein he states that the Applicant attained a Public Interest Score (PIS) of more than 500 points in the past five financial years, which made it fall within the category of companies that are required to establish a Social and Ethics Committee. He submits that the directors of the Applicant are of the view that a SEC is not required, as the reason the Applicant achieved these points is that it has 1 379 voting members who are the registered owners of Sectional Title units within the Estate.

[5] It is submitted further that the Applicant's main objective is to promote, advance, and protect the communal interest of the homeowners in the Estate by maintaining its essential community services, amenities, and activities. However, its activities are relevant only to its members and not the public at large.

[6] Mr. Mills emphasizes that the Applicant has already established sufficient committees and auditing functions within for the day-to-day functioning of the Estate. The committees referred to herein perform the functions that are intended to be performed by a Social and Ethics Committee.

[7] According to Mr. Mills, the Applicant:-

7.1 raises, collects and utilizes levies, interest and penalties from its Members, to the exclusion of any third party funding, to meet the business objectives contemplated in its Memorandum of Incorporation;

7.2 has very limited external activities due to the nature and extent of its activities; and

7.3 is annually independently audited.

[8] It is pointed out by Mr. Mills that this Tribunal previously exempted the Applicant from establishing a Social and Ethics Committee in August 2021 and that there have been no changes in the Applicant's activities since.

C LEGAL FRAMEWORK

[9] In terms of section 72(4) of the Companies Act, the relevant Minister is empowered to prescribe a category of companies that must establish a Social and Ethics Committee if it is in the public interest to do so. Factors such as the company's turnover, the number of employees it employed as well as the nature and extent of its activities would provide a sense of whether a company is required to establish a Social and Ethics Committee.

[10] Generally, every state-owned company, every listed public company, and any other company that has scored 500 points in terms of its public interest score in any two of the previous five-years must establish a Social and Ethics Committee.[1]

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[1] Regulation 43(1)(*a*),(*b*)&(*c*) and Regulation 26(2) of the Companies Regulations, 2011.

[11] In terms of section 72(5) of the Companies Act, a company that is required to establish a Social and Ethics Committee may apply to the Tribunal to be exempt from establishing such a committee. To grant such exemption, the Tribunal must be satisfied that such a company has some form of formal mechanism within its operations that substantially performs the work that would ordinarily be performed by a Social and Ethics Committee.[2] The applicant in the present matter does not rely on this ground for exemption.

[12] A company can also be exempt from establishing a Social and Ethics Committee if it can satisfy the Tribunal that *'it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company'* (section72(5)(b)). The applicant herein appears to be solely relying on this ground.

[13] In terms of section 72(6) of the Companies Act, where the Tribunal grants an exemption, such an exemption is only valid for a period of five years or such shorter period as the Tribunal may direct when the exemption is granted.

[14] In terms of Regulation 43(5) of the Companies Regulations, among others, a social and ethics committee must monitor the company activities, having regard to any relevant legislation and other applicable codes of good practice concerning matters relating to:

14,1 the company's social and economic development;

14.2 its good corporate citizenship, including promotion of equality, prevention of unfair discrimination, and reduction of corruption, contribution

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[2] Section 72(5)(c) of the Companies Act.

to the development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed, as well as its record of sponsorship, donations, and charitable giving;

14.3 the environment, health, and public safety, including the impact of the company's activities and its products or services;

14.4 consumer relationships, including its advertising, public relations, and compliance with consumer protection laws; and

14.5 labour and employment, including the company's standing in terms of the International Labour Organisation Protocol on decent work and working conditions and employment relationships and its contribution toward the development of its employees.[3]

D EVALUATION

[15] It is concerning that the applicant in its application quotes Regulation 43(5) of the Companies Regulations, 2011, and merely states that there are various committees without indicating the functions which these committees perform. According to the Applicant, this is the second application for exemption and its functions have not changed. This means that by now it should be relatively easy for the Applicant to detail the functions that are performed by every one of its committees.

[16] This Tribunal has been seriously disadvantaged by the way this application has been brought. It is unable to ascertain as a matter of fact whether indeed the purported committees within the applicant's structures exist and if they do, the nature of the work that they perform. It cannot be that the Tribunal is merely expected to rely on Mr. Mills word. Facts and evidence should be provided to the Tribunal to enable it

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[3] Regulation 43(5)(a) of the Companies Regulations.

to adequately determine the matter. It is hoped that in future applications the Tribunal will be provided with more than what has currently been furnished to it in this application.

E CONCLUSION

[17] While I have serious reservations about this application and I am inclined not to grant it, but I am mindful of the fact that both Regulation 43 of the Companies Regulations and section 72 of the Companies Act do not provide those who wish to approach this Tribunal precise guidance on how to prepare their applications. However, where a party is represented, it is expected that the application should be arranged in such a way that the Tribunal can be placed in a position to reach a just decision.

[18] One of the ways to do so, where there is a claim that the company has a structure that performs functions that are usually performed by a Social and Ethics Committee, is to provide details of the actual functions of such a structure. Failure to do so may lead to applications for exemptions being refused. I am, however, of the view that this application should succeed.

ORDER

[19] In the premises, I make the following order:

a) Application for the Applicant to be exempt from establishing a social and ethics committee is granted.

b) The exemption shall be effective for a period of five years.

Nomagcisa Cawe