IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02726ADJ2026

In the matter between:

AKHONA MAHANJANA Identity Number: 860823 XXXXXXX	**APPLICANT**
and	
KUNGAWOBANTU (PTY) LTD Registration Number: 2015/256284/07	**FIRST RESPONDENT**
YASMIN VUSIWE INEZ MDLALO **ID NUMBER: 721122 XXXXXXX**	**SECOND RESPONDENT**
RICHARD DUMILE MDLALO **ID NUMBER: 681026X XXXXXXX**	**THIRD RESPONDENT**
NDIPHIWE BONGA **ID NUMBER: 820414XXXXXXX**	**FOURTH RESPONDENT**
THE COMMISSIONER OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**FIFTH RESPONDENT**

DECISION

A INTRODUCTION AND NATURE OF THE APPLICATION

1. This matter concerns the purported removal of the Applicant as a director of the First Respondent and the consequential CoR39 processed by CIPC. The Applicant seeks to invalidate the removal and restore the CIPC record.
2. The Applicant says the process was defective because the notice invoked sections 71(3) and 71(4) of the Companies Act 71 of 2008 although the company had only two directors; the convenor's authority was disputed; only three days' notice was given; and the notice used the expression "board of shareholders".
3. The First to Fourth Respondents raised lack of jurisdiction. On the merits they say the Applicant was removed by shareholders under section 71, three days was reasonable in context, and the notice defects were immaterial.

B WHAT OCCURRED AT THE HEARING

4. The Tribunal isolated jurisdiction first and required the parties to identify the precise statutory source of jurisdiction rather than relying only on section 195.
5. The Applicant relied on section 71(8), section 195(1)(g), and the Tribunal decision in *Makwena Rose Molele/Maluleke v Limelight Academy Institutions.* Because there were only two directors, the Applicant argued section 71(3) was unavailable and section 71(8) placed the matter before the Tribunal. He also characterised the case as a review of CIPC's processing of the CoR39.
6. The Respondents argued that section 71(8) permits an application to the Tribunal for a determination contemplated in section 71(3), but does not create a reverse-review jurisdiction after shareholders have already removed a director.
7. The Tribunal tested the distinction between board removal under section 71(3), shareholders' removal under sections 71(1)-(2), and section 71(8). The Respondents' oral position was that this was a shareholders' decision although the notice expressly invoked sections 71(3) and (4).
8. The Tribunal heard the merits without immediately deciding jurisdiction, so that a final decision could cover all issues if jurisdiction were established.
9. It became common cause that the notice was sent on 7 April 2026 for a meeting on 10 April 2026, with attendance to be confirmed by 8 April. The Respondents maintained that three days was reasonable because the underlying allegations had been discussed earlier.

10. The Respondents accepted that “board of shareholders” is not a statutory concept and called it a drafting error by a layperson. The Tribunal questioned whether the identity of the person/body giving notice is material because it determines the applicable statutory mechanism.

11. The hearing exposed a substantial shareholding dispute. The Applicant relied on share certificates, CSD records, financial statements, dividend records and a B-BBEE affidavit. The Respondents relied on an earlier shareholders’ agreement and contended that later records were prepared for tendering purposes.

12. During oral argument the Respondents’ representative described the B-BBEE affidavit as fictitious/a misrepresentation for tendering purposes and, after taking instructions, confirmed that the Second Respondent had commissioned the affidavit. Those matters are serious but unnecessary to decide the threshold jurisdictional question.

C HEADS OF ARGUMENT

Applicant

13. The Tribunal has jurisdiction because section 71(8) is the statutory route where a company has fewer than three directors, reinforced by the prior Molele/Maluleke Tribunal decision.

14. The Third Respondent lacked authority under section 61(1) to convene the shareholders’ meeting; section 61(3) requires qualifying shareholders to demand that the board call a meeting.

15. The express reliance on sections 71(3) and (4) was fatal because there were only two directors and section 71(8) excludes subsection (3) in that situation.

16. Alternatively, if treated as a shareholders’ removal, section 71(2)(a) imports the notice entitlement of a shareholder and therefore the section 62(1)(b) notice period; no valid short-notice waiver occurred.

17. Sharp is relied upon for defective convening, short notice and audi; Litabe paragraph [27] for the evidential effect of a compliant share certificate.

18. The Applicant seeks invalidation of the removal and consequential CIPC record, with punitive costs.

First to Fourth Respondents

19. The Tribunal's jurisdiction is statutory and limited. Section 71(8) authorises an application for a determination/removal in a small-board company; it does not authorise review of a completed shareholders' removal.
20. Sections 61 and 62 regulate shareholders' meetings generally and should not displace the special section 71 regime. Section 71(2)(b) requires a reasonable opportunity rather than a fixed ten-day preparation period.
21. Weir and Matthew are relied upon for the less onerous nature of shareholders' removal under section 71(1) compared with board removal under section 71(3), and for the proposition that shareholders do not need substantive good cause.
22. Three days was reasonable because the Applicant knew of the allegations from prior engagements and elected not to attend.
23. The phrase "board of shareholders" was an immaterial drafting error by a layperson; in substance the process was a shareholders' meeting.
24. The Applicant was not a shareholder; documents suggesting otherwise were said not to reflect the true position. The Respondents seek dismissal with punitive costs and allege forum shopping.

D ISSUES FOR DETERMINATION

25. Whether the Tribunal has jurisdiction under section 71(8), section 195(1)(g), or a specific review provision concerning CIPC.
26. If jurisdiction exists, whether the removal complied with sections 61, 62 and 71.
27. Whether the notice was materially defective in its statutory basis, identity of decision-maker and notice period.
28. Whether it is necessary or competent to decide disputed shareholding and validity of tender-related documents.
29. Relief and costs.

E APPLICABLE LAW AND AUTHORITIES

30. Section 71(1) permits removal by ordinary resolution adopted at a shareholders' meeting, subject to section 71(2). Section 71(2)(a) requires notice at least equivalent to that which a shareholder is entitled to receive; section 71(2)(b) requires a reasonable opportunity to make a presentation before the vote.

31. Section 71(3) governs removal by the board where the company has more than two directors. Section 71(8) provides that if a company has fewer than three directors, subsection (3) does not apply and a director or shareholder may apply to the Companies Tribunal for the determination contemplated in subsection (3).

32. Section 195(1)(g) permits the Tribunal to adjudicate an application that may be made in terms of the Act and make an order provided for in the Act. Standing alone, it is not a source of inherent jurisdiction.

33. *Sharp and Another v Buthelezi and Others*[1] the Applicant's heads cite paragraphs [10], [11] and [36]. The final order at paragraph [57] declares the removal resolution invalid and directs CIPC to amend its records.

34. *Weir v Wiehahn Formwork Solutions (Pty) Ltd and Others*[2] paragraphs [25]-[28] identify due notice and reasonable opportunity as peremptory requirements and contrast shareholder removal with board removal. Paragraphs [67]-[68] reject an additional universal requirement for advance reasons. Paragraphs [72]-[75] deal with the precautionary second resolution.

35. *Matthew and Others v Africa Imaging (Pty) Ltd and Others*[3] at paragraphs [72]-[73], as cited by the Respondents, reinforces the less conditional nature of shareholders' section 71(1) power.

36. *Minister of Defence and Military Veterans v Motau and Others*[4]: paragraphs [75]-[76] distinguish substantive removal power from section 71 procedure; paragraph [94] contains the order declaring the termination unlawful insofar as section 71 procedure was not followed.

37. *Litabe v Di Thabeng Wholesale Fuel Supply (Pty) Ltd and Others*[5]: paragraph [27] holds that a compliant share certificate constitutes prima facie evidence of ownership. The judgment also records that the Companies Tribunal had indicated it lacked jurisdiction over that complaint, after which the High Court adjudicated the review.

---

[1] (2024/088147) [2024] ZAGPJHC 908.
[22] (19494/2024) [2025] ZAWCHC 74.
[3] (D6693/2024) [2026] ZAKZDHC 1
[4] 2014 (5) SA 69 (CC).
[5] (434/2022) [2023] ZAFSHC 376.

38. *Ganes and Another v Telecom Namibia Ltd*[6] at paragraph [19], relied upon by the Respondents, distinguishes authority to depose to an affidavit from authority to institute and prosecute proceedings.

F ANALYSIS

Jurisdiction

39. The jurisdictional enquiry must begin with the source of the Tribunal's power, not with the fact that CIPC has already altered its register. The Tribunal is a creature of statute. Section 195(1)(g) does not confer an inherent or free-standing review jurisdiction over every act of CIPC; it permits the Tribunal to adjudicate an application that may be made in terms of the Companies Act and to make an order provided for in the Act. A specific empowering provision is therefore required.

40. In this matter that empowering provision is section 71(8). It provides that, where a company has fewer than three directors, section 71(3) does not apply and any director or shareholder may apply to the Companies Tribunal for the determination contemplated in section 71(3). It is common cause that immediately before the impugned removal the First Respondent had only two directors, namely the Applicant and the Second Respondent. The statutory condition activating section 71(8) was therefore present.

41. The jurisdictional consequence is important. Section 71(8) allocates the determination contemplated in section 71(3) to the Tribunal precisely because, in a company with fewer than three directors, the remaining board cannot perform the section 71(3) determination in the ordinary manner. The jurisdiction is attached to the statutory subject matter and the composition of the board; it is not lost merely because a party has already submitted a CoR39 and CIPC has administratively recorded the disputed removal.

42. This distinction also answers the Respondents' contention that, because the Applicant has already been removed on the CIPC register, only a court may intervene. CIPC's recording of a change in directorship is consequential upon the corporate act presented to it. The administrative alteration of the register cannot retrospectively supply statutory authority for an antecedent removal process which, on the Applicant's case, was required by section 71(8) to be determined by the Tribunal. Otherwise, the jurisdiction expressly created by section 71(8) could be defeated by the simple expedient of bypassing the Tribunal, filing a

---

[6] 2004 (3) SA 615 (SCA).

CoR39 and thereafter relying on the completed registration as the reason why the Tribunal can no longer act. That construction would render section 71(8) ineffective in the very circumstances for which it was enacted.

43. *Molele v Limelight Academy Institutions (Pty) Limited*[7] is directly instructive. At paragraph [3] the Tribunal framed the issue before it as the review of the applicant's removal by CIPC as director and the correction of the company's director record. The director had therefore already been removed on the CIPC record when the Tribunal entertained the matter. At paragraphs [80]-[81] the Tribunal determined the lawfulness of the removal and rejected conduct which had sought to manipulate the number of directors so as to exclude the Tribunal's jurisdiction. At paragraph [82] it granted relief and ordered CIPC to reinstate the applicant as a director within ten days.

44. *Molele* is a Tribunal decision and does not itself create jurisdiction. Its significance is narrower and more persuasive: it demonstrates the practical operation of section 71(8) after CIPC has already effected a disputed removal. The jurisdiction derives from section 71(8); Molele confirms that the subsequent CIPC entry does not, without more, extinguish that jurisdiction.

Merits: validity of the removal process

45. The jurisdictional finding determines the lens through which the merits must be assessed. The question is not whether the allegations against the Applicant were serious enough to justify concern. It is whether the statutory power used to remove him existed and whether the prescribed procedural safeguards were observed. Serious allegations do not cure the use of an unavailable statutory mechanism.

46. The notice expressly invoked sections 71(3) and 71(4) at a time when the company had only two directors. Section 71(8) states that where a company has fewer than three directors, subsection (3) does not apply. On the face of the statute, therefore, a section 71(3) board determination was unavailable. The notice's reference to a 'board of shareholders' compounds rather than cures the problem: the Act recognises a board of directors and a body of shareholders, each exercising distinct statutory powers. The

[7] (CT02243/ADJ/2025) [2025]

identity of the decision-maker is material because it determines which statutory route and safeguards apply.

47. Nor can the process be saved simply by re-characterising it after the event as a section 71(1) shareholders' removal. Section 71(2)(a) requires the director concerned to receive notice of the meeting and proposed resolution at least equivalent to that which a shareholder is entitled to receive. Section 62(1)(b) prescribes at least 10 business days' notice for a private-company shareholders' meeting, subject to the statutory short-notice mechanism. The Applicant received three calendar days' notice and was required to confirm attendance within approximately 24 hours. He expressly objected to the notice and did not waive the statutory protection.

48. *Sharp* is particularly instructive on this issue. At paragraphs [23]-[24] the High Court treated the section 62 notice requirements as applicable to the shareholders' meeting at which removal was contemplated; at paragraph [36] it held the meeting unprocedural and set the removal resolution aside. The principle of *audi alteram partem* reinforces the statutory text: a director facing removal must receive a real and reasonable opportunity to know and meet the case before the vote is taken.

49. The Tribunal accordingly concludes that the impugned removal cannot stand. If characterised as a section 71(3) process, it was unavailable because section 71(8) applied. If characterised as a section 71(1) shareholders' removal, the notice and fair-opportunity requirements were not met. The subsequent CoR39 filing could not cure those antecedent defects. The removal resolution is therefore invalid and the CIPC record flowing from it must be corrected.

G COSTS

50. The Respondents relied on prior exchanges concerning the alleged financial misconduct to justify the three-day period. Prior knowledge of a dispute is not the same as statutory notice of a meeting at which removal will be decided. The purpose of section 71(2) is to afford the affected director a fair opportunity, in relation to the proposed resolution itself, to prepare and make representations before the decision is taken.

51. Although the Applicant succeeds, the jurisdictional question was genuinely contested and the record contains serious disputes extending beyond the validity of the removal process.

A punitive costs order is not justified. In the circumstances, each party should bear its own costs.

H ORDER

52. The First to Fourth Respondents' point in limine on lack of jurisdiction is dismissed.
53. It is declared that the process by which the Applicant was removed as a director of the First Respondent was not compliant with section 71 of the Companies Act 71 of 2008 and is invalid.
54. The resolution purporting to remove the Applicant as a director is set aside.
55. The Fifth Respondent, the Companies and Intellectual Property Commission, is directed to amend its records to reinstate the Applicant as a director of the First Respondent within 10 business days of receipt of this order.
56. Each party is to bear its own costs.

Issued at Pretoria on this 11 day of August 2026.

____

Dr. Minah Tong-Mongalo
Member: Companies Tribunal of South Africa