



(1) Reportable Yes/No
(2) Of interest to other Judges: Yes/No
(3) Revised

Signature

Date

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case number: 2025-247725

In the matter between:

**RAJGOPAUL REDDY
LOGANATHAN REDDY**

**FIRST APPLICANT
SECOND APPLICANT**

and

**NEERMALA CHETTY
SEGIE MOODLEY NO
WYEBANK FUNERAL PARLOUR CC
WFP BURIAL SCHEME CC
THE MASTER OF THE HIGH COURT, DURBAN**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

ORDER

In the result, I make the following order:

The application is dismissed with costs on scale A, the applicants are directed to pay such costs jointly and severally, the one paying the other to be absolved.

JUDGMENT

Barnard AJ

Introduction

[1] This matter arises from a family business that has once again found its way before this court. The parties are no strangers to litigation in this forum. In earlier proceedings, the two applicants and the first respondent stood together; they now stand opposed. The applicants seek relief against the first respondent, their former ally. The applicants are represented by Mr *Combrink SC*. Mr *Tucker* represents the first respondent. There were no appearances on behalf of the second, third, fourth and fifth respondents.

The parties

[2] Mr R Reddy, the first applicant, and Mr L Reddy, the second applicant, are brothers. Ms N Chetty, the first respondent, is their sister. The second respondent is Mr S Moodley, an attorney, who is cited herein as *nominee officio*, being the executor of the estate of the late Dhanapalan Reddy, so appointed by the fifth respondent, the Master of the High Court, Durban. The late Mr Reddy was the father of the applicants and the first respondent. The third respondent is Wyebank Funeral Parlour CC, a close corporation. The fourth respondent is WFP Burial Scheme CC, a close corporation. No relief is sought against the second, third, fourth and fifth respondents.

The nexus with the close corporations

[3] The third respondent operates as a funeral parlour. The applicants and the first respondent are members of the third respondent and together hold 45% of the members' interest, divided equally among them. At the time of his death, the late Mr Reddy held the remaining 55% of the members' interest, which now forms part of his deceased estate.

[4] The fourth respondent is a burial scheme. It essentially performs the function of collecting funeral policy premiums from customers of the fourth respondent who have taken out policies issued by it to provide funeral cover. The fourth respondent is an appointed juristic representative of Oricle Investment Services, which is a financial service provider and carries on the business as an intermediary. The late Mr Reddy held 60% of the members' interest in the fourth respondent. The remaining 40% is held equally between the first and second applicants.

[5] The applicants and the first respondent have been involved in the operations of the third and fourth respondents, whose businesses are run from the same premises. The third respondent, arranges and coordinates funerals and provides the related services and items. These funeral services are provided to the third respondent's customers and to policyholders who are customers of the fourth respondent.

The relief sought

[6] The applicants seek the following relief as set out in the notice of motion:

- 1.1 THAT the Applicants be, and is hereby directed to institute action against the respondents for a declarator as to the existence of a tacit or implied agreement between the First Respondent and the Applicants regulating the management of the business of the Third Respondent, together with ancillary relief, within thirty (30) days of the grant of this order;
- 1.2 THAT the First Respondent be and is hereby –
 - 1.2.1 directed to repay the amount of R700 000.00 to the Fourth Respondent within 14 days of the grant of this order;
 - 1.2.2 interdicted from any further involvement in the management of the affairs of the Fourth Respondent.
- 1.3 THAT the First Respondent be and is hereby –
 - 1.3.1 directed, in relation to the Third Respondent, to only perform an accounting and bookkeeping function involving debtors' control, creditors' control, VAT calculation, and engagement with the Third Respondent's auditors;
 - 1.3.2 interdicted from interfering with or being involved with the functions performed by the First and Second Applicants in the management of the business of the Third Respondent;

- 1.4 THAT the relief set out in paragraphs 1.2 and 1.3 above operate as interim relief pending the outcome of the action contemplated in paragraph 1.1 above;
- 1.5 THAT the costs of the application be borne by the First Respondent on the party and party scale C;

[7] The first respondent concedes that she should have no further involvement in the fourth respondent, and Mr *Tucker* confirmed that she has given an undertaking to that effect. The relief sought for repayment of R700 000 is final in nature, while the relief limiting the first respondent's involvement in the third respondent is sought as an interim interdict. The first respondent opposes the final and interim relief.

Repayment of R700 000

The facts and arguments

[8] It is common cause that the first respondent withdrew R700 000 from the fourth respondent's bank account. In the founding affidavit, the applicants allege that these withdrawals were unlawful, unauthorised, and made without the consent of either of the applicants. The withdrawals were discovered in November 2024. In her answering affidavit, the first respondent contends that the applicants consented to the withdrawals. She states that the money was used to develop a property owned by her and that it was to be repaid once the property was sold. That sale has not yet occurred. She further alleges that it was ordinary practice for her and the applicants to borrow funds from the business. In addition, an amount of R200 000 had already been repaid.

[9] In reply, the applicants admit the repayment of R200 000. Thus, they now contend that the first respondent is liable to repay the amount of R500 000 to the fourth respondent. Faced with the WhatsApp messages annexed to the answering affidavit, the applicants concede to being aware of the first respondent's request to withdraw R210 000. They now allege that all their dealings in relation to the businesses were done on the WhatsApp group. Had they agreed that the R210 000 would only be due once the property is sold, this would have reflected on the group messages. Similarly, the WhatsApp group would have reflected the other loans if they had consented thereto. In addition, it is alleged that the applicants conducted Deeds searches and found that the first respondent does not own any property.

Either her version is false, or the property has been sold, in which event she is obliged to repay the amounts to the fourth respondent as the amounts would then be due.

[10] In his heads of arguments, Mr *Tucker* raised the issue of *locus standi*. He argued that the applicants do not have standing in seeking the relief in respect of the repayment of money to the fourth respondent. He argued that it was the fourth respondent who would have to seek the relief. Mr *Combrink*, in argument, stated that the issue of *locus standi* is not properly before me as it was only raised in the heads of argument. He added that the issue of standing is also contrary to the allegations made by the first respondent in her answering affidavit. He referred the court to various paragraphs in the answering affidavit where the first respondent alleges that the withdrawals were made with the consent of either the second applicant or both applicants – not the fourth respondent.

The law

[11] According to s 2 of the Close Corporations Act 69 of 1984 (the Act), a close corporation is on registration a juristic person and continues, subject to the provisions of the Act, to exist as a juristic person. A corporation has the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of having such capacity or of exercising such powers. In *Cianam Trading 104 CC v Peters MP and Others*,¹ Lephoko AJ held that when a member of a close corporation acts in her personal capacity, she is not acting on behalf of the close corporation even though such action may benefit the close corporation. The court held that: ‘... [T]here is no reason to departing (sic) from the well-established principle that a juristic person has its own legal personality and exists separately from its members ...’ (Footnote omitted.)

[12] In *Juna Trading DMCC v We R the Stars Trading and Projects CC*,² Carelse J held that:

‘*Locus standi* is fundamental to due process for without it, proceedings are invalidated. Simply put, *locus standi* is a matter of law and cannot be conferred or be consented to. It is

¹ *Cianam Trading 104 CC v Peters MP and Others* [2014] ZAGPPHC 974 para 20.

² *Juna Trading DMCC v We R the Stars Trading and Projects CC* [2019] ZAGPJHC 541 para 19.

trite that at common law, a party instituting legal proceedings must be able to show a sufficient, personal and direct interest in the case. In *Tulip Diamonds FZE v Minister of Justice and Constitutional Development and Others* the Constitutional Court held: “Standing is an important element in determining whether a matter is properly before a court. Our law accords generous rules for standing that permit applicants to bring lawsuits either on their own behalf or on behalf of others. But these are not limitless. A methodical and thorough application of the rules of standing is necessary to ensure, amongst other things that relief is being sought by the appropriate party.” (Footnotes omitted.)

[13] In motion proceedings, affidavits serve a dual purpose. The affidavits act as the pleadings in defining the issues and provide the evidence a party is relying on. A court will decide an application on legal issues not pertinently raised in the affidavits where it is satisfied that all the relevant facts have been canvassed in the affidavits so that none of the parties are prejudiced. In *Minister van Wet en Orde v Matshoba*,³ the Appellate Division held that:

‘... [T]his Court has often held that a point of law which is not pertinently raised in an appellant’s application but arises from the proven facts may be considered by the Court and form the basis of its judgment. However, this principle is qualified by the proviso that the Court can only act in such a way if there is no unfairness to the respondent. In the cases, this element is usually expressed by requiring all relevant facts to be before the Court. This eliminates the most obvious source of possible unfair harm to the respondent. In the present case, however, it is about a gap in the evidence. The question whether the Minister was unfairly disadvantaged by the Court basing its judgment on this gap therefore does not depend on whether all relevant facts were before the Court - obviously they were not - but whether the Minister was called upon to fill this gap ...’ (My translation.)

[14] The relief sought for the repayment of the money and the interdictory relief in respect of the fourth respondent are final in nature. Thus, the *Plascon-Evans* rule applies.⁴ The relief should be granted only if the facts stated by the first respondent, together with the admitted facts in the applicants’ affidavit, justify the order. It is trite that motion proceedings are not designed to resolve factual disputes, to establish probabilities, or to determine credibility. A court is permitted to deviate from the rule where it is convinced that no real, genuine or *bona fide* dispute of fact has arisen on

³ *Minister van Wet en Orde v Matshoba* 1990 (1) SA 280 (A) at 285E-285H.

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) (*Plascon-Evans*) at 634D-635C.

the papers or where the respondent's version is wholly fanciful and untenable. A real, genuine and *bona fide* dispute of fact arises where a party has clearly and unambiguously addressed the facts said to be disputed in its papers.

Analysis

[15] On the issue of *locus standi*, the applicants brought this application in their personal capacity. In the founding affidavit, there is no allegation made that they are acting in their capacity as members of the fourth respondent nor is there any allegation that they have the necessary authority to bring this application on behalf of the fourth respondent. More importantly, it is a well-established principle of our law that a close corporation is a juristic person capable of instituting proceedings as such. In this matter, the applicants, in their personal capacities, are not entitled to the relief. The relief belongs to the fourth respondent. In paragraph 1.2.1 the applicants request an order directing the first respondent to repay the amount to the fourth respondent and not themselves. That the applicants seek an order compelling the first respondent to make payment to the fourth respondent reinforces my view that the requisite *locus standi* to seek this relief resides exclusively with the fourth respondent. As stated by Lephoko AJ in *Cianam (supra)*, it matters not that the relief claimed may benefit the close corporation.

[16] It is regrettable that the first respondent failed to raise the issue of *locus standi* in the answering affidavit and only raised it in the heads of argument. Our jurisprudence differs on whether a court can entertain the issue of *locus standi* if it was not raised in the answering affidavit or the pleadings.⁵ In my view, the applicants' lack of standing is apparent from a proper reading of the papers. The late introduction of the lack of standing causes no incurable prejudice to the applicants. It should have been foreseen from the outset. For these reasons, I find that the applicants did not have the required standing to ask for the relief claimed in paragraph 1.2 of the notice of motion. However, on the assumption that I am wrong, it is necessary to consider the merits of the relief claimed in paragraph 1.2.

⁵ *Trustees for the Time Being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Another* 2022 (1) SA 424 (SCA) at para 34-36; *Ndevu and Another v Westonaria South Property Holding (Pty) Ltd t/a Westonaria South* [2022] ZAGPPHC 80 at para 19; *Trans Creations KZN CC v City of Cape Town and Another* [2015] ZAWCHC 32 at para 4; *Arendse and Another v Communicare NPS and Others* [2024] ZAWCHC 91 at para 27-34.

[17] There is a factual dispute as to whether the applicants knew of, and consented to, the withdrawals from the fourth respondent's bank account. If the first respondent's version is accepted, there is also a factual dispute as to whether the loan amounts are presently due. Applying the *Plascon-Evans* rule, the following factual matrix is accepted: The first respondent withdrew various amounts from the fourth respondent's bank account totalling R700 000 (a withdrawal of R210 000 on 14 July 2023, two withdrawals of R100 000 on 8 April 2024, and a withdrawal of R290 000 on 1 November 2024). R200 000 was repaid on 31 May 2024. The applicants knew of and consented to the withdrawal of R210 000, as reflected in the WhatsApp conversation dated 14 July 2023.⁶ Initially, this amount was to be repaid by the end of the month. The second applicant verbally consented to the other withdrawals. The first respondent used the funds to develop a property she owns. Ultimately, the parties agreed that the first respondent would repay the outstanding amount upon the sale of the property, which has not yet occurred.

[18] Mr *Combrink* submitted that the first respondent's version is inconsistent and cannot withstand scrutiny. I disagree. Her version is not so far-fetched or untenable that it may be rejected on the papers. I agree with Mr *Tucker* that there is nothing untoward about siblings involved in a family business to agree to the terms as professed by the first respondent. It is so that the first respondent did not produce a title deed to support her assertion that she owns a property and that it has not yet been sold. I do not believe that this omission undermines her version. One should not lose sight of the case the first respondent was required to answer. The applicants contended that the withdrawals were unauthorised and made without their knowledge. The first respondent answered that case with sufficient particularity. There was, in my view, no need for her to do more than she did considering the allegations contained in the founding affidavit. Had the applicants alleged in the founding affidavit that she had breached the agreed terms of the loan agreements, the position may have been different.

[19] In their replying affidavit, the applicants departed from their initial position that the withdrawals were unauthorised. This shift supports the first respondent's version,

⁶ Indexed bundle, Answering affidavit, annexure "C" at 08-6.

at least in relation to the R210 000 withdrawal. It also supports her version that R200 000 had already been repaid to the fourth respondent. The applicants allege that they discovered the unauthorised withdrawals in November 2024. They did not tender an explanation why they waited more than a year before demanding repayment. In my view, this delay is consistent with the first respondent's version that repayment would become due only upon the sale of her property, which has not yet occurred.

[20] The factual dispute raised by the first respondent is real, genuine and *bona fide*. It cannot be ruled wholly fanciful or untenable. The disputes of fact are fundamental and were reasonably foreseeable – especially considering the conceded facts in reply. Despite this, the applicants elected to persist with their application. There was no *in limine* application for referral of the matter to oral evidence and I find no reason or basis on which to do so *mero motu*.

Conclusion

[21] The applicants have failed to convince me that they have the necessary *locus standi* to have applied for the relief in respect of the repayment of the R500 000 or the interdictory relief as set out in paragraph 1.2.2 of the notice of motion. In addition, they have not met the threshold required for the final relief sought. In this regard, their application stands to be dismissed.

First respondent's involvement in the management of the third respondent

The facts and arguments

[22] It is common cause that the applicants and the first respondent are members of the third respondent with equal member's interests. It is also common cause that all three of them have been involved with the third respondent from the outset.⁷ It is not disputed that during previous proceedings in this court under case number D3387/2022 (where the first respondent in the present matter was the third applicant, and the third and fourth respondents were the fourth and fifth respondents respectively), the roles the applicants and the first respondent performed in the third respondent were described as follows by the first applicant:

⁷ Indexed bundle, founding affidavit at 01-1 and Indexed bundle, answering affidavit at 07-10.

'42. My role and that of the other Applicants in the businesses of the Fourth and Fifth Respondents can briefly be described as follows-

- 42.1. I was involved in operations and the management of staff in both businesses;
- 42.2. the Second Applicant was involved in general customer relations and arranged the servicing of vehicles used in the businesses;
- 42.3. the Third Applicant was responsible for the management of the accounts of both businesses, managing the banking and performing functions in relation to the Fourth and Fifth Respondents' obligations to SARS ...'⁸

[23] The first respondent confirms that she resided in Johannesburg from 2020 to 2025 and that she only recently relocated to Durban during October 2025. It is common cause that during the period she resided in Johannesburg, she continued managing the accounts of the third respondent. It is not disputed that she travelled to Durban regularly (approximately every two weeks, for a couple of days) as soon as the Covid restrictions lifted, and that she would then spend time at the business.

[24] The applicants contend that they and the first respondent concluded a tacit or implied agreement that her role in the third respondent would be confined to accounting, while they would be responsible for the business' operations and day-to-day management. They aver that the agreement is evidenced by the parties having performed those respective roles for the past five years. They also allege that it would not have been possible for the first respondent to be involved in the management of the business while she was residing in Johannesburg.

[25] The first respondent denies the existence of a tacit or implied agreement as averred by the applicants. The first respondent disputes that she waived her rights to be involved in the operational side of the business. She contends that she remained involved in all the managerial decisions, dealt with HR issues, and had discussions about the operations of the business with her late father despite her residing in Johannesburg. She concedes that the applicants may have taken on some of the more day-to-day decisions after the death of her father but that she was still involved in any major management decision.

⁸ Indexed bundle, replying affidavit at 10-11.

The issues

[26] The issue is whether the applicants have satisfied the requirements for an interim interdict, given the factual dispute as to whether a tacit or implied agreement existed between them and the first respondent regulating the management of the third respondent's business.

The law

[27] The requirements for interim relief, and the principles as set out in *Webster v Mitchell*⁹, and qualified by *Gool v Minister of Justice and Another*¹⁰, are considered holistically in *Reckitt & Colman SA (Pty) Ltd v S C Johnson & Son (SA) (Pty) Ltd*,¹¹ as follows:

'The applicant seeks interim relief. The applicant must therefore establish:

- (1) a clear right or, if not clear, that it has a *prima facie* right;
- (2) that there is a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief (by way of the summons issued) is eventually granted;
- (3) that the balance of convenience favours the grant of an interim interdict; and
- (4) that the applicant has no other satisfactory remedy.

When the applicant cannot show a clear right, and more particularly where there are disputes of fact relevant to a determination of the issues, the Court's approach in determining whether the applicant's right is *prima facie* established, though open to some doubt, is to take the facts set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should (not could) on those facts obtain final relief at the trial of the main action. The facts set out in contradiction by the respondent should then be considered and if serious doubt is thrown upon the case of the applicant it cannot succeed.'

[28] The applicants rely on the provisions of s 44(3) of the Act. Section 44(3) of the Act provides that:

'(3) Whether or not an association agreement exists, any other agreement, express or implied, between all the members of a corporation on any matter that may be regulated by an association agreement shall be valid, provided that such express or implied agreement-

⁹ *Webster v Mitchell* 1948 (1) SA 1186 (W), at 1189-1190.

¹⁰ *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C), at 682C-E.

¹¹ *Reckitt & Colman SA (Pty) Ltd v S C Johnson & Son (SA) (Pty) Ltd* 1995 (1) SA 725 (T) at 729H-730C.

- (a) is not inconsistent with any provision of an association agreement;
- (b) does not affect any person other than the corporation or a member who is a party to it; and
- (c) ceases to have any effect when any party to it ceases to be a member of the corporation.'

[29] Section 46 of the Act provides that:

'The following rules in respect of internal relations in a corporation shall apply in so far as this Act or an association agreement in respect of the corporation does not provide otherwise:

- (a) Every member shall be entitled to participate in the carrying on of the business of the corporation;
- (b) subject to the provision of section 47, members shall have equal rights in regard to the management of the business of the corporation and in regard to the power to represent the corporation in the carrying on of its business ...
- (c) differences between members as to matters connected with a corporation's business shall be decided by majority vote at a meeting of members of the corporation.'

Analysis

Prima facie right

[30] The applicants rely, *inter alia*, on the court order handed down in case number: D6122/2022 to support their contention that a tacit or implied agreement existed, allocating distinct roles to them and to the first respondent in the management of the third respondent's business. In my view, such reliance is misplaced. The relevant portion of the order granted by Hadebe J, and later confirmed by Ploos Van Amstel J, provides that '*... [T]he Applicants jointly, be and are hereby authorised to take sole control of the management and running of the businesses of the Fourth and Fifth Respondents.*'¹² Thus, this order did not allocate specific roles to any of the parties. The order merely states that the applicants and the first respondent in the present matter were to take control of the management of the businesses.

[31] The applicants further submit that the first respondent's confirmation of the first applicant's affidavit in case number D3387/2022 supports their contention that she accepted that her role in the business was confined to managing the accounts of the

¹² Indexed bundle, founding affidavit, annexure "RR3" at 02-27.

third and fourth respondents.¹³ The roles described in that founding affidavit do not concern specific managerial functions, nor do they state that the first respondent's role was limited to managing the accounts. They therefore do not support the applicant's reliance on an implied agreement.

[32] Moreover, the facts pleaded in the founding and replying affidavits do not support the conclusion, even *prima facie*, that a tacit or implied agreement existed. In the founding affidavit, the applicants allege that they and the first respondent had been involved in the third respondent from the outset.¹⁴ In reply, however, they deny that the first respondent was ever involved in the management of the business.¹⁵ This contradiction undermines their version on this issue. The applicants further allege that, after their father's death, the first respondent and another sibling, Pramagamie Naicker, assumed responsibility for managing the third and fourth respondents in accordance with the late Mr Reddy's wishes, and that the applicants stepped back to allow them to do so.¹⁶ Yet, they do not explain what role the first respondent performed during that period. The applicants have pleaded no facts that gainsay the first respondent's version that she was actively involved in managing the third respondent during that period. It is therefore doubtful that she would have relinquished that role once the applicants again became more involved in the running of the third respondent.

[33] The first respondent's version is that she has always been involved in managing the business, even when she was residing in Johannesburg. She explained that she travelled regularly to Durban and spent time at the business, a fact that the applicants do not dispute. She relied on a WhatsApp exchange in which the first applicant told her to address an issue she had raised, stating that she too was involved in operations.¹⁷ That exchange is likewise undisputed and is inconsistent with the applicants' contention that her role was confined to managing the business accounts.

¹³ Indexed bundle, replying affidavit at 10-11.

¹⁴ Indexed bundle, founding affidavit at 01-18.

¹⁵ Indexed bundle, replying affidavit at 10-9 to 10-10.

¹⁶ Indexed bundle, founding affidavit at 01-20.

¹⁷ Indexed bundle, answering affidavit, annexure "E" at 08-11.

[34] Having regard to the inherent probabilities, I remain unconvinced that the applicants should on those facts, obtain final relief at the trial of the main action they intend to institute. The facts pleaded do not lend themselves to a *prima facie* conclusion that the first respondent waived her rights to be involved with the management of the third respondent. The facts do not support the applicants' contention that an implied agreement as referred to in s 44(3) of the Act came into existence. The inference that she was involved in managing the third respondent is therefore unavoidable and accords with her version.

Apprehension of irreparable harm

[35] The applicants allege that the friction between them and the first respondent has hindered the smooth running of the third respondent's business. They contend that her interference with staff has created uncertainty about whose instructions the staff should follow, and they identify several incidents in which she allegedly caused discord with certain staff members. Those allegations remain hearsay, as no confirmatory affidavits were obtained from the staff concerned. The first respondent dealt with the incidents in detail and provided comprehensive explanations, which were not challenged in reply. On the facts before me, the applicants have not established a well-grounded apprehension of irreparable harm.

Balance of convenience

[35] In his heads of argument, Mr *Combrink* states that the prejudice to the applicants if the interim order is not granted, is that the ongoing conflict will persist, which adversely affects the smooth operation of the business of the third respondent. He also argues that the first applicant does not complain of any prejudice she would suffer should the interim relief be granted. I do not agree with this contention. The first respondent alleges that if the interim relief is granted, it will effectively hamper her continued involvement in the management of the third respondent. The intended action proceedings may be delayed for years, and she would not be able to participate in any of the operational affairs of the third respondent. In the words of Mr *Tucker* she would '*...be ousted from an entity she has been involved with for near 30 years.*'

[36] By virtue of s 46(a) and s 46(b) of the Act, the first respondent holds a legislative right to be involved in the management of the third respondent. The contention advanced by the applicants that the first respondent waived her rights to be so involved is unsupported by the facts. They have failed to meet the high threshold to justify such a conclusion. This tips the balance of convenience in favour of the first respondent.

No other satisfactory remedy

[37] Section 46 sets out the default rules for managing a close corporation where there is no association agreement under s 44(1), or any agreement contemplated in s 44(3) of the Act. The applicants therefore have a statutory remedy if interim relief is refused. Section 46(c) of the Act provides that disputes between members concerning the corporation's business must be resolved by majority vote at a meeting of the members.

Conclusion

[38] Considering the above, I find that the applicants have failed to satisfy the requirements for interim relief. They have not established a *prima facie* right to restrict the first respondent's involvement in the management of the third respondent. The facts do not support the existence of a tacit or implied agreement in terms of s 44(3) of the Act. They have failed to show a well-grounded apprehension of irreparable harm. The balance of convenience favours the first respondent, who has a statutory right to participate in the management of the third respondent, and the applicants have an alternative statutory remedy under s 46(c) of the Act. The interim relief sought in relation to the third respondent must therefore be refused. Lastly, there is no reason why the costs should not follow the result.

Order

[39] In the result, I make the following order:

The application is dismissed with costs on scale A, the applicants are directed to pay such costs jointly and severally, the one paying the other to be absolved.

Barnard AJ**Appearances**

Counsel for the applicants: Mr Combrink SC
Instructed by: Shepstone & Wylie Attorneys
24 Richefond Circle
Ridgeside Office Part
Umhlanga Rocks

Counsel for the first respondent: Mr Tucker
Instructed by: Mohamed Hassim Attorneys
134 Silverton Road
Musgrave
Durban

Date of hearing: 23 July 2026
Date of judgment: 20 August 2026