



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT02791/ADJ/2026

In the matter between:

MARIO VAN DER WESTHUIZEN

APPLICANT

And

DIRECTORS OF EVERGLADES HARTIES

HOMEOWNERS ASSOCIATION

RESPONDENT

Presiding Member: Ms H K Dlepu

Panel Members; Dr M Chicktay

Mr F.S Mudzunga

Date of decision: 10 September 2026

DECISION AND REASONS

A. INTRODUCTION

- 1 This is an application brought to the Companies Tribunal by the applicant seeking an order by the Tribunal directing the respondents to comply with all

binding legal and regulatory obligations including, directing respondents to take all the necessary to rectify their ongoing non-compliance within the period determined by the Tribunal, and that the Tribunal grant further and alternative relief as it deems appropriate to ensure proper governance and compliance.

- 2 In addition to the order above the applicant in its founding affidavit, seeks an order declaring the respondent's director's delinquent in terms of Section 162 of the Companies Act ,71 of 2008.

B. BACKGROUND

- 3 The Applicant is an adult male member of the Everglades Harties Homeowners Association NPC ("the HOA") a non-profit company registered in accordance with the Company laws of South Africa with registration number 2007/013378/08 its registered address being 26 Everglades Estate, R512, Hartbeespoort Dam, Northwest ,0216
- 4 The Applicant has included in his prayers Marnie Engelbrecht, the Chairperson of the Board, and Michael De Melo the Deputy Chairperson of the Board, as the only two directors of the respondent against whom the order in terms of Section 162 of the Companies Act 71 of 2008 is sought.

- 5 The complaint stems from an adjudication order granted by the Community Scheme Ombud Service in terms of Section 53 & 54 of the Community Scheme Ombud Act NO 9 of 2011 ("CSOS Act") dated the 31 October 2025.
- 6 The adjudicator granted the following relief against Everglades Estate Homeowners Association as the first respondent and Michael De Melo as the second respondent, in summary; -.

(i) That the relief sought in terms of Section 53 (1)(a) of the CSOS Act is denied, as it was misconceived.

(ii) The relief sought in terms of Section 39(6) (c) (i) of the CSOS Act was granted in terms of Section 54(1) of CSOS Act wherein the first respondent was ordered to remove the containers containing human faeces located in front of the applicant's property within 60 (sixty) days of the order.

(ii)The Respondent was ordered in terms of Section 39(6) (c) (i) of the CSOS Act to complete the service entry to the sewage area within 30(thirty) days of the order.

(iii)The Respondent was ordered in terms of Section 39(6) (c) (i) of the CSOS Act to clean and maintain the estate and all common property within 60(sixty) days of the order.

(iv) The Respondent was ordered in terms of Section 39 (7) (a) of the CSOS Act to disclose the adopted MOI filed with the CIPC within 30 (thirty) days of the order.

(v) No order as to costs.

7. The adjudication order further highlights the applicants RIGHTS in terms of Section 57 of the CSOS Act which provides that an applicant who is dissatisfied by an adjudication order may appeal to the High Court, but only on a question of law.

8 It is against the background I need to address the conflated issues conflated raised by Applicant.

9 .The Applicant sought a default order against the respondent, his reasons being that the respondent failed to file their opposing papers within 20 days (twenty) as prescribed by the Tribunal Rules and that the Office of the Tribunal had confirmed that “We do not have any record of a CTR145 having being filed by the Board of Directors of the Everglades Harties Homeowners Association on our system” .The Application for relief in terms of Section 180 to 184 of the Companies Act ,2008 and Regulation 145 of the Companies Regulations,2011 on Form CTR142 was served at the Tribunal on the 8 June 2026 and the default order 7 July 2026

10. The Applicant seeks the following order from the Tribunal in support of his application for default against the Respondents.

(i) An Order be granted on an unopposed basis /default basis.

(ii) Grant the relief sought in the CTR142 application.

(iii) Order the immediate removal of: Mr Manie Engelbrecht as Chairman and Director of Everglades Harties Homeowners Association and the removal of Mr Michael De Melo as Deputy Chairman and Director of Everglades Harties Homeowners Association NPC.

(iv) Direct that such removal take effect immediately upon the granting of the Tribunal order

(v) Grant any further relief deemed appropriate to ensure proper governance, accountability and compliance within the Association.

11. As the date for the application for the default, the 7 July 2026, the Respondents had not filed their response. The respondents subsequently filed their response however no condonation application was filed.

12 The Applicant added prayers in the default application which were never raised in the main application, and this cannot be entertained at this stage. The prayer is non pro scripto in that there is no basis for the prayer which was never prayed for in the main application. Thus, the judgement by default cannot be entertained.

C JURISDICTION OF THE TRIBUNAL

13. The Companies' s Tribunal is a South African statutory agency under the Department of Trade, Industry and Competition (dtic) created to provide free speedy, and in terms of Section 193 of the Companies Act 71 of 2008. It is a creature of statute and does not have inherent jurisdiction.

14. Its mandate under the Act includes resolving disputes ,reviewing decisions made by the CIPC, and adjudicating specific applications such as disputes over company names or access to company records but lacks the judicial jurisdiction to strip a person of their directorship through delinquency in terms of Section 162 (5) of the Companies Act .,this jurisdiction solely lies in the high court .

15 The Companies Tribunal does not have jurisdiction to impose compliance of adjudication Orders made by other fora, for instance the orders made by the Community Schemes Ombud Service under its own legislation Act No 9 of 2011. The High Court is the correct forum to settle such matters.

16 This, in our opinion, the applicant is embarking on a forum shopping exercise, instead of directing or approaching the high court for the relief he seeks, to compel the applicants. This situation is unfortunate; the applicant should apply to the high court for resolution of this matter.

D. ORDER

17, We hereby grant the following order.

- (i) The above application is hereby dismissed for lack of jurisdiction.

Signed

Hlaleleni Kathleen Dlepu, Presiding Member of the Tribunal