

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 38204/2022

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

Date: 27 May 2024 E van der Schyff

In the matter between:

Edward Eduman Milne

Paul Heslop

Adriaan Combrinck

Christopher Riley

1st Applicant

2nd Applicant

3rd Applicant

4th Applicant

And

Jose Luis Rodrigues Babtista N.O.

Jaco van Rooyen N.O.

Jorge Mendoca Velosa N.O.

(Of the Best Trust Company (JHB) (Pty) Ltd)

1st Respondeny

2nd Respondent

3rd Respondent

In re:

Jose Luis Rodrigues Babtista N.O.

1st Applicant

Jaco van Rooyen N.O.

2nd Applicant

Jorge Mendoca Velosa N.O.

(Of the Best Trust Company (JHB) (Pty) Ltd)

3rd Applicant

and

Quickstep 684 (Pty) Ltd

1st Respondent

Edward Eduman Milne

2nd Respondent

Paul Heslop

3rd Respondent

Adriaan Combrinck

4th Respondent

Christopher Riley

5th Respondent

Gillian Claire Milne

6th Respondent

Sarah Heslop

7th Respondent

Wellness Property Company (Pty) Ltd

8th Respondent

Recem Trust

9th Respondent

J Calitz

10th Respondent

Peter Errol Boucher

11th Respondent

J Ginder

12th Respondent

Martie Kuhn N.O.

13th Respondent

Proplan Holding

14th Respondent

Martin Van Achterbergh

15th Respondent

Eric Truebody

16th Respondent

Norman Nicholson

17th Respondent

Renee Hawkridge

18th Respondent

Environmental Management CC

19th Respondent

Misty Lake Trade and Investment 69
 40/50 Investments CC
 Charmaine Phillip
 Lynn Hardy
 Dion Barnard Holding
 Jacobus Phillipus de Villiers
 Argontoula Pleaner Holding
 Willem Christoffel Van Wijk N.O. and
 Petronella Jacoba van Wijk N.O.
 Robjohn CC
 Rainer Schuerger
 Jimoto Bushvel Investments
 Willem du Preez
 Jackie Howard
 Hillary Oats
 Nich Rosenberg
 Margaret Ann Callen and E Callen
 Pamela Ann Bouwer
 Bruno de Castro
 Toney Vey Family Trust
 Istermar Game Farm CC
 Ian Lawrence Peach N.O.
 Ivan James Roodt N.O.
 Jonathan Peach
 Anna-Mare Peacj N.O.
 JVH Krüger N.O.

20th Respondent
 21st Respondent
 22nd Respondent
 23rd Respondent
 24th Respondent
 25th Respondent
 26th Respondent
 27th Respondent

 28th Respondent
 29th Respondent
 30th Respondent
 31st Respondent
 32nd Respondent
 33rd Respondent
 34th Respondent
 35th Respondent
 36th Respondent
 37th Respondent
 38th Respondent
 39th Respondent
 40th Respondent
 41st Respondent
 42nd Respondent
 43th Respondent
 44th Respondent

Ivan James Emmett N.O.
Combrinck Incorporated

45th Respondent

46th Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] This is an application for leave to appeal against the whole judgment and order dated 2 May 2024 in the abovementioned matter. The second to fifth respondents in the main application are the applicants in this application for leave to appeal. Three main grounds of appeal are raised:

- i. The first ground of appeal is that I erred in finding that short notice of the shareholders' meeting was fatal to the validity of the shareholders' meeting and that the principle laid down in *Van Zyl v Nuco Chrome Bophuthatswana (Pty) Ltd and Others*¹ and not the principle laid down in *Millar v Natmed Defence (Pty) Ltd*² applies and that *Millar v Natmed* is wrong insofar as it allows for the condonation of short notice of shareholders' meetings outside the parameters of section 62(2A) of the Companies Act 71 of 2008 (the 2008 Companies Act);
- ii. The second ground of appeal is that I erred in finding that the papers were effectively served on all interested and affected parties;
- iii. The third ground of appeal is that I erred in finding that neither Recem Trust nor Portion 7 Alsef (Pty) Ltd qualified as shareholders as defined in the Companies Act. The applicants in this application for leave to appeal contend that I should have found that if regard is had to the extended meaning of section 57(1) of the 2008 Companies Act, Recem Trust or Portion 7 Alsef (Pty) Ltd qualified as a shareholder.

¹ (43825/2012) [2013] ZAGPJHC 40 (13 March 2013).

² 2022 (2) SA 554 (GJ).

- [2] A written judgment was handed down containing the reasons for the order granted on 2 May 2024. There is no need to revisit these reasons. Having considered the grounds of appeal raised, I am not of the view that the appeal would have a reasonable prospect of success. As a general proposition, I agree with the applicants in this application that it is important and necessary that the extended meaning of the term shareholder, as provided for in section 57(1) of the 2008 Companies Act, be interpreted and traversed by the Supreme Court of Appeal. In this case, however, the undisputed factual finding that Mr. Riley signed the impugned notice as the representative of Istemar Game Farm CC and not in his capacity as trustee of Recem Trust renders the extended definition of the term shareholder as contained in section 57(1) an interesting academic issue only.
- [3] A court is not concerned with what a party 'would have' or 'could have' done, but with what the court finds, on a proper evaluation of the facts placed before the court, a party did, in fact, do.
- [4] *In casu*, it is important to have regard to the fact that natural persons and juristic persons represent two distinct categories of legal subjects. The differentiation between natural and juristic persons is not a mere legal technicality. It is vital to protect the distinction between the two categories of legal subjects. Company Law is complicated, and natural persons who venture into the legal labyrinth comprising the legal principles governing Company Law in order to draw the benefits it brings, must be aware of the risks it poses. On the facts, Mr. Riley could, in theory, probably have represented Recem Trust when he signed the notice calling for the shareholders' meeting, the question is whether he did, in fact, represent Recem Trust. He states in the answering affidavit:³

'Accordingly, the notice convening the shareholders meeting of 24 May 2022, [w]as signed by me in my representative capacity of Istemar, the only shareholders I represented, alternatively, accepting the applicants (*sic*) contention that Recem share sale agreement with Alsef is void,

³ Paragraph 15.9.

then the shares vested with Recem and as such I appended my signature to reflect that I was also acting on behalf of Recem.'

- [5] Mr. Riley did not provide the court with any proof that he was, in fact, representing Recem Trust. He did not attach a resolution from Recem Trust authorising him to call the meeting on the Trust's behalf. It cannot be found that he acted on behalf of TRecem trust when he signed the impugned notice.
- [6] Portion 7 Alsef (Pty) Ltd does not meet the requirements for being regarded as a shareholder in terms of the Act.

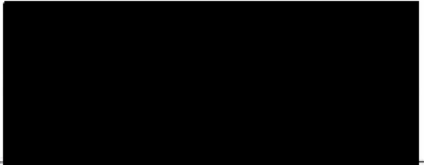
Costs

- [7] The respondents in this application sought a costs order that includes the costs of senior counsel. The Rules Board for Courts of Law recently issued amendments to the Uniform Rules of Court which took effect on 12 April 2024. One of the material amendments relates to Rule 67A. The rule, among others, provides that a bill of costs submitted for taxation shall be for advocates in accordance with the tariff in rule 69. I sought supplementary heads of argument from the parties dealing with the costs issue. I considered the supplementary heads filed, the complexity and significance of the matter.

ORDER

In the result, the following order is granted:

- 1. The application is dismissed with costs, counsel's fees to be recovered in accordance with the maximum tariff provided for in as provided for in Scale B to Rule 69.**


E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicants in the application

For leave to appeal:

Instructed by:

For the respondents in the application

for leave to appeal:

Instructed by:

Date of the hearing:

Date of judgment:

Adv. L. Morris SC

Frese Gurovich Attorneys

Adv. ARG Mundell SC

AC Schmidt Inc.

20 May 2024

27 May 2024