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**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MIDDELBURG**

**CASE NO:1615/25**

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

**07 APRIL 2025**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

In the matter between:

**T ONE C TRADING AND PROJECTS (PTY) LTD  
(REGISTRATION NUMBER: 2015/310443/07)**

**APPLICANT**

and

**CAPE FINANCE CORPORATION (PTY) LTD**

**RESPONDENT**

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**JUDGMENT**

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## **Leso AJ**

### **Introduction**

[1] The applicant had brought an urgent application seeking the order as follows:

- 1.1 That the usual forms and/or service provided for by the Uniform Rules of the Court be dispensed with;
- 1.2 That the first respondent be ordered to restore undisturbed possession of the property, being an Iveco Trakker 440 Truck Tractor with the engine number: F[...] to the applicant within 24 (twenty-four) hours of service of this order; and
- 1.3 The respondent or any interested party to pay the cost on attorney and client scale in the event of opposition.

[2] The respondent opposed the application based on the grounds as follows:

- 2.1 Lack of urgency;
- 2.2 Lack of locus standi; and
- 2.3 The deponent as a duly authorized representative of the applicant consented to the repossession of the assets.

### **Background**

[3] The motion was filed in this court on 27 March 2025 for hearing on 1 April 2025. The respondent was served by email on 27 March 2025. The applicant gave the respondent until 29 March 2025 at 16h00 to file the notice of intention to oppose and to file the answering affidavit on 31 March 2025 at 12h00, and the applicant was to deliver the replying affidavit on 31 March 2025.

- [4] The matter was postponed for 2 April 2025 because on the day of the hearing the applicant requested an opportunity to file the replying affidavit. This request was despite the applicant's undertaking to deliver the reply on 31 March 2025 as per the motion.
- [5] With the direction of the court, the parties addressed the issue of urgency first and at the conclusion of the submission the respondents counsel raised the issue of point *in limine* relating to the applicant's lack of standing to litigate in the matter.
- [6] It is common cause that the respondent repossessed the Iveco Trakker 440 Truck Tractor ("the truck") on the first week of February 2025. Both parties presented substantial arguments on urgency followed by the remaining point *in limine*. The submissions made by the parties are succinctly set out below.
- [7] On urgency, the applicant's ground of urgency lies in the allegation that the respondent might sell the truck after it has been repaired and the applicant will then be denied the opportunity to buy the truck as agreed by the parties in terms of the lease agreement.
- [8] In its founding papers, the applicant avers that the urgency was triggered by the applicant finding out from NATIS(National Traffic Information System) on 24 March 2025 that the truck is registered in the respondent's name and not in the name of the applicant. During oral submission, the counsel for the applicant placed emphasis on the property depreciation of the truck in time and argued that a delay in restoring the truck would result in irreparable harm should the urgency not be granted.
- [9] The respondent's attorney argued that this matter was not urgent, alternatively, that the matter was not so urgent to justify extremely truncated timelines because there was a delay in bringing the application that the applicant did not explain. The delay was explained from the chronology of events as follows:

- 9.1 The applicant's attorney's first engagement with the respondent was through a letter dated 11 March 2025 and on 13 March 2025 there were settlement discussions.
- 9.2 The time period from deposing a founding affidavit to issuing the application and the date of the hearing.
- [10] The respondent argued that the applicant did not explain why the application was brought 13 days after the applicant's attorney's final correspondence with the respondent, and a month after the repossession of the truck.
- [11] The respondent argued that the applicant's grounds for urgency are misguided because the truck has always been in the name of the respondent and therefore, it was never registered in the applicant's name. The respondent also refuted the applicant's allegations that the truck had been sent for repairs with the intention to sell without the knowledge of the applicant. According to the respondent, the truck was not roadworthy and the applicant failed to maintain the truck and keep it licensed. The respondent confirmed under oath that the truck cannot be sold until it has been repaired, the licensing fees paid, and the truck re-offered to the applicant with the settlement figure.
- [12] At the conclusion of the submissions on urgency, the respondent proceeded to argue the remaining point *in limine*, which I will deal with first because the finding on those points in favour of the respondent will be the end of the dispute.

### **Respondent's Point *In Limine***

- [13] The respondent's counsel argued that the application should be struck off as the applicant is not properly before the court. The respondent argued that while the resolution attached to the founding affidavit as annexure "AN1" authorises Mr Zulu( the director of the applicant and the deponent) to *represent the applicant in all and any legal matters* (my emphasis) it does not

authorise him to institute the current litigation against the respondent nor does the resolution grant him power to make the decision on whether or not to institute legal proceedings on behalf of the applicant.

[14] The respondent argued that it is strange that the resolution is signed by two directors while the CIPC's records marked as annexure "OA9" by the respondent reflect that the applicant has one director.

[15] Lastly, the respondent argued that the applicant is a non-existent entity and does not have locus standi to institute proceedings against the respondent because the applicant is no longer registered with the CIPC.

### **Analysis of the Point *In Limine***

[16] The respondent raised technical points on the admissibility of the resolution based on the inconsistent or questionable information contained in the resolution, as well as the CIPC record reflecting that the applicant is in the process of de-registration. There was also a complaint about the wording used in the resolution authorizing the deponent to act on behalf of the applicant.

[17] I will first deal with the issue of the allegation of the de-registration of the applicant as argued by the respondent. A copy of the CIPC record marked as annexure "OA9" by the respondent is accepted as credible evidence in the absence of objection from the applicant. The record indicates that the company is in imminent de-registration. This document does not however prove that the company is non-existent as the respondent's counsel argued. The argument by the respondent that the applicant has no standing to litigate because it is non-existent has no basis and it must not stand because the company has not yet been de-registered, and the status can be rectified at any stage. Section 19(1)(b) of the Companies Act 71 of 2008 ("the Companies Act"), which states that a company has all the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having such capacity, or as provided in the company's

Memorandum of Incorporation ("MOI"). There has not been any reference or any issues raised on the applicant's MOI and as such, I can safely accept that it does accord with the corporate governance laws qualifying the applicant as a juristic person.

- [18] On the issue relating to the authority of the deponent to represent the applicant in these proceedings, I cannot find any shortcoming on the wording used in the resolution which the applicant relies upon in this litigation. While it is crucial in resolutions related to litigation or legal proceedings to include specific details of a specific matter, action to be taken and the authorised person, lack thereof cannot invalidate the resolution as those particulars are merely to ensure clarity and legal effectiveness. The company law and corporate laws of this country are not instructive on the wording of the resolution when the director of the company acts on behalf of the company in litigation. The only requirement is that the applicant must have the authority to act on behalf of the company or to represent the company, and that power or authority must be reflected in the company resolution. In many jurisdictions, the legal framework governing the actions of a company, including the authority to initiate litigation, is established by company or corporate law.
- [19] Section 20 of the Companies Act provides that the MOI of the company limits, restricts or qualifies the purposes, powers or activities of that company and or the authority of the directors to perform an act on behalf of the company as contemplated in section 19(1)(b)(ii) of the Companies Act. In this case, there is no evidence that the authority or activities of the directors to perform an act on behalf of the company as contemplated in section 19(1)(b)(ii) were limited. In the event that there is evidence that the deponent went overboard in performing the activities of the company, the law empowers the shareholders, by special resolution, to ratify any action by the company or the directors that is inconsistent with any such limit, restriction or qualification, subject to section 20(3).
- [20] Having said the above, I cannot accept the resolution submitted by the applicant as evidence of the deponent's authority to act on its behalf. The

respondent's point on the inadmissibility of the resolution cannot be ignored because there is an inconsistency on the CIPC record marked as annexure "OA9" by the respondent and the resolution that the applicant relies on. Annexure "OA9" reflects that the deponent was the sole director in 2020, however, the resolution marked as annexure "AN1" dated 10 February 2025 reflects the signatures of two directors. Annexure "AO9" is a copy of a CIPC record on the applicant dated 29 March 2025 and is accepted as a piece of credible evidence that proves the discrepancy in the resolution. The resolution cannot be accepted as evidence.

- [21] The applicant missed the opportunity to deal with the respondent's point *in limine* after the matter was postponed to allow the applicant to file the answering affidavit. The only issue the applicant addressed was to deny that the deponent has no locus standi and unfortunately, he continued to rely on the unscrupulous resolution and the outdated CIPC records. This leaves the matter to be settled on the respondent's affidavit.

## **Conclusion**

- [22] This case is incompetent because it was instituted without a board resolution. Consequently, the applicant had no authority to litigate on behalf of the company in these proceedings. Consequently, there is no application before me.

## **Order**

- [23] In the result, I make the following order:

1. The application is struck off.
2. No order as to costs.

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**J T LESO**  
**ACTING JUDGE OF THE HIGH COURT**  
**MPUMALANGA DIVISION, MIDDELBURG**

Appearances

For the applicants:           Adv Maponya

Instructed By:               Zwane M Attorneys  
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For the respondent:       R A Lategan

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Hearing Date:               01 and 02 April 2025

Judgment delivered on:   07 April 2025