

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2021/25200

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
21 June 2021

In the matter between: -

SOWETO COMMUNITY TELEVISION NPC

Applicant

and

HLALUKANA, MZIMKHULU

First respondent

KENANA, MAHLOMOULA

Second respondent

MLAMBO, NKOSINATHI

Third respondent

NKOSI, DUDUZILE

Fourth respondent

TSHEKEDI, JOHN

Fifth respondent

JUDGMENT

GEORGIADES AJ:

[1] The applicant seeks to declare a meeting where the respondents were purportedly elected as directors of the applicant, null and void. The meeting was apparently held by members of the Soweto community on 12 May 2021.

[2] The applicant seeks to interdict the respondents from the following acts: -

[a] Misrepresenting themselves to be the directors or officers of the applicant;

[b] Giving unlawful and unauthorized instructions to the staff of the applicant;

[c] Unlawfully engaging the stakeholders of the applicant;

[d] Using the intellectual property of the applicant and/or any resources of the applicant, including the applicant's logo;

[e] Making any public announcements concerning the applicant;

[f] Interfering with the legitimate process of the applicant to recruit members and the board nomination process for the planned special annual general meeting ("AGM"); and

[g] Disrupting the planned AGM of the applicant.

[3] Central to the determination of this matter is the outcome of the complaint laid in October 2020 with the Complaints and Compliance Committee of ICASA in October 2020. The complaint, at its heart, was against the board of directors. It alleged that the board was not properly constituted.

[4] The CCC found that the board was not properly appointed. This was because the then sole director, Mr Nkutha, did not hold a special meeting to elect the directors. Instead, he co-opted the current directors. The company had no members to hold an election, it held and therefore, Mr Nkutha had no choice but to co-opt directors. Mr Nkutha is no longer a director. The current directors removed him. The CCC held that, *inter alia*, a special meeting of members for the election of directors be held within 60 days.

[5] The applicant says it is still within the 60-day period but is prevented from holding this election or special meeting to elect the directors because its attention lay elsewhere. Also, the Covid regulations prevented it from doing so. In a note to the Court, the applicant indicated that the Covid restriction has been lifted, although they did not state when the special general meeting would be held.

[6] There are currently four directors and a company secretary on the board of the applicant. Two of the directors were appointed in 2019 while the other two were appointed in 2021. The latter were appointed after the complaint was lodged with the CCC.

[7] The applicant has not taken any steps to implement the judgment of the CCC. There was nothing preventing it from recruiting members from the broader Soweto community. During the week of the hearing of this matter, the Covid restrictions were lifted. I called for further submissions on urgency given that this had occurred. However, there was no indication that the CCC judgment was in the process of being implemented. It maybe that this is in process.

[8] The respondents are all residents of Soweto and are community members. Frustrated by the lack of transparency and other factors that included no elections or registration of membership, they called the applicant's directors to a meeting on 12 May 2021.

[9] They also pointed to certain irregularities which included: -

[a] A salary advice purportedly issued by the applicant in favour of the company secretary and attorney of record, Mr Gcayi, for a monthly salary in the net amount of R80,000.00;

[b] In October 2020 Mr Gcayi issued an invoice in his capacity as attorney of Soweto TV in the amount of R140,000.00, which includes a monthly retainer of R40,000.00. In addition, a tax invoice issued by the law firm of Mr Gcayi for professional services rendered, in October 2020, in the amount of R240,000.00 did not describe the nature of the professional services;

[c] On 10 October 2019 MVM House, one of the service providers of Soweto TV, rendered an invoice to Soweto TV in the amount of R115,000.00. The director of MVM is one Mr T Molefe, currently also a director of Soweto TV since 3 March 2021;

[d] An undated broadcasting partnership agreement concluded between Soweto TV and Touch HD provides at clause 5.2 of the appointment of an

external supplier, MVM Multimedia (Pty) Ltd. The profit sharing is provided for in clause 6.1. Production costs and 16.5 % commission would be payable to MVM House firstly, and then only the surplus would be shared between Soweto TV and Touch HD on a 50/50 basis. Mr Molefe is also a director of MVM, as well as Touch HD.

[10] The respondents allege that the interests of the applicant are not being served by the current board of directors and the company secretary. In this regard they also pointed to the fact that there were no audited financial statements for the past few years. They allege further that it was in the financial interests of the applicant that an interim board of directors be appointed, pending a special members' meeting to manage the financial affairs of the applicant.

[11] On the other hand, the applicants allege that the respondents have been purporting to act as the directors of Soweto TV and have to this extent terminated the contract of MVM. They did not want the respondents to continue interfering with the workings or the business of Soweto TV.

[12] The applicant's directors indicated that they were not available to attend the meeting on the 12th of May 2021. The meeting went on and the respondents were elected as directors. They informed the applicant's current directors that they were elected as the new directors of Soweto TV.

[13] This is a case of an improperly constituted board of directors, as found by the CCC, calling into question and wanting to nullify the subsequent election of directors, i.e. the respondents.

[14] I agree with the finding of the CCC. The current board is improperly constituted. Hence the CCC's recommendations need to be implemented. These had not been implemented, resulting in the meeting of the 12th of May 2021.

[15] Similarly, that election wasn't proper and stands to be nullified. The respondents did not inform the current board of directors that they intended holding an election.

[16] During the hearing the Court proposed to Ms Bezuidenhout and to Mr Moela

that the proverbial baby be cut in half and that each of the contestants serve on an interim board.

[17] In my judgment this seems to be the best way of resolving the matter pending the special meeting of members.

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

1. Pending the election of a board of directors at a special meeting to be convened as contemplated in this order, and interim board of directors is hereby appointed and shall consist of a total of 4 directors, appointed as follows (*“the interim board”*): -

1.1 two directors to be nominated and appointed by the respondents’ attorney, namely Ms Ndileka Ngoqo;

1.2 two directors to be nominated and appointed by Mr Gcayi;

1.3 one director to be nominated and appointed by the Chairperson of the Johannesburg Society of Advocates.

2. The interim board shall be elected and constituted by no later than close of business on Wednesday, 30 June 2021.

3. All decisions relating to the management and financial affairs of the applicant will be taken by the interim board by way of majority vote.

4. The interim board shall sign a resolution for the operation of the bank account/s of the applicant, including but not limited to the bank account held with Absa Bank Limited with account number: [...] and furnish it to the applicant’s bankers by no later than Friday, 2 July 2021.

5. The interim board shall from Monday, 5 July 2021, between the hours of 07:00 – 08:00 and 18:00 - 20:00, advertise on television and on its website that persons of 18 and older who live within the broadcasting range (as per its licence) of Soweto Television may apply for membership of the applicant so that they may elect a board of directors at a Special meeting of the applicant to be held by no later than Saturday the 28th of August 2021 between the

hours of 14:00 and 19:00 at a specified readily accessible place within the broadcasting range.

6. The advertisement must include that an application form must be filled in as set out on the station's website or as obtained from the office of the radio station (with station's street address) or per e-mail (with station's e-mail address).

7. The interim board must, if an applicant for membership lives at a place as aforementioned, issue the said membership by notifying the applicant per e-mail or postal service and stating that he or she must at the meeting, as set out hereunder, be in possession of the said proof of membership to enter the meeting place and vote.

8. As main item a board of directors, including a chair and deputy chair, of 8 be elected from the members by a majority vote at such a meeting for a term of 3 years.

9. The election shall be chaired by a Senior Counsel (SC) nominated by the Chairperson of the Johannesburg Society of Advocates, with a director nominated by the interim board acting as secretary.

10. A representative of the ICASA shall be invited to the said meeting within 21 working days' notice.

11. Paragraphs 2.1 and 2.2 of the *rule nisi* order granted by this court on 14 April 2021 is substituted with this order.

12. Each party shall pay their own costs.

**C GEORGIADES
ACTING JUDGE OF
THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

Date of Hearing: 3 June 2021

Judgment Delivered: 21 June 2021

APPEARANCES: -

On behalf of applicant: Mr Moela

Instructed By: SGA Law Africa Attorneys
Pretoria

On behalf of respondents: Ms F Bezuidenhout

Instructed By: Ngoqo Sithole Incorporated
Johannesburg