IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION. PRETORIA

Case number: 31487/2012

Date: 17 September 2014

In the matter between:

THOMAS SAREL LESSING Applicant

and

SERENGETI GOLF AND WILDLIFE PROPERTY OWNERS

ASSOCIATION Respondent

JUDGMENT

PRETORIUS J.

[1] At the outset of hearing this application, counsel for the applicant indicated that the applicant would only persist with prayers 1, 2 and 4 of the notice of motion, seeking certain information and/or documents.

[2] It is common cause that the respondent is a property homeowners association, a company enacted in terms of Section 21 of the old Companies Act, Section 1 of the new Companies Act. The respondent is a so-called non-profit organisation. The applicant is a member of the respondent. The applicant seeks in terms of prayer 1 the member's register of the respondent; in terms of prayer 2 minutes of all the meetings held by the respondent and in terms of prayer 4 the financial statements of the respondent.

[3] All these requested documents were served on the applicant as soon as the summons was received. The main defence by the respondent is that these documents had never been requested before summons had been served and therefor the respondent could not have supplied the relevant documents, as the respondent had been unaware that the applicant was seeking these documents. The respondent never denied that the applicant was entitled to these documents, but could not guess what and which documents the applicant required. The members' register was served on 5 July 2012, the minutes of all the meetings as well as the financial statements were served on 5 July 2012. These documents were served subsequent to the respondent receiving the summons. The respondent regarded the summons as the first request to the respondent to have the

documents supplied.

[4] The respondent does not dispute that all members may exercise their rights to obtain information of the applicant as set out in the Articles of Association as well as the relevant sections of the Companies Act, read with the Promotion of Access to Information Act (PAIA).

[5] It is clear from the applicant's own founding affidavit that the request for information on 26 March 2012 was limited:

> "*On the 26th of March 2012, I instructed my attorney, Marius van Wyk by way of power of attorney to attend at the respondent's administrative offices at The Serengeti Golf and Wildlife Estate and to obtain copies of the following information:*
>
> > *5.48.1 An electronic copy of the respondent's membership register or copies thereof upon payment for the copies;*
> >
> > *5.48.2 The respondent's manual in terms of Section 51 of the Promotion of Access to information Act 2 of 2000;*
> >
> > *5.48.3 Minutes of the meeting that was held on 13 February 2012."* (Court's emphasis)

[6] It is clear that to enable a court to find on a balance of probabilities that the applicant had requested the relevant documents and information prior to launching this application the applicant has to set out facts on which the court can rely. Furthermore the applicant had to follow the prescribed procedures as prescribed by the legislature and had to make requests for access to the information according to these procedures and prescripts.

[7] It is evident from the applicant's affidavit that the applicant requested an electronic list of the email addresses of all the members -

> "*Voorsiening aan ons kliënt van 'n elektronieses lys van alle eienaars van SPOA* ***se e-pos adresse.*** *Mag ons hierdie ontvang deur dit op die USB-dryf voorsien, te kopiëer."* (Court's emphasis)

[8] This is clearly not a request for a register of the members, but personal information of the members. No request for the register of members preceded this application. As soon as the respondent received the application on 4 June 2012 the respondent complied and provided the member's register to the applicant on 5 July 2012.

[9] Although the applicant alleged in his affidavit that he had on several occasions requested the members

register and the minutes of all annual meetings held by the respondent, these allegations are patently untrue. The applicant failed to set out how, where and when these requests were made. The applicant's counsel conceded during argument that the applicant had only requested the minutes of the meeting of the Board of Directors of 13 February 2012, contrary to requesting access to all the minutes as set out in the notice of motion. Similarly as in prayer 1, such a request for all the minutes of the meetings was never made until the application was served and therefor the application is premature.

[10] The applicant sets out in his affidavit

> "*To inspect and make copies of the respondent's financial statements"*

[11] This allegation is not supported by a copy of such a request being made. The applicant did not request the financial statements prior to issuing this application. The respondent could not comply with a request which had never been received. The first time the respondent had knowledge of this request was when this application was served on 4 June 2012.

[12] The applicant argued that although the applicant had not requested these documents in the correct manner, the court should use a purposive approach as set out in **African Christian Democratic Party v Electoral Commission 2006 (3) SA (CC). I** am of the view that this is not a decision I have to consider. The facts in this matter can be totally differentiated from the decision I have been referred to as here was no prior request. The decision of Fabricius J in **Golden Falls Trading 125 (Pty) Ltd v The MEC of the Gauteng Department of Agriculture & Rural Development & 6 Others** will not assist the court either, as the facts are totally distinguishable from the facts in the present application.

[13] In this application there had been no requests for the relief prayed for in prayers 1, 2 and 4, before the application was launched.

[14] In any event, the respondent conceded that he had received all the relevant documents and therefor the relief sought is moot. The relevant documents had already been provided on 5 July 2012.

[15] In **National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others 2000 (2) SA (CC)** Ackermann J found at par [21] (footnote 18):

> "*A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract propositions of law. "*

[16] In this instance there is no longer any controversy as the respondent had already complied on 5 July 2012. The fact that the applicant had conceded that the court should not deal with prayers 3, 5, 6 and 7 must

also be considered as the applicant brought the respondent to court to defend these allegations.

[17] The court can come to no other conclusion, after hearing argument by both counsel for the applicant and the respondent and perusing the papers, that the applicant had not requested the relevant information as set out in paragraphs 1, 2 and 4 of the notice of motion as required by the relevant statutes before launching this application. Therefor the only conclusion this court can come to is that the application was launched prematurely and that the respondent had complied by providing all the documents and information as set out in prayers 1, 2 and 4 on 5 July 2012 - some two years before this application was heard.

[18] The following order is made:

The application is dismissed with costs

Judge C Pretorius

Case number: 31487/2012

Heard on: 9 September 2014

For the Applicant: Adv De Beer

Instructed by: Geyser

For the Respondent: Adv Heystek

Instructed by: Van Rensburg Schoon

Date of Judgment: 17 September 2014