

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 19741/2022

REPORTABLE: YES/NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
Date: 21 November 2022

In the matter between:

JOHANNES JACOBUS KLOPPER

APPLICANT

and

SHAKAS ROCK NO.62 (PTY)LTD

FIRST RESPONDENT

RENE KRUGER BESTUURSDIENSTE (PTY) LTD

SECOND
RESPONDENT

RENE KRUGER SEKRETARIËLE DIENSTE (PTY) LTD

THIRD RESPONDENT

RENE KRUGER

FOURTH
RESPONDENT

THE COMPANIES AND INTELLECTUAL

JUDGMENT

Van der Schyff J

Introduction

[1] In this application, the applicant seeks the confirmation of a rule *nisi* granted in the urgent court on 19 April 2022. The first to fourth respondents opted not to oppose the urgent court application but reserved their right to oppose the application on the return date.

The dispute

[2] The nub of the applicant's case is that he was erroneously, alternatively, fraudulently appointed as a director of the first to third respondents. He therefore approached the court seeking an order in the following terms: (i) that the fifth respondent (the CACP) be ordered to set aside the applicant's appointment as a director of the first to third respondents, with retrospective effect, effective 31 May 2019; (ii) that the CACP be ordered to investigate the dealings of the first to fourth respondents, insofar it pertains to his appointment as a director of the first to third respondents; (iii) that the CACP be ordered to investigate the appointment of the applicant as a director of the first to third respondents by investigating the fourth respondent, her office, representatives, associates, and employees with regards to the applicant's appointment as director of the first to third respondents and the falsifying of the applicant's signature on official and other documents; (iv) confirmation that the applicant's appointment as director of the first to third respondents was wrong and/or incorrect and/or fraudulent with effective date 31 May 2019; (v) indemnifying the applicant against any and all liability pertaining to any actions, dealings and transactions of the first to third respondents for the period 31 May 2019 to the date of the order.

[3] As stated above, a rule *nisi* was issued calling upon the respondents to show cause why the order granted on 19 April 2022 should not be made final, and the relief set out above served as an interim order with immediate effect. The order was served on all the respondents, and the CIPC records were amended to reflect the applicant's removal as director of the first to third respondents. Interestingly the CIPC records reflect that the applicant's status was changed from 'active' director/member to 'remove' on 12 April 2022. It also reflects an internal correction 'Jacobus Johannes Kloppe removed as per court order of Pretoria High Court Case.' The CIPC did not enter the fray.

[4] The applicant contends that he was appointed as the sole director of the first to third respondents without his knowledge or permission and without intending to be a director of the said entities. He denies ever signing any documentation or authority thereto at any time. He only realised that he was appointed as a director of the first to third entities when the fourth respondent sent him an email requesting that he sign documents to facilitate his resignation as director in the first respondent, on or about 2 March 2022. The applicant attached a report from a technical forensic handwriting expert, confirmed in an affidavit by the said expert, wherein he claims it is recorded that his signature was falsified on, amongst others, the following documents allegedly signed by him: the CIPC CoR39 director amendment document dated 8 August 2019; minutes of a meeting of the first respondent dated 7 August 2019; a typed letter regarding his directorship of the first respondent dated 7 August 2019; CIPC CoR39 director appointment allegedly signed by him on 16 August 2019; minutes of a general meeting held on 15 August 2019; typed letter regarding his newly appointed directorship of the second respondent dated 15 August 2019.

[5] He states that the fourth respondent pressured him to sign documents regarding the sale of a property, the Shakas Rock property, in his capacity as director. Under the 'extremely suspicious circumstances,' he is not prepared to sign any of the documents. He does not know whether the first respondent has engaged in any transactions without his knowledge whilst he was appointed as the sole director and fears that he might have attained certain liabilities as director of the first respondent.

[6] The applicant points out that his email address, as reflected on the CIPC record, was '[...]'. His investigation also indicated that the fourth respondent removed herself as the sole director of the second and third respondents, and added him 'incorrectly' as the director.

[7] The applicant attempted to resolve the issue with the fourth respondent. The fourth respondent, in a letter through her attorneys, proposed to indemnify the applicant against all liabilities pertaining to the rates and taxes and utilities in respect of the Shakas Rock property, and against any claim from SARS that might arise as a result of this property transaction. Since he was, however, not involved in the management of the first to third respondents, where the first respondent owns two bonded properties, he wants to be removed as director from the inception of his alleged directorship. He states that the first to fourth respondents cannot remove his name retrospectively from the records of the fifth respondent.

[8] He was, in addition, served with a notice in terms of section 71 of the Companies Act 71 of 2008, on 16 March 2022, whereby his removal as director of the first respondent is sought on the basis that he is not complying with his fiduciary duties as director of the first respondent. He brought it to the court's attention that he signed a document on 9 February 2021 wherein mention is made of his directorship of the first respondent. In this document, he gave permission to the fourth respondent to market the property. He denies ever reading the document, assuming that it concerned the fourth respondent's family trust, of which he understood he was a trustee. Due to the relationship that existed between him and the fourth respondent at the time, he had no reason to doubt her.

[9] The fourth respondent, a chartered accountant, deposed to the answering affidavit on behalf of the first to fourth respondents. The fourth respondent claims that the relief sought by the applicant pertaining to the removal of his name from the CIPC records became moot since he was already removed as a director by 22 June 2022. The relief sought pertaining to the CIPC investigating the issue is bad in law as this is the function of the SAPS. The fourth respondent alerted to the fact that an investigation by the SAPS was already launched prior to the inception of this application. She avers that the version that she puts forward leads to this court being

faced with two mutually destructive versions that cannot be adjudicated on affidavit, and the respondents' version should thus prevail. In the final instance, she avers that the applicant failed to exhaust his remedies, and this in itself, disentitles the applicant to further relief.

[10] The fourth respondent denies that the applicant did not consent to be appointed as a director of the first to third respondents. Of importance, however, is that she does not elaborate when and how it came about that he consented to the directorship of the first to third respondents.

[11] The fourth respondent, on her turn, also utilised the services of a handwriting expert. Her expert examined the signatures on the original Sale Agreement pertaining to the Shakas Rock property, and concluded that the agreement was signed by the same person that signed the documents she furnished him with that contain the applicant's signature. These documents include, amongst others, the applicant's original will, and a copy of a prescription signed by the applicant. She informs the court that the Sale Agreement was signed at the applicant's dental practice in the presence of her assistant, Ms. Pretorius. Ms. Pretorius deposed to a confirmatory affidavit.

[12] The fourth respondent denies knowledge of the CoR39 documents attached to the applicant's founding affidavit, as these contain unknown tracking numbers and were not prepared by or furnished to the fifth respondent by the first to fourth respondents. She denies that the documents referred to by the applicant were used in the applicant's appointment as director. She avers that her signature on these documents was falsified, as confirmed by her expert. The fourth respondent, however, did not provide the court with the documents in terms whereof the applicant was appointed as director of the first to third respondents. She pertinently states that the applicant 'verbally' agreed to the appointments that underpin this application, but does not state that he signed the documentation that needed to be submitted to the CIPC. The fourth respondent explains that her family trust was the shareholder of the first respondent, and that the applicant actively participated in the marketing of the Shakas Rock property. The fourth respondent raises a number of aspects that she is

of the view the applicant had to bring to the court's attention but failed to do. Due to the order that I propose to grant, I do not deal with these.

[13] In the replying affidavit, the applicant takes issue with the role played by the fourth respondent in the running of the first to third respondents, despite not being a director. The applicant denies signing the Agreement of Sale, and attaches confirmatory affidavits by the alleged witnesses, who denies the version put forward by the fourth respondent.

[14] The fourth respondent denies that there is any basis on which the applicant can be held liable for anything as director of the first to third respondents.

Discussion

[15] It is evident that what was a close and intimate friendship went south. Both parties accuse the other of dishonesty and underhand dealings. The main question is whether the fourth respondent is correct in contending that the relief sought by the applicant is moot, because the applicant was removed as a director during April 2022. The relief sought by the applicant is very specific. He wants to erase any connection between him and the first to third respondents retrospectively. The alternative relief proposed by the fourth respondent, will not have the desired outcome, and in this regard, there is no alternative remedy available to the applicant.

[16] Having regard to the fact that the fourth respondent is a chartered accountant, I can understand why she opposes the application, despite having seen to the removal of the applicant as a director of the said companies in any way, and contending that if she knew the applicant wanted to be removed as director from 2019 she would have seen to it, and proposing to indemnify him from liability. As a chartered accountant, she cannot afford not to oppose an application wherein she is accused of dishonest and fraudulent conduct.

[17] I initially considered referring this application to trial so that the mutual accusations of dishonesty could be properly ventilated. However, the fact that the fourth respondent failed to provide the court with the documents pertaining to the

applicant's appointment as the sole director of the first to third respondents that were signed by the applicant, renders her denial in this regard, a bare denial. Her office attended to the amendment of the CIPC records and the applicant's appointment as director, and as such, she is the only party that could have provided the documents signed by him. In light hereof, the affidavits do not, on this specific aspect, disclose a real, genuine, and *bona fide* dispute of fact.¹ This aspect is amidst all the allegations, mud-slinging, and side issues, the core aspect that underpins the applicant's application, and in the result, I need not pronounce on the question as to whether any of the parties were dishonest or acting fraudulently in deciding whether to conform or discharge the rule *nisi*.

[18] The fourth respondent unequivocally states in the answering affidavit:

'The directors of the First Respondent were appointed and such appointment was backdated by the Fifth Respondent as is evident from Annexure "RK6". Had the applicant stated that he wished to be removed from the date of his appointment I would have taken steps to have him removed from that date.'

[19] Against this background, the first to fourth respondents did not show cause as to why the rule *nisi* granted in the urgent court on 19 April 2022 should not be confirmed.

[20] As for the contention that prayers 2, 3, and 4 of the order granted on 19 April 2022 are bad in law because it is not the duty of the fifth respondent to investigate the appointment of the applicant as director of the first to third respondents, or the dealings of the first to fourth respondents insofar it relates to the applicant's appointment, I am of the view that it is for the fifth respondent to seek the setting aside of those prayers if it deems it necessary.

[21] The issue of costs is already dealt with in the rule *nisi* that stands to be confirmed.

¹ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at paras [12] – 13].

ORDER

In the result, the following order is granted:

1. The rule *nisi* granted on 19 April 2022 and extended on 5 September 2022 is confirmed.

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 sent to the parties/their legal representatives by email.

For the applicant: Adv. J. Prinsloo
Instructed by: Hills Inc.

For the respondent: Adv. L Kellerman SC
Instructed by: Le Grange Attorneys

Date of the hearing: 8 November 2022
Date of judgment: 21 November 2022