



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 2282/2017

In the matter between:

TUMELO GAELEBALE FAITH SEDIKELO

1st Applicant

PALESA MAMOKHOAETSI MOAHLOLI

2nd Applicant

and

BELEGA WOMEN'S INVESTMENTS (PTY) LTD

1st Respondent

SUN INTERNATIONAL (SOUTH AFRICA) LTD

2nd Respondent

MANGAUNG SUN (PTY) LTD

3rd Respondent

FREE STATE GAMBLING AND RACING BOARD

4th Respondent

ETAPELE INVESTMENTS (PTY) LTD

5th Respondent

HEARD ON: 1 MARCH 2018

JUDGMENT BY: LOUBSER, J

DELIVERED ON: 15 MARCH 2018

[I] **INTRODUCTION**

[1] This is an application wherein the Applicants seek the following relief in the Notice of Motion:

(a) That Applicants be declared to be valid shareholders of the First Respondent.

(b) That First Respondent pays the costs of the application.

[2] The application is opposed by the First Respondent, while the remainder of the Respondents did not file any opposing affidavits, nor did they appear at the hearing of the application.

[II] **ISSUES:**

[3] In the Answering Affidavit filed by the First Respondent, reference is made *inter alia* to an Order made by this court on 18 September 2014 under case number 5093/2013. The portion of that Order which is relevant to the present application, reads as follows

(per Naidoo, J):

2. *It is declared that:*

2.3 The individuals whose names appear in annexure “2” appended to the Notice of Motion are the lawful owners, in the percentage expressed therein, of the shares of Belega Women’s Investments (Pty) Ltd and the following individuals are appointed directors in Belega Women’s Investments (Pty) Ltd, namely Ms Laura Grobblers, Ms Noluthando Khomo and Ms Busi Ntsele.

[4] In the present proceedings it was common cause between the parties that the company referred to in the Order of Naidoo,J was the First Respondent herein, and that the names of the two Applicants were not included in the annexure referred to in the Order.

[5] Mr Gilliland, appearing for the First Respondent, submitted that the order now sought cannot be granted without an order rescinding the order of Naidoo,J. Mr Hefer, appearing with Ms Khooe for the Applicants, submitted that nothing stood in the way of the order sought, since an application for rescission of the order of Naidoo,J will follow as of necessity at a later stage.

[III] **DETERMINATION:**

[6] Leaving aside the merits of the application for the moment, it is apposite to determine, first of all, whether an order in terms of the relief sought would be in the interest of justice in circumstances where the court has already determined the shareholding of the company in question in an earlier order. I am inclined to think not, for the following reasons:

- (a) An order in terms of the Notice of Motion would directly infringe upon the rights of the existing shareholders without them having had the opportunity of expressing their views in this regard.
- (b) The existing shareholders have not been joined or cited as respondents in the proceedings although the order sought would have a prejudicial effect on the respective percentages of their shareholding.
- (c) There is no guarantee that a future application for rescission of the order of Naidoo,J would be successful. If not, the existing shareholders will be faced with the untenable situation of two conflicting court orders pertaining to their individual shareholding.
- (d) There is no explanation why the Applicants have not moved for a rescission first before they have approached the court for the Order now sought. They have elected to put the cart before the horse, and they have persisted with this approach despite the fact that they have known at least since the filing of the First Respondent's Answering

affidavit some few months ago that the First Respondent would rely heavily on this point in its defence.

[7] In the premises, it is not necessary to consider the question whether the application has any merits or not on the facts as presented in the respective affidavits. An order in terms of the Notice of Motion would not serve the interests of justice, irrespective of whether the Applicants have shown an entitlement to the shareholding or not.

[8] I therefore make the following order:

1. The Application is dismissed with costs.

P. J LOUBSER, J

On behalf of Applicants:

Adv. J.J.F Hefer

Adv. N.J Khooe

Instructed by: Webbers Attorneys

Bloemfontein

On behalf of Respondents:

Adv. J.G Gilliland

Instructed by: Phatsoane Henney Inc

Bloemfontein

