



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

CASE NUMBER 2023-056232

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

19/6/2023
DATE

J Moorcroft
SIGNATURE

In the application by

RAMETSE, TSHEPO

Applicant

and

MATHADA, AVHAPFANI

First Respondent

MART ATTORNEYS INC

Second Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION (CIPC)**

Third Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] In this matter I make the following order:

1. *Setting aside the removal of the applicant as a director of the second respondent;*
2. *Directing the first and second respondents forthwith to reinstate the applicant as a director of second respondent, the law firm, MART Attorneys Inc, in the records of the third respondent;*
3. *Authorising the third respondent to correct its records to reflect the applicant as a director of the second respondent and to expunge the entries relating to the removal of the applicant as director.*

[2] The reasons for the order follow below.

Introduction

[3] In this application in the Urgent Court the applicant seeks an order that his removal as director of the second respondent be set aside and that he be reinstated as a director, together with ancillary relief.

[4] The application is opposed by the first and second respondents and they are referred to as 'the respondents.'

[5] It is common cause on the papers and between the parties that –

- 5.1 There are disputes between the parties that can not be addressed in this application.
- 5.2 The applicant owns 30% of the share capital of the second respondent and the first respondent owns 70%.
- 5.3 The first respondent is a director of the second respondent, and the applicant was a director until his name was removed from the list of directors kept by the CIPC.
- 5.4 There are no other directors or shareholders.

5.5 On 5 June 2023 the first respondent wrote to the applicant, as follows:

To: Tshupo Rametse

Kindly be informed of my (Avhaphani Mathada) decision as a sole shareholder of Mart Attorneys Inc to terminate your Directorship.

5.6 There was no meeting of shareholders held to discuss the removal of the applicant as director.

[6] The letter quoted above refers to the first respondent as sole shareholder but the shareholders' agreement confirms the 70:30 ratio of share ownership. The agreement provides in clause 9 for its termination under specified circumstances, namely dissolution, winding-up, unanimous agreement, sale of the firm, and unilateral termination in terms of clause 9.4:

9.4. Should either party decide to terminate this agreement prior to the expiration of 5 (five) years from date of signature hereof, such a party, notwithstanding any provision contained in this agreement, shall forfeit his/her shares and in the A Mathada Inc, and no claim of whatsoever nature, resulting from such forfeiture, shall lie against A Mathada Inc by the party that so terminated this agreement.

[7] In terms of section 71 of the Companies Act, 71 of 2008, a director must be given the opportunity to be heard on the matter of his or her removal from office. The first two subsections read as follows:

71 Removal of directors

(1) Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2).

(2) *Before the shareholders of a company may consider a resolution contemplated in subsection (1)-*

(a) the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and

(b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

[8] The authors of *Henochsberg*¹ are of the view that the resolution to remove a director can not be passed informally in terms of section 60 of the Act. Notice of the meeting and of the proposed resolution equivalent to what shareholders must receive for the meeting must therefore be given to the director whose removal was being sought.

[9] The fact that the adoption of the resolution appears to be a foregone conclusion as it is supported by the majority of shareholders is not a reason for a failure to comply with section 71.

[10] The removal of the applicant as a director was not done in accordance with the requirements imposed by the Companies Act and the applicant is entitled to relief.

[11] It was argued on behalf of the respondent that the application is not urgent. The CIPC records constitute a window to the World and it is desirable that the records be rectified as soon as possible particularly since third parties may act on the strength of what the records tell them. I am satisfied that the applicant is entitled to an order on an urgent basis so as to restore the *status quo* as it existed prior to his removal.

[12] The applicant appeared in person and no cost order is required.

¹ Delport *et al*, *Henochsberg on the Companies Act 71 of 2008* p 274(1)

[13] For the reasons set out above I make the order in paragraph 1.


J MOORCROFT

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **19 June 2023**.

COUNSEL FOR THE APPLICANTS:	IN PERSON
INSTRUCTED BY:	-
COUNSEL FOR THE RESPONDENT:	MR MAKOLE
INSTRUCTED BY:	MART ATTORNEYS
DATE OF ARGUMENT:	15 JUNE 2023
DATE OF JUDGMENT:	19 JUNE 2023