

REPUBLIC OF SOUTH AFRICA



COMPANIES TRIBUNAL

Case/File Number: CT007SEP2014

In the matter between:

COMAIR LIMITED

Applicant

and

**KUHLULA TRAINING, PROJECTS AND
DEVELOPMENT CENTRE (PTY) LIMITED**
(Reg NO.: 2012/205785/08)

Respondent

Coram : Khashane Manamela (Mr.),
Lucia Glass (Ms.) and
Kasturi Moodaliyar (Prof.)

Date of Hearing : 21 January 2015

Date of Decision : 27 February 2015

DECISION (Reasons and an Order)

Khashane Manamela (Kasturi Moodaliyar and Lucia Glass concurring)

Introduction

[1] The applicant, COMAIR Limited (“COMAIR”), is a public company and proprietor of the trade marks KULULA and KULULA.COM. Both trade marks are registered in various classes, covering a wide range of goods and services.¹ The trade marks - it is submitted - have been extensively used since 2001 in respect of COMAIR’s airline business.²

[2] The respondent herein is KUHLULA TRAINING, PROJECTS AND DEVELOPMENT CENTRE (“KUHLULA”). KUHLULA is a non-profit company, which was registered on 19 November 2012.³ Evidently, the respondent was erroneously cited as a private company and allotted the expression “(Pty) Ltd”. As a non-profit company it should have been suffixed with the expression “NPC”.⁴

[3] In this application COMAIR applies that KUHLULA should be directed to choose a new name as its current name does not satisfy the requirements of the Companies Act 71 of 2008 (the CA 2008).

[4] I deal first with the procedural issues and thereafter the merits of the application.

¹ See para 4.1 of the founding affidavit on pp 6 – 9 (the indexed pagination).

² See para 4.3 of the founding affidavit on p 10.

³ See annexure ‘DHB 14’ to the founding affidavit (no pagination appears on this and subsequent pages).

⁴ See ss 11(3)(c)(ii) and 11(3)(c)(v) of the Companies Act 71 of 2008 (the CA 2008).

Procedural Issues

[5] COMAIR submits that the existence of KUHLULA came to its attention only in July 2014. A letter dated 24 July 2014 was directed by COMAIR's attorneys to KUHLULA (the cease and desist letter).⁵ Another letter was sent after the cease and desist letter in August 2014 indicating that COMAIR had not received a response from KUHLULA.⁶ When the letters failed to yield the intended result, this application was filed on 15 September 2014.⁷ Although, COMAIR appears to have acted promptly from the time it is stated to have become aware of the existence of the respondent's name, there is paucity of information regarding how COMAIR obtained that knowledge or awareness in the first place. Notably, this was one and half years after KUHLULA was registered.⁸ At the hearing of this application, my colleagues and I (the panel) attempted to shed more light on this by directing Mr. Gerard du Plessis, who appeared before us on behalf of the applicant, to the provisions of s 160(2) of the Companies Act 71 of 2008 (the CA 2008), but with no notable success.⁹ This provision sets the time periods within which an application of this nature has to be made to this Tribunal. Together with subsection 1, it reads as follows:

“160. Disputes concerning reservation or registration of company names

(1) A person to whom a notice is delivered in terms of this Act with respect to an application for reservation of a name, registration of a defensive name, application to transfer the reservation of a name or the registration of a defensive name, or the registration of a company's name, or any other person with an interest in the name of a company, may apply to the

⁵ See annexure 'DHB 15' to the founding affidavit.

⁶ See annexure 'DHB 16' to the founding affidavit.

⁷ See Form CTR 142 on p 2.

⁸ See para [2] above.

⁹ See pp 4 – 14 of the transcribed record of the proceedings on 21 January 2015 (the transcript).

Companies Tribunal in the prescribed manner and form for a determination whether the name, or the reservation, registration or use of the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of this Act.

(2) An application in terms of subsection (1) may be made-

- (a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or
- (b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.”

[underlining added for emphasis]

[6] It is common cause that COMAIR did not receive notice contemplated in s160(1) of the CA 2008. Therefore, its application falls within the ambit of s160(2)(b). This being the case, COMAIR ought to have shown good cause why it only made the application almost two years after the registration of KUHLULA. From both oral and written submissions by COMAIR, I get the impression that this is not considered by COMAIR or its attorneys to be a critical issue for this application. I disagree with such an approach or view. It is a very critical issue and in my opinion even a decisive issue for the application.¹⁰ It is not implausible to imagine the adverse impact of applications challenging company names brought years after such names have been registered. This will no doubt affect the credibility of the register kept by regulatory authorities. Although, the CA 2008 doesn't explain what is meant by showing good cause, in my view it entails that, an applicant has to at least adduce evidence regarding how it

¹⁰ See *AVON Justine (PTY) LTD vs Justine Trading CC* unreported Case NO.: CTR001/11/2011 (Companies Tribunal, decided on 20 January 2013) at paras [58] – [64]. A copy may be obtained from the website: www.companiestribunal.org.za.

became aware of the reservation or registration of an impugned company name when it became aware and not earlier. In other words that it did not willfully default to make the application earlier than it did. In *Minister of Defence and Military Veterans v Motau and Others* [2014] ZACC 18, although dealing with a slightly different connotation of the phrase, it was stated that “good cause may be defined as a substantial or “legally sufficient reason” for a choice made or action taken”.¹¹ Therefore, stating only a date on which the applicant became aware of the challenged name, does not [in my view] amount to showing good cause. This is a factual determination dependent on the circumstances of the particular matter.¹² In my view, the applicant had failed to show good cause required in terms of s 160(2)(b) of the CA 2008. However, I will overlook this for current purposes and move to the substantive issues.

[7] Still on procedural issues, COMAIR contends that KUHLULA is the dominant and memorable element or part in the respondent’s name KUHLULA TRAINING, PROJECTS AND DEVELOPMENT CENTRE. In the main, it submits that the word or element KUHLULA is visually (appearance), phonetically (sound) and conceptually (sense)¹³ confusingly similar to its trade mark KULULA. It adds that the remainder of the respondent’s name is “presumably descriptive of its activities and therefore, not distinctive”.¹⁴ The aforesaid is axiomatic of COMAIR’s approach in this application. COMAIR appears to have approached its

¹¹ *Minister of Defence and Military Veterans v Motau and Others* [2014] ZACC 18 para [54].

¹² *Ibid.*

¹³ See *Laboratoire Lacharte S.A. v Armour-Dial Incorporated* 1976(2) SA 744 (T) at p 746. *Miriam Glick Trading v Clicks Stores Transvaal* 1979 (2) 290 (T) at 295 A-B.

¹⁴ See para 5.2 of the founding affidavit on p 14. Italics and underlining added to the quotation.

challenge to KUHLULA in a routine-like manner. I consider it apposite to state here that I always find this approach lamentable.¹⁵ COMAIR ought to have taken steps as *dominis litis* [master of the lawsuit or the person who initiates legal proceedings] to determine the description of KUHLULA's principal business from the other records of the CIPC, like the respondent's memorandum of incorporation. There are unfortunately more causes for my lamentation, besides this.

[8] The following are some indications of why, in my view, COMAIR appears to have not appreciated its assumed duties and responsibilities as the applicant in this matter. Firstly and as indicated above, COMAIR assumed for whatever reason that KUHLULA is a private company.¹⁶ Secondly and as stated in the immediately preceding paragraph, COMAIR assumed that KUHLULA's name is descriptive of KUHLULA's business activities. I enquired in this regard from Mr. Du Plessis at the hearing of this matter why KUHLULA's constitution or memorandum of incorporation wasn't acquired from the relevant authorities or record keepers, but there was no meaningful response.¹⁷ Thirdly and of paramount importance, in my view, no written or oral evidence was presented by COMAIR or on its behalf regarding why it is submitted that KULULA is phonetically similar to KUHLULA. The result from the latter omission was unguided linguistic expedition by the panel into the phonetics and linguistic

¹⁵ See *Comair Limited v Kalule Fashion's Proprietary Limited*, unreported Case NO.: CTR017/10/2012 (Companies Tribunal, decided on 28 August 2013) at para [13]. A copy is available on the website: www.companiestribunal.org.za.

¹⁶ See para [2] above.

¹⁷ See pp 15 – 17 of the transcript.

morphology of the contending names. Even with the resulting confirmation that the two words are phonetically dissimilar Mr. Du Plessis wasn't prepared to make any unequivocal concessions in this regard, despite the patent linguistic limitations of the applicant's submissions.¹⁸ I am alive to the fact that legal representatives ought not to be coerced into making concessions, but - again in my view - COMAIR as *dominis litis* had the duty and responsibility in all these regards. I shall return at the relevant moments to deal with these.

Nature and Extent of the Dispute

[9] Turning my attention to the substantive issues, I recap that COMAIR submits that the respondent's name does not satisfy the requirements of s11 of the CA 2008, in particular ss 11(2)(b) and 11(2)(c)(i) thereof. In COMAIR's view, other than being confusingly similar to its KULULA trade mark, the respondent's name falsely implies or suggests or would reasonably mislead a person to believe incorrectly that the respondent is part of, or associated with COMAIR or its trade mark KULULA.

[10] It is further contended that the applicant continuously spend millions of rand in promoting and advertising its trademarks or brand and this has resulted in COMAIR acquiring substantial reputation and common law rights in its KULULA trade mark. Further, that any unlawful or unauthorised use by the respondent of the KULULA trade mark is not only damaging to the applicant's asset, but to its business as well. Consequently, COMAIR prays that KUHLLULA's company name

¹⁸ See pp 47, 48 and 61 of the transcript.

be found to be unsatisfactory of the requirements or provisions of the CA 2008 and KUHLULA be ordered to change its name.

[11] KUHLULA denies that its name breaches the statutory provisions as contended by COMAIR or at all. It submits that its name totally differs with COMAIR's trade mark and it is not confusing to members of the public. It further contends that KUHLULA and KULULA do not carry a similar meaning; are spelt dissimilarly and originate from different languages. When its director, Mr. F. Sambo addressed us in opposition of the order sought in this application, he stated that KUHLULA name is from Tsonga or Shangaan, while COMAIR's trade mark originates from the Zulu language.¹⁹ He named his company, the respondent herein, after his child NHLULO.²⁰ Therefore, he finds his company's name to have no potential of bringing harm to the applicant's business.

[12] To facilitate the referencing and further discussions, I paste the relevant parts of s 11(2) of the CA 2008 as follows:

“11. Criteria for names of companies

(1) ...

(2) The name of a company must-

(a)...

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) ...

(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company-

(i) is part of, or associated with, any other person or entity...”

¹⁹ See pp 82 – 83 of the transcript.

²⁰ See pp 87 – 88 of the transcript.

Is KUHLULA confusingly similar to KULULA?

[13] This is one of the two questions to be answered in this matter. The other being, whether KUHLULA could be incorrectly associated with KULULA or COMAIR. In my view, an answer given in respect of the first question is determinative or dispositive of the second question. It is for this reason that I have decided to deal with the questions in this sequence.

[14] It is COMAIR's submission that KULULA and KUHLULA sound or are pronounced the same way or at the very least in a confusingly similar way. It is submitted that the consonant "H" in KUHLULA is silent and therefore when pronounced, KUHLULA sounds exactly the same as KULULA. I have already bemoaned the fact that, this submission is made without the benefit of any authority or relevant expert advice.²¹ On the other hand, Mr. Sambo disputed any similarity in pronunciation or phonetics in the contending words or elements. Although he is no linguistic expert, he submitted that the word KUHLULA is from Shangaan or Tsonga where the "H" is pronounced rather than silent.²² No submission on behalf of COMAIR gainsaid Mr. Sambo's submissions in this regard.

²¹ See para [8] above.

²² See p 82 of the transcript.

[15] Mr. Sambo's submissions actually find support from a less mercurial source in the form of a Tsonga- English dictionary²³, in which the word KUHLULA is defined as follows:

“-**ku**, say; (with foll.id) do.

-**hlula**, overcome, surpass, be too much for, vanquish.”²⁴

From a sound or phonetic perspective, the consonant *hl* is stated to be a voiceless alveolar lateral fricative [ɬ] as in *hlahle* (in Shangaan) (spark in English).²⁵ Therefore, KUHLULA means “to overcome, surpass or vanquish”. This is in fact not far from Mr. Sambo's definition to KUHLULA: “to win”.²⁶ On the other hand, the word KULULA is said to coming from the Zulu word meaning “easily”.²⁷ The dictionary meaning of the word is as follows:

“ku, *pers.pron.* It.

ku, *pers.pron.* obj. Thee

ku, *prep.* To, from, into, with respect to...

Kulula, v. Loosen; unloose; absolve; release; set free; deliver.”²⁸

[16] These being the meanings of the words, they immediately dispose of two issues. The first, being whether the words KULULA and KUHLULA are

²³ The use of authoritative dictionaries has been considered a useful aid by our courts, as long as sufficient attention is paid to the context and regard of the ordinary meaning of a word is not lost. See *Fundstrust (Pty) Ltd (in liquidation) v Van Deventer* 1997 (1) SA 710 at 726H-727B

²⁴ See Cuenod, R. *Tsonga – English Dictionary* (1967).

²⁵ *Ibid.*

²⁶ See p 82 of the transcript.

²⁷ See annexure ‘DHB 11’ to the founding affidavit.

²⁸ See Colenso, J.W. *Cambridge Library Collection Zulu-English Dictionary* (1861) (digitally printed version 2012).

ideologically or conceptually (sense) similar, which is the other part of the triad of a determination of confusing similarity, as already indicated above.²⁹ Secondly, the phonetics or sounds of the words have also been dealt with. It has been determined that, the consonant “H” in KUHLULA is not silent and is as in the word “HLAHLE”, a Shangaan or Tsonga word meaning spark in English.³⁰ This accord with the pronunciation I observed Mr. Sambo making at the hearing of this matter.³¹ Then, the only outstanding issue is to determine whether KULULA and KUHLULA are visually confusingly similar or not.

[17] The CA 2008 does not define “confusingly similar”. This appears to be a borrowing from the Trade Marks Act 194 of 1993, which refers to “deceptively” and “confusingly similar”.³² It is therefore not just a sheer coincidence that even the case law relied upon by the applicant are significantly from the realm of intellectual property.³³ However, the aforesaid borrowing doesn’t necessarily render cases decided in terms of the Companies Act 61 of 1973³⁴ irrelevant. These cases although dealing with the concept of undesirability of names, continue to be relevant and instructive in this regard.³⁵ They will therefore be

²⁹ See para [7] above.

³⁰ See para [15] above.

³¹ See pp 82, 83 and 87 of the transcript (albeit in respect of the word or name *Nhlulo* on the latter page).

³² See, among others, s 10 of the Trade Marks Act 194 of 1993.

³³ See *American Chewing Products Corporation v American Chicle Company* 1948 (2) SA 736 (A); *Plascon-Evans Paints v Van Riebeeck Paints* 1984(3) SA 623 (A)

³⁴ S 41 of the Companies Act 61 of 1973 reads as follows:

“Names of companies not to be undesirable.—No memorandum containing a name for a company to be incorporated shall be registered if in the opinion of the Registrar the name is undesirable.”

³⁵ See Delpont, P.A. and Vorster, Q. *Henocheberg on Companies Act 71 of 2008*, LexisNexis, 2011 on p 56.

considered to determine whether KUHLULA is visually confusingly similar to and KULULA or not.

[18] From a cursory visual perspective the words KUHLULA and KULULA are substantially similar. However, from what is stated above, we are now at least aware that the consonants “H” and “L” in KUHLULA are inseparable as fricative [ɬ] and a syllable “HL”. Therefore, viewed from that perspective, the likelihood of confusion is obviated. Mr. Du Plessis stated that, the test for confusion include a determination whether a substantial portion of the population of South Africa will be able to see a distinction on a conceptual or a meaning level in the two words or names.³⁶ This aspect raised a lively debate at the hearing. This was accentuated by the fact that KUHLULA may be unpopular with those unfamiliar with the Tsonga or Shangaan language. For reasons that will emerge later on, I do not consider it warranted to deal with the language aspect any further.

[19] Regarding the issue of similarities, the following authoritative words were said by the court in *Peregrine Group (Pty) Ltd v Peregrine Holdings Ltd* 2001 (3) SA 1268 (SCA):

“For the purposes of the present matter it suffices to say that, where the names of companies are the same or substantially similar and where there is a likelihood that members of the public will be confused in their dealings with the competing parties, these are important factors which the Court will take into account when considering whether or not a name is 'undesirable'. It does not follow that the mere existence of the same or similar names on the register (without more) is 'undesirable'.”³⁷

[underlining added for emphasis]

³⁶ See p 29 of the transcript.

³⁷ See [2001] JOL 8319 (A) 198J-199C.

[20] In *Laboratoire Lacharte S.A. v Armour-Dial Incorporated* 1976(2) SA 744 (T) the court dealt with the contending words or elements “Dial” and “Diatrial”. It found that the additional syllable “tri” in “Diatrial” as a strongly distinctive feature makes the two words look so different and thus resulting in “no substantial danger of confusion”³⁸. I have already pointed out the significance of the syllable “hl” in KUHLLA above. I therefore differ with Mr. Du Plessis, who submitted that the difference in the two names [which he limits to only the consonant “H” which he also considers silent, as opposed to the inseparable “HL” syllable] is not sufficient to avoid any confusion or deception.³⁹

[21] In *Miriam Glick Trading v Clicks Stores Transvaal* 1979 (2) 290 (T), which was a *passing-off* dispute, the court after finding the names or words “Glicks” and “Clicks” to have close resemblance, stated that the matter must not be considered *in abstracto*, but all the surrounding circumstances, including the business types; type of persons who constitutes potential clients and the conditions under which the business is conducted, must be considered, before finding that there was no likelihood of confusion.⁴⁰ I find this to be of relevance to this matter. Not much, if anything is known about the business type; the respondent’s potential clients or customers or the respondent’s business conditions. I have already stated that the applicant bore the burden of proof in this regard, not the other way round.

³⁸ At 747G.

³⁹ See pp 30 – 31 of the transcript.

⁴⁰ At 295B-C.

[22] In the matter of *Link Estates (Pty) Ltd v Rink Estates (Pty) Ltd* [1979] 3 All SA 360 (E)⁴¹, the court held that the likelihood of confusion of the names or words “*Rink*” and “*Link*” was due to carelessness and ignorance, which is conduct falling sort of care to be expected from the “*notional ordinary reasonably careful prospective client*”.⁴² The ultimate standard of care to be applied, the court stated, was that of “*the ordinary reasonable careful man, ie not the very careful man nor the very careless man*”.⁴³

[23] The CA 2008 proscribes confusing similarity in company names and other proprietary dominions, like trademarks. Mere similarity is not enough, but confusing similarity.⁴⁴ Also, a company name has to be considered in its entirety and the confusion, if found, should be due to the whole name and not just part of the name, unless there is evidence militating against this approach. Therefore, the respondent’s name, being KUHULULA TRAINING, PROJECTS AND DEVELOPMENT CENTRE has to be considered. This is not to say that I disagree with COMAIR’s contention that the memorable part of this name is KUHULULA. However, this is as far as the submission goes. There is no submission regarding whether customers of the respondent will view the name in isolation and how they will confuse it with KULULA’s. Without necessarily finding that there is a potential confusion, the remainder of KUHULULA’s name is

⁴¹ And also 1979 (2) SA 276 (ECD).

⁴² At 288 D-E.

⁴³ On p 365.

⁴⁴ See *Comair Ltd v Kurhula Security Services and Trading (Pty) Ltd*, Case NO.: CT016May2014 (unreported matter of the Companies Tribunal decided on 27 November 2014) at para [14]. A copy of the decision is obtainable from the website: www.companiestribunal.org.za.

sufficient to distinguish the name from COMAIR's trade mark "KULULA" and thereby obviating any confusion.⁴⁵

[24] Against the backdrop of what is stated above, there is no basis to find that the name KUHLULA will be confused as similar to KULULA. This disposes of the first leg of this application based on s 11(2)(b) of the CA 2008. The remainder is based on s 11(2)(c)(i).

Could KUHLULA be incorrectly associated with KULULA or COMAIR?

[25] I have stated above that, in my view, a determination on the first leg of or question in, the application is dispositive of the second question. As in the first question, reasonableness is also the standard of care for a determination based on s 11(2)(c)(i) of the CA 2008. This statutory provision appears to be equivalent to the common law delict of passing-off, which is a species of the broader delict of unlawful competition⁴⁶. The Supreme Court of Appeal had recently had the opportunity to re-set the elements of passing-off in *Alliance Property Group v Alliance Group* referred to above⁴⁷ as follows:

"Passing-off is a wrong consisting of a false representation made by one trader (the defendant) to members of the purchasing public that the enterprise, goods or services of a rival trader (the plaintiff) either belong to him (the defendant) or are connected, in the course of trade, with his own enterprise, goods or services.... The defendant's representation is a misrepresentation if it is likely to deceive or confuse a substantial number of members of the public as to the source or origin of his product [being enterprise, goods or services]. Passing-off, to be actionable, erodes the plaintiff's goodwill. Goodwill is the product of a cumulation of factors,

⁴⁵ See *Alliance Property Group (Pty) Ltd v Alliance Group Limited* [2011] JOL 26890 (SCA) at para [28].

⁴⁶ *Lorimar Productions Inc v Sterling Clothing Manufacturers (Pty) Ltd* 1981 (3) SA 1129 (T)1138 and Cassim, F.H *et al*, *Contemporary Company Law*, Juta Cape Town, 2011 at pp 110 to 111.

⁴⁷ See para [23] above.

the most important of which, in the context of passing-off, is the plaintiff's reputation. Reputation is the opinion which the relevant section of the community holds of the plaintiff or his product. If favourable, it would dispose potential customers to patronise the plaintiff or his product and, if unfavourable, it would tend to discourage them from doing so. The plaintiff's reputation may be associated with the symbol under which his product is marketed. The symbol renders the product distinctive of the plaintiff or his product. A false representation by the defendant about the symbol used by the plaintiff may encourage or induce potential customers of the plaintiff, believing that they were patronising him, into patronising the defendant."

[underlining added for emphasis]

[26] In order to succeed in proving passing off, a litigant must prove misrepresentation; reputation or goodwill; that the infringing party's trade name was calculated or likely to deceive or confuse the ordinary customer and thus to deceive or cause confusion, and a common field of activity (although not essential).⁴⁸ The aforesaid should be contrasted with section 11(2)(c)(i) of the Act, which only requires the applicant to prove that the respondent's name, either falsely implies or suggests, or is such as would reasonably mislead a person to incorrectly believe that, the applicant is part of or associated with the respondent. In my opinion this only requires evidence proving fraud or misrepresentation (innocent or negligent misrepresentation) to the effect that, the infringing party's company name fraudulently implies or suggests a link (as part of or associated with) between the two organisations or that members of the public would be misled into incorrectly believing the existence of such a link between the parties. Members of the public relevant to the proof are those meeting the test of a

⁴⁸ Harms, L.T.C., *Amler's Precedents of Pleadings* (5 edition), Butterworths, Durban (Amler's) at pp 318 to 320.

reasonable person.⁴⁹ COMAIR relied on the same grounds on its submissions on s 11(2)(b) and s 11(2)(c)(i). I therefore see no reason why I should traverse the same facts again here. I similarly find no basis of a reasonable person being misled to incorrectly believe that KUHLULA is part of or associated with KULULA or KULULA.COM or COMAIR.

[27] I also find the facts that KUHLULA is a non-profit company; which according to its director and owner Mr. Sambo is currently dormant and will be for the rehabilitation of drug addicts and is based somewhere in the Hammanskraal township, north of Pretoria, not to be insignificant surrounding circumstances.⁵⁰

Conclusion

[28] Although the respondent did not ask for a costs order against the applicant, this Tribunal is capacitated in terms of regulation 156 of the Companies Regulations, 2011⁵¹ to make such an order. However, I do not think that the circumstances under which this application was brought by COMAIR were such that it should be mulcted with the costs of this application. I may have expressed some misgivings with the timing of the application and other procedural issues, but these – in my view - did not render doubtful COMAIR's *bona fides* in challenging the registration and use of the name KUHLULA by the

⁴⁹ See para [22] above.

⁵⁰ See *Miriam Glick Trading v Clicks Stores Transvaal* 1979 (2) 290 (T) discussed in para [21] above.

⁵¹ The Companies Regulations were made by the Minister of Trade and Industry in terms of section 223 of the Companies Act 71 of 2008 and published under GN R351 in Government Gazette 34239 of 26 April 2011.

respondent. Therefore, I do not deem it necessary to burden COMAIR with costs of this application.

Order

[29] I therefore make the following order:

- a) the application is dismissed, and
- b) there will be no order as to costs.

Khashane Manamela

Member, Companies Tribunal

Lucia Glass Concurring

Member, Companies Tribunal

Kasturi Moodaliyar Concurring

Member, Companies Tribunal