



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT010074ADR2022

In the matter between:

MABALINGWE NATURE RESERVE SHAREBLOCK (PTY) LTD
(Registration Number: 1987 / 005591 / 07)

Applicant

and

MABALINGWE GAME RESERVE (PTY) LIMITED
(Registration Number: 2017/050937/07)

First Respondent

COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION

Second Respondent

Presiding Member: **Lindelani Daniel Sikhitha**

Date of hearing: **12 September 2022**

Date of handing down of decision: **08 June 2023**

Summary: *An application objecting against the registration and continued use of a company name – objection lodged in terms of section 11(2)(b) and 11(2)(c) read with section 160 of the Companies Act, 2008 (Act No. 71 of 2008) – there is a delay in objecting to the name of first respondent – applicant did manage to show good cause for its application to be entertained by the Companies Tribunal – applicant and first respondent are not trading in the same market – applicant is operating a time share scheme within a share block company – Mabalingwe is a geographical location – there are 47 entities currently using Mabalingwe as part of their registered company name – held: the name objection application is dismissed.*

DECISION (Reasons and Order)

Per: Lindelani Daniel Sikhitha

A. INTRODUCTION

[1] The Applicant in this matter is Mabalingwe Nature Reserve Shareblock (Pty) Limited, which is a company duly incorporated and registered as such in terms of the applicable laws of the Republic of South Africa, with Registration Number: 1987 / 005591 / 07. The Applicant's registered address is situated at Mooikloof Office Park East, Corner Atterbury Road and Jollify Road, Mooikloof, Pretoria, Gauteng Province, Republic of South Africa ("South Africa"), 0059. The Applicant was registered by the Companies and Intellectual Property Commission ("the CIPC") on the 09th day of November 1987.¹

[2] The First Respondent in this matter is Mabalingwe Game Reserve (Pty) Limited, which is a company duly incorporated and registered as such in terms of the

¹ See Annexure FA2 to the Founding Affidavit which appears at pages 24 to 27 of the Indexed and Paginated Bundle.

company laws of the Republic of South Africa, with Registration Number: 2017 / 050937 / 07. The First Respondent's registered address is situated at Mabalalingwe Nature Reserve, R516 Road to Thabazimbi, Bela Bela, Limpopo Province, South Africa, 0480. The First Respondent was registered by the CIPC on the 10th day of February 2017.²

[3] The Second Respondent is the Commissioner of Companies and Intellectual Property Commission, duly appointed as such in terms of section 189³ of the Companies Act, 2008 (Act No. 71 of 2008) ("the Act"). The place of business of

² See Annexure "FA3" to the Founding Affidavit which appears at pages 28 to 32 of the Indexed and Paginated Bundle.

³ Section 189 of the Act reads as follows:

"Appointment of Commissioner

- (1) The Minister must appoint a suitably qualified and experienced person to be-
 - (a) the Commissioner of the Commission, who-
 - (i) holds office for an agreed term not exceeding five years; and
 - (ii) is responsible for all matters pertaining to the functions of the Commission; and
 - (b) the Deputy Commissioner of the Commission, who-
 - (i) holds office for an agreed term not exceeding five years; and
 - (ii) may perform any function of the Commissioner when the office of the Commissioner is vacant, or when the Commissioner is absent or is for any reason unable to perform the functions of that office.
- (2) A person may be reappointed as Commissioner or Deputy Commissioner on the expiry of an agreed term of office.
- (3) The Commissioner is the accounting authority of the Commission, and as such, is responsible for-
 - (a) the proper control and management of the Commission;
 - (b) the effectiveness and efficiency of the Commission;
 - (c) all income and expenditure of the Commission;
 - (d) all revenue collected by the Commission;
 - (e) all assets, and the discharge of all liabilities, of the Commission; and
 - (f) the proper and diligent implementation of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with respect to the Commission.
- (4) The Commissioner may-
 - (a) assign management or other duties to employees of the Commission, who have appropriate skills to assist in the management, or control over any function of the Commission; and
 - (b) delegate, with or without conditions, any of the powers or functions of the Commissioner to the Deputy Commissioner or any other suitably qualified employee of the Commission, but any such delegation does not divest the Commissioner of responsibility for the exercise or any power or performance of any duty."

the Second Respondent and the CIPC is located at the dti Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng Province, 0002, South Africa.

[4] The Second Respondent is cited in its official capacity as the person responsible for the functions of the CIPC, which include reservation of company names and registration of companies in terms of the Act. The CIPC is an organ of state that has been established in terms of section 185 of the Act.⁴ The CIPC performs its functions within the parameters of section 187 of the Act. The functions that are relevant for present purpose are contained in section 187(2) and (4) of the Act and they read as follows:

“(2) Other than with respect to matters within the jurisdiction of the Takeover Regulation Panel, the Commission must enforce this Act, by, among other things:-

⁴ Section 185 of the Act reads as follows:

“Establishment of Companies and Intellectual Property Commission

- (1) The Commission is hereby established as a juristic person to function as an organ of state within the public administration, but as an institution outside the public service.
- (2) The Commission-
 - (a) has jurisdiction throughout the Republic;
 - (b) is independent, and subject only to-
 - (i) the Constitution and the law; and
 - (ii) any policy statement, directive or request issued to it by the Minister in terms of this Act;
 - (c) must be impartial and perform its functions without fear, favour, or prejudice; and
 - (d) must exercise the functions assigned to it in terms of this Act or any other law, or by the Minister, in-
 - (i) the most cost-efficient and effective manner; and
 - (ii) in accordance with the values and principles mentioned in section 195 of the Constitution.
- (3) Each organ of state must assist the Commission to maintain its independence and impartiality, and to exercise its authority and perform its functions effectively.
- (4) Except to the extent prescribed otherwise by or in terms of this Act, a certificate, notice, decision, determination or ruling issued or made with respect to any particular matter contemplated in this Act by-
 - (a) the Commissioner; or
 - (b) a person designated by the Commissioner to perform a particular function of the Commission,is the certificate, notice, decision, determination or ruling of the Commission with respect to that matter.”

- (a) promoting voluntary resolution of disputes arising in terms of this Act between a company on the one hand and a shareholder or director on the other, as contemplated in Part C of Chapter 7, without intervening in, or adjudicating any such dispute;
 - (b) monitoring proper compliance with this Act;
 - (c) receiving or initiating complaints concerning alleged contraventions of this Act, evaluating those complaints, and initiating investigations into complaints;
 - (d) receiving directions from the Minister in terms of section 190, concerning investigations to be conducted into alleged contraventions of this Act, or other circumstances, and conducting any such investigation;
 - (e) ensuring that contraventions of this Act are promptly and properly investigated;
 - (f) negotiating and concluding undertakings and consent orders contemplated in section 169(1)(b) and 173;
 - (g) issuing and enforcing compliance notices;
 - (h) referring alleged offences in terms of this Act to the National Prosecuting Authority; and
 - (i) referring matters to a court, and appearing before the court or the Companies Tribunal, as permitted or required by this Act.
- (3)
- (4) The Commission must-
- (a) establish and maintain in the prescribed manner and form-

- (i) a companies register; and
 - (ii) any other register contemplated in this Act, or in any other legislation that assigns a registry function to the Commission;
- (b) receive and deposit in the registry any documents required to be filed in terms of this Act;
- (c) make the information in those registers efficiently and effectively available to the public, and to other organs of state;
- (d) register and deregister companies, directors, business names and intellectual property rights, in accordance with relevant legislation; and
- (e) perform any related functions assigned to it by legislation, or reasonably necessary to carry out its assigned registry functions.”

[5] The Applicant filed a notice of motion (application for objection against company name) (“the application”) before the Companies Tribunal on the 24th day of June 2022. In this application, the Applicant is objecting against the company name of the First Respondent in terms of section 11(2)(b) and (c) of the Act which reads as follows:

“The name of a company must –

- (b) not be confusingly similar to the name, trademark, mark, word or expression contemplated in paragraph (a) unless –***

(i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies. . .

(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. . . .” [Own emphasis added.]

[6] According to the papers placed before the Companies Tribunal, the application was served electronically on Haasbroek and Boezaart, who is the First Respondent’s legal representatives on record. The application was also electronically served on the Second Respondent. It is common cause that only the First Respondent is opposing the application. I will therefore proceed on the assumption that the Second Respondent made a choice not to oppose the application with full knowledge of the consequences that might follow in the event that the application succeeds.

B. THE RELEVANT BACKGROUND FACTS

[7] As I have already stated above, the Applicant was registered on the 09th day of November 1987. The Applicant’s company’s registration number is 1987/005591/07 and it was registered by the Second Respondent more than thirty (30) years prior to the registration of the First Respondent. The First Respondent was registered on the 10th day of February 2017 and its company’s registration number is 2017/050937/07.

[8] The Applicant alleges that it is a share block company⁵ which operates in the time share and tourism industry. Its business consists of, amongst other things, accommodation, shops, restaurants, entertainment, the Kalahari Oasis bar, bushwalks, game drives and the usual general amenities, which tourists can expect to encounter at a time share resort.

[9] According to CIPC records, the Applicant's principal description and standard industrial classification is recorded as "FINANCIAL INTERMEDIATION INSURANCE, REAL ESTATE AND BUSINESS SERVICES".⁶ According to the Applicant, it conducts a nature and game reserve business on an immovable property, which it owns. During the hearing of this matter on the 12th day of September 2022, I did request and I was furnished with a copy of the Memorandum of Incorporation of the Applicant. The Applicant's Memorandum of Incorporation perused records, amongst other things, the following which is considered to be relevant for present purposes:

- 9.1 The Applicant is a Share Block Company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980) ("the SBC Act");
- 9.2 The Applicant is incorporated as a proprietary limited company in terms of the relevant provisions of the Act;
- 9.3 The Applicant is incorporated in accordance with and governed by, inter alia:

⁵ A share block scheme allows an individual to own a block of shares in the company. This block of shares is allocated to a specific part or parts of the building, the apartment, parking bay, garden and so on. Owning the block of shares entitles the individual to the permanent and exclusive use of those parts of the building. But it is the company, not the individual, that owns the immovable property, the land, buildings and improvements.

⁶ See Annexure "FA2" to the Founding Affidavit at page 27.

- 9.3.1 the unalterable provisions of the SBC Act and the Act which applies to Share Block companies and proprietary limited companies;
 - 9.3.2 the alterable provisions of the Act which are applicable to proprietary limited Share Block companies subject to any limitation, extension, variation or substitution set out in the Memorandum of Incorporation of the Applicant; and
 - 9.3.3 the provisions of the Memorandum of Incorporation and the registered use agreement and rules of the Applicant, if any.
- 9.4 In terms of Clause 2 of the Memorandum of Incorporation of the Applicant, the main purpose and object of the Applicant is to operate a share block scheme in respect of the property owned by the Applicant in accordance with the SBC Act and the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983) (“the PTSC Act”).
- 9.5 In terms of the registered Use Agreement and the rules of the Applicant, a Shareholder of the Applicant is entitled to use specified parts of the buildings owned by the Applicant. As part of its broader functions, the Applicant also promotes, sustains and advances the communal and group interests of its Shareholders.
- 9.4 In article 2 of the Applicant’s Memorandum of Incorporation, the Applicant’s purpose and object is described as follows:
 - “The main purpose and object of the Company is to operate a share block scheme in respect of the Property owned by the Company in accordance with the Share Blocks Act and the Time-Sharing Act, entitling a Shareholder to use specified parts**

of the Buildings in accordance with the Use Agreement entered into between the Shareholders and the Company and promoting, sustaining and advancing the communal and group interests of the Company's Shareholder." [Own emphasis added.]

9.5 The Memorandum of Incorporation of the Applicant does contain several definitions of several words used therein. I have however only picked up a few definitions which I consider to be relevant for present purposes and these definitions are listed below:

9.5.1 The word "Buildings" is defined in the Memorandum of Incorporation to mean the Company's immovable properties.

9.5.2 The word "Company" is defined in the Memorandum of Incorporation to mean "Mabalingwe Nature Reserve Share Block (Pty) Ltd".

9.5.3 The word "property" is defined in the Memorandum of Incorporation to mean the Company's land being Remaining Extent of the Farm Boschpoort 473, Registration Division KR, Gauteng, Measuring 2141,9324.

9.5.4 The word "scheme" is defined in the Memorandum of Incorporation to mean the property time sharing scheme that is operated by the share block company (the Applicant) in respect of accommodation, improvements, the common facilities and common property, in terms of the SBC Act and the PTSC Act.

9.5.5 The word "share" is defined in the Memorandum of Incorporation to mean that which is set out in section 1 of the SBC Act and it

relates to the share block Company granting a right of use to the holder thereof.

9.5.6 The words “Share Block Company” are defined in the Memorandum of Incorporation to mean Mabalingwe Nature Reserve Share Block (Pty) Limited.

9.5.6 The word “Shareholder” is defined in the Memorandum of Incorporation to mean the holder of Shares (as defined in the use agreement) comprising a share block and includes the purchaser thereof who has purchased subject to suspensive condition, irrespective as to whether such condition has been fulfilled, and further includes the purchaser who has not yet taken transfer of the Shares comprising the Share Block and Shareholders will have the corresponding meaning.

9.5.7 The words “use agreement” is defined in the Memorandum of Incorporation to mean the duly filed Use Agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated and as further set out in Annexure “B” attached to the Memorandum of Incorporation.

9.6 In terms of the registered Use Agreement and the rules of the Applicant, a Shareholder of the Applicant is entitled to use specified parts of the buildings owned by the Applicant. As part of its broader functions, the

Applicant also promotes, sustains and advances the communal and group interests of its Shareholders.

C. THE PURPOSE OF THE APPLICATION

[10] This is an Application for Relief (“the application”) in terms of section 160 of the Act read with regulations 142 the Companies Regulations, 2011 (“the Regulations”) for the following order:

- 10.1 a determination that the First Respondent’s company name contravenes section 11(2)(b) and (c) of the Act;
- 10.2 an administrative order directing the First Respondent to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period (*sic*) and on any conditions that the Companies Tribunal may consider just, equitable and expedient under the circumstances; and
- 10.3 an administrative order directing the Second Respondent to take the steps set out in section 14(2)(b) by:
 - 10.3.1 taking the steps set out in section 14(1)(b) by using the company registration number, followed by “**(Pty) Ltd**”, as the interim name of the First Respondent in the companies register and registration certificate of the First Respondent;

10.3.2 inviting the First Respondent to file an amended Notice of Incorporation using a satisfactory name when the First Respondent files such an amended Notice of Incorporation by:

10.3.2.1 entering the First Respondent's new name in the companies register; and

10.3.2.2 issuing and delivering to the First Respondent an amended registration certificate showing the amended name of the First Respondent.

[11] The First Respondent filed its Answering Affidavit late and as a result it did file an application for condonation for the late filing of its answering affidavit. It is common cause that the First Respondent's answering affidavit was filed two days late. The Applicant had initially opposed the application for condonation brought by the First Respondent in respect of such late filing of its answering affidavit. However, the Applicant is no longer opposing the First Respondent's application for condonation application.⁷ Consequently, I find no further basis to proceed dealing with the merits of the application for condonation in any detail.

[12] Based on the explanation detailed in the First Respondent's Condonation Affidavit accompanying its application for condonation for the late filing of its Answering Affidavit, I am satisfied that the First Respondent has succeeded in

⁷ See Applicant's confirmation in this regard which appears at page 2 lines 12 to 21 of the transcript where the following is stated regarding the condonation application of the First Respondent:

"ADV MARSCHALL: I saw that, thank you. My sound is not very good, so I may, if you ask a question, I may have to ask you to repeat yourself. I do not know why, there seems to be some interference, but I can sort of hear you. Also just at the get-go, just so that everybody knows where we are, the Applicant had initially opposed the condonation application of the First Respondent in respect of the late filing of the Answering Affidavit. The Applicant is no longer opposing that condonation application, so it is not necessary to deal with that aspect."

showing good cause for its application for condonation to be entertained and granted. Therefore, the application for condonation for the late filing of the First Respondent's Answering Affidavits hereby granted.

D. LOCUS STANDI AND PROCEDURAL ISSUES

[13] This is an application in terms of which the Applicant is objecting to the company name of the First Respondent in terms of section 11(2)(b) and (c) read together with section 160 of the Act and the applicable Regulations. Before dealing with the substantive issues that are relevant in this matter, it is imperative that I should first have a look at some preliminary issues which are related to the form that an application of this nature must conform to as prescribed in terms of the applicable provisions of the Act read with the applicable Regulations.

[14] As a point of departure in this exercise, I should have a look at the provisions of regulation 13(a) of the Regulations which read as follows:

“(a) A person may apply in Form CTR 142 to the Tribunal in terms of section 160 if the person has received... a Notice of a Potentially Contested Name, in Form CoR 9.6 or a Notice of a Potentially Offensive Name, in Form CoR 9.7, or **has an interest in the name of a company as contemplated in section 160(1)....**” [Own emphasis added.]

[15] Section 160(1) of the Act states that a person with an interest in the name of a company may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name, or reservation, registration or use of

the name, or the transfer of any such reservation or registration of a name, satisfies the requirements of the Act. There is no doubt in my mind that the Applicant does have an interest in the name of the First Respondent as contemplated in section 160(1) of the Act. I am therefore satisfied that the Applicant has the necessary *locus standi* to bring the application objecting against the name of the First Respondent as it indeed did through the current proceedings.

[16] Regulation 142 of the Regulations deals with applications to the Companies Tribunal in respect of matters other than complaints and the relevant parts thereof read as follows:

- “(1) A person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or those Regulations, by completing and filing with the Tribunal’s recording officer-**

 - (a) an Application in Form CTR 142; and**
 - (b) a supporting affidavit setting out the facts on which the application is based.**
- (2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it.**
- (3) An application in terms of this regulation must-**

 - (a) Indicate the basis of the application, stating the section of the Act or these Regulations in terms of which the Application is made; and**
 - (b) Depending on the context –**

- (i) **Set out the Commission's decision that is being appealed or reviewed;**
- (ii) **Set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;**
- (iii) **Set out the regulation in respect of which the applicant seeks condonation; or**
- (c) **Indicate the order sought; and**
- (d) **State the name and address of each person in respect of whom an order is sought.** [Own emphasis added.]

[17] In terms of regulation 142(1) of the Regulations, it is clearly provided that a person may apply to the Companies Tribunal for an order in respect of any matter contemplated in the Act or the Regulations by completing and filing with the Companies Tribunal's recording officer:

17.1 an Application in Form CTR 142; and

17.2 a supporting affidavit setting out the facts on which the application is based.

[18] The application in this matter is made in Form CTR 142 and it is supported by a Founding Affidavit deposed to by Johannes van Niekerk ("Van Niekerk") who is, as it appears from the papers, one of the four (4) directors of the Applicant. It is common cause that it is not always practical for the whole board of directors to, in each and every transaction, represent the company. In such event, the board of directors will usually delegate its authority to one director amongst their number or to any preferred representative.

- [19] Section 66 of the Act does indeed make provision for such delegation of authority to take place as it provides that the business and affairs of a company must be managed by or under the direction of the board. In this event the question regarding the authority of the director that acts, brings one back to the application of the principles of representation (in a principal and agent relationship) within the context of company.
- [20] It is clear from the papers placed before the Companies Tribunal that Van Niekerk has indeed been duly authorised to depose to the Founding Affidavit on behalf of the Applicant by virtue of a Resolution of the Board of Directors of the Applicant. The relevant parts of the Resolution of the Board of Directors of the Applicant read as follows:

“BACKGROUND

On 21 January 2022 a letter of demand was served on the Directors of Mabalingwe Game Reserve (Pty) Ltd (“MGR”) setting out Mabalingwe Share Block’s concerns regarding the confusingly similarity of MGR’s name to the Company’s name which has been in existence for approximately three decades and demanded that MGR amends its name. The request was subsequently refused on 02 February 2022. The Company has considered the continuous misunderstanding when the public deals with these two entities (Mabalingwe Nature Reserve and Mabalingwe Game Reserve),

AND NOW RESOLVE THAT:

1. The Company shall proceed with the application with the Companies Tribunal in terms of section 160(1) of the Act for an order:
 - 1.1 that MGR's name does not satisfy the requirements of section 11(2); and
 - 1.2 be directed to choose a new name provided for in terms of section 160(3)(1).
2. **JOHANNES VAN NIEKERK is appointed and authorised as authorised representative of the Company and to give instruction, undersign all necessary affidavits and any other documentation and to take all necessary steps pertaining to the afore-mentioned legal proceedings on behalf of the Company...**⁸ [Own emphasis added.]

[21] Based on the Resolution of the Board of Directors of the Applicant as cited above, I am satisfied that Van Niekerk had been appointed and further that he does indeed have the necessary authority to act as representative of the Applicant in these name objection proceedings.

[22] Be that as it may, I have perused the papers filed with the Companies Tribunal in this matter with a view of assessing compliance with the applicable Regulations. After carefully assessing the application in this matter, I am satisfied that the

⁸ See a copy of the Resolution of the Board of Directors of the Applicant dated 10 June 2022. A copy of the Resolution is attached to Van Niekerk's Founding Affidavit and it is marked Annexure "FA1". Annexure "FA1" appears at pages 22 to 23 of the indexed and paginated bundle of documents.

application as supported by Van Niekerk's Founding Affidavit contains the necessary particulars as required by the Regulations. Based on my assessment, the application is therefore in compliance with regulation 142 of the Regulations. I am now proceeding to deal with the relevant submissions that have been made by the Applicant and the First Respondent in their respective supporting and opposing papers filed in these name objection proceedings.

E. SUMMARY OF SUBMISSIONS MADE BY THE APPLICANT IN SUPPORT OF THE APPLICATION

[23] In its Notice of Motion and paragraph 15 of Van Niekerk's Founding Affidavit, the Applicant is seeking for the following orders against the First and Second Respondents:

- 23.1 A determination that the First Respondent's company name, contravenes section 11(2)(b) and (c) of the Act;
- 23.2 An administrative order directing the First Respondent to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within an unspecified period and on any conditions that the Companies Tribunal may consider just, equitable and expedient under the circumstances; and
- 23.3 An administrative order directing the Second Respondent to take the steps set out in section 14(2)(b) by:

23.3.1 taking the steps set out in section 14(1)(b) by using the company registration number, followed by “(Pty) Ltd”, as the interim name of the First Respondent in the companies register and registration certificate of the First Respondent; and

23.3.2 inviting the First Respondent to file an amended Notice of Incorporation using a satisfactory name when the First Respondent files such an amended Notice of Incorporation by:

23.3.2.1 entering the First Respondent’s new name in the companies register; and

23.3.2.2 issuing and delivering to the First Respondent an amended registration certificate showing the amended name of the First Respondent.

[24] I have further noted that in paragraph 9.2 of Van Niekerk’s Founding Affidavit, the Applicant is seeking the following orders against the First and Second Respondents which order is slightly different from the one referred to above:

24.1 An order that the First Respondent’s name does not satisfy the requirements of section 11(2) of the Act;

24.2 An order that the First Respondent be directed to choose a new name as provided for in terms of section 160(3)(b)(ii) of the Act;

24.3 An order that the name “Mabilingwe Conservancy” reserved under tacking number 9332778844, and believed to be reserved by the First Respondent, does not satisfy the requirements of section 11(2) of the Act; and

24.4 An order that the Second Respondent cancels the name reservations as provided for in terms of section 160(3)(c) of the Act.

[25] In support of its application, the Applicant makes the submissions outlined below and these submissions are contained in its founding and supplementary affidavits as well as the supporting documents. I have only included those submissions which I consider to be relevant for purposes of my determination of the application. I summarise the relevant submissions as follows:

25.1 The First Respondent’s name is confusingly similar to the Applicant’s name and the First Respondent is not in any manner affiliated with the Applicant.

25.2 Just like the Applicant, the First Respondent conducts business within the tourism accommodation and services space, causing members of the public to be misled regarding the service provider and/or affiliation between the Applicant and the First Respondent.

25.3 The Applicant was registered on the 09th day of November 1987 and the First Respondent was registered on the 10th day of February 2017.

- 25.4 The Applicant has been made aware of several occasions where guests and shareholders confused the identities of “Mabalingwe Game Reserve (Pty) Limited” and “Mabalingwe Nature Reserve Share Block (Pty) Limited”. The alleged confusion is created on tourism platforms on the worldwide web, social media and where clients make use of the services of either party.
- 25.5 The word “Mabalingwe” means spots of the leopard, and the Applicant does not claim to have an interest in the word itself but when used in conjunction with the words “Nature Reserve” as part of the name, the Applicant does have a claim to the wording as its registered name.
- 25.6 The words “Game Reserve” in conjunction with “Mabalingwe” is confusingly similar to the prior existing and commercially well established name of “Mabalingwe Nature Reserve”.
- 25.7 The Applicant does not have reservations about a name such as “Mabalingwe Construction” but does have strong reservations about the name “Mabalingwe Game Reserve” and “Mabalingwe Conservancy”. The Applicant submits that such combination raises serious concerns regarding passing off and confusion as these words are synonymous to each other.
- 25.8 The Companies Tribunal is not required to take the full name into consideration. According to the Applicant, the suffix word “Share Block” and the Applicant’s operation as such is not relevant to whether the name

of the First Respondent is confusingly similar or falsely implies or reasonably misleads a person to believe that the entity is the Applicant or associated with the Applicant. The crux of the company name disputed in these proceedings lies in the words “Mabalingwe Nature Reserve” and “Mabalingwe Game Reserve”.

- 25.9 The Applicant operates in the tourism industry by supplying its Shareholders accommodation, rental of chalets, operating a restaurant, operating of 2 bars, operating a shop, operating a fuel station and catering for game drives on its immovable property.
- 25.10 The First Respondent is now copying the business model to a great degree and passing it off as the Applicant, which is easy marketing using a well-established 35 years of business name.
- 25.11 The First Respondent does not own any immovable property at its registered address and/or principal place of business. The First Respondent cannot, in contrast to the Applicant who is the registered owner of a large portion of game farm, commercial activities and chalets for eco-tourism on its property, be regarded as a game reserve.

- 25.12 The Applicant encountered various instances of confusion regarding its identity. These instances are outlined in paragraph 12.6 of Van Niekerk's Founding Affidavit.⁹
- 25.13 The Applicant regularly deals with enquiries from members of the public enquiring about pricing and availability of accommodation at the Caravan Park. The Caravan Park is a business that is owned and operated by the First Respondent.
- 25.14 The Applicant also receives complaints on its GuestRevu account in relation to nature walks and game drives excursions. Guest complaints range, among other, from the quality of the vehicles to the knowledge of the guide and/or their overall disappointment with the experience. Upon further enquiry, the Applicant discovered that the guest(s) had booked their excursion with the First Respondent.
- 25.15 In addition, the Applicant also receives complaints on its GuestRevu account in relation to the pricing of items sold at the Caravan Park Shop, which is the business operated by the First Respondent.
- 25.16 The examples demonstrated above are a cause for concern to the Applicant as it has good reason to believe that the similarity of the Applicant's and First Respondent's names would continue to cause the public to erroneously believe that the respective entities are either one

⁹ See Annexures "FA6" to "FA8" to the Founding Affidavit. Annexure "FA6" appears at page 36 of the Indexed and Paginated Bundle; Annexure "FA7" appears at pages 37-38 of the Indexed and Paginated Bundle and Annexure "FA8" appears at page 39 of the Indexed and Paginated Bundle.

and the same party, alternatively, affiliated or in some way associated with one another.

25.17 As a result of what is stated above, on or about the 21st day of January 2022, the Applicant instructed its legal representatives to deliver a letter of demand to the First Respondent. In terms of the letter of demand, the First Respondent was requested to address the contravention of section 11(2) of the Act.

25.18 On the 02nd day of February 2022, the First Respondent's legal representatives replied to the letter of demand of the Applicant denying the allegations and refusing to change the name of the First Respondent.

25.19 The name "Mabilingwe Conservancy" is reserved as a company name by the Second Respondent under tracking number 9332772244. The Applicant did make an enquiry to the Second Respondent regarding the reserving entity but it was informed that the name of the applicant for name reservation cannot be disclosed in compliance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

25.20 The Applicant believes that the name was reserved by the First Respondent, or a related entity / individual and it is submitted that "Conservancy" in conjunction with Mabilingwe will again lead to confusion due to the similar meaning of the words "Nature Reserve" and "Conservancy".

- 25.21 The Applicant is therefore requesting that the Second Respondent finds that “Mabilingwe Conservancy” does not satisfy the requirements of section 11(2) of the Act and proceeds to cancel the name reservation as provided for in terms of section 160(3)(c) of the Act.
- 25.22 In addition, the Applicant is submitting that any synonyms of the words “Nature Reserve” or “Conservancy” will also continue to be confusingly similar and should be rejected.
- 25.23 The First Respondent consistently misleads the Companies Tribunal regarding its operations. The First Respondent endeavours to hold itself out as being a game reserve. The First Respondent, however, cannot escape from its admission, in its papers, that it is not a game reserve, but is a management company. This is confirmed by the First Respondent’s attorneys in their correspondence, addressed to the applicant’s attorneys dated 2 February 2022.
- 25.24 The First Respondent’s company name is accordingly unrelated to its main object and business activities and this is misleading. This alone is a basis not to allow the First Respondent’s company name to continue to be registered.
- 25.25 The fact of the matter is that the Applicant and the First Respondent have had an entwined history. The deponent to the First Respondent’s Opposing Affidavit, one Johannes Stephanus Wessels (“Wessels”), was in fact, a director of the Applicant and his family were the original founders

of the Applicant. Wessels further established 2 (two) additional companies, being Boschpoort Management Services (Pty) Ltd ("*BMS*") and Boschpoort Ondernemings (Pty) Ltd ("*BO*").

25.26 BMS and BO were integrally involved with the Applicant and the Applicant's operations, as was the Wessels. This is specifically borne out by the annexures contained in the applicant's memorandum of incorporation as well as the history set out in Wessels' Opposing Affidavit.

25.27 The annexures to the Applicant's memorandum of incorporation specifically show that:

25.27.1 BO was the seller of the share blocks in the Applicant (page 1 of the agreement of sale);

25.27.2 the share block scheme (that is, the applicant's immovable property and business) was managed by BO (clause 2.4 of the information schedule to the sale agreement); and

25.27.3 BO was the secretary of the Applicant (clause 4 on the information schedule in the sale agreement).

25.28 Furthermore, the provisions of the Use Agreement, annexed to the memorandum of incorporation, provides that the operating company of the Applicant was BO (clause 1.21 of the Use Agreement).

25.29 BMS and BO were liquidated in approximately 2017 and BO sold its shares in the Applicant. It was then that the First Respondent registered

itself. This was a clear attempt of the controlling minds of the First Respondent to capitalise on the goodwill and reputation of the Applicant, in which they had previously been integrally involved.

- 25.30 Not only are there undisputed facts that members of the public have been misled into, incorrectly, believing that there is a link between the Applicant and the First Respondent. It however clear that, by virtue of the relationship between the directors of the First Respondent and the Applicant, there was an intention to create the impression that there was a link or association between the Applicant and the First Respondent.
- 25.31 Furthermore, the First respondent's name misrepresents that it is a game reserve (which it is not) being a concept synonymous with a nature reserve and a portion of the business of the Applicant.
- 25.32 In circumstances such as these, where there are a large number of similarities between the names, the onus lies with the First Respondent to prove that the differences are such, as to distinguish the names and convey to the ordinary user of the goods or services that the goods or services are not those of the other party. This is required, should the First Respondent wish to avoid the inference of deception being drawn.
- 25.33 In the premises, the name of the First Respondent falsely implies or suggests, and has reasonably misled the members public to believe, incorrectly, that the First Respondent is part of or associated with the Applicant.

25.34 In the premises, it is submitted that the Applicant should also succeed with its relief sought on the basis of section 11(2)(b) and (c)(i) of the Act.

F. SUMMARY OF SUBMISSIONS MADE BY THE FIRST RESPONDENT IN OPPOSITION OF THE APPLICATION

[26] The First Respondent is opposing the name objection application and the relevant opposing submissions are summarised below.

26.1 The Applicant's case is based on section 11(2) of the Act in that it alleges that the First Respondent's name:

26.1.1 is confusingly similar to the Applicant's name, and the First Respondent does not form part of a group of companies with the Applicant; and

26.1.2 falsely suggests an affiliation between the Applicant and the First Respondent.

26.2 The mere similarity of the names or part thereof is not sufficient to make a finding that the name contravenes section 11(2) of the Act. The Applicant must prove upon a balance of probabilities that the names of the two entities are confusingly similar and that it is reasonably likely that the general public, or a substantial portion thereof, would believe that the goods and services of the First Respondent are that of the Applicant. The Applicant must also prove that it has a vested interest in the words used in its name.

- 26.3 Furthermore, the Applicant must show that the First Respondent's name was calculated to deceive or mislead the public. This element requires the Applicant to adduce proof that the First Respondent registered its name with the intent to deceive the public and to feign a link between the goods and services that the First Respondent offers and the goods and services offered by the Applicant.
- 26.4 In its assessment of the application, the Companies Tribunal must consider, amongst other:
- 26.4.1 the names of the two companies in relation to the goods and services they market, how they appear to consumers and how consumers would perceive them;
 - 26.4.2 whether the two companies trade in the same commodity; and
 - 26.4.3 that the nature of their business will increase the likelihood of the persons who would approach those companies to conduct the said business to be confused by the similarity of the names.
- 26.5 The Applicant and the First Respondent do not compete in the same market and they do not trade in the same commodity. It follows therefore that the similarity in their names cannot reasonably confuse members of the public.
- 26.6 The word "Mabalingwe" refers to the geographical location where the Applicant's and First Respondent's businesses are located, and it therefore constitute *bona fide* use of the word.

- 26.7 The words “Nature Reserve” in the Applicant’s name are not descriptive of the goods and services that are offered by the Applicant. Therefore, the Applicant cannot have a vested interest in the words “Mabalingwe Nature Reserve” in its name as there is no link between these words and its business.
- 26.8 The First Respondent did not register its name with the express intention to create the impression that it was affiliated with the goods and services offered by the Applicant. The two entities do not trade in the same market and the First Respondent has been using its name prior to its registration, and before the Applicant began trading as “Mabalingwe”.
- 26.9 In the event that there is any confusion which exist, the alleged confusion is created by the Applicant’s own deceptive and misleading marketing of its business. The Applicant’s full registered name is Mabalingwe Nature Reserve Share Block (Pty) Ltd.
- 26.10 In terms of Clause 2 of the Memorandum of Incorporation of the Applicant, the main purpose and object of the Applicant is to operate a time share block scheme in respect of the property owned by the Applicant in accordance with the SBC Act and the PTSC Act.
- 26.11 Every single bit of social media advertising or social media presence that the Applicant has relied on in this matter does not once refer to the full registered name of Mabalingwe Nature Reserve Share Block (Pty) Ltd. It only makes use of a partial portion of the company name, that being Mabalingwe Nature Reserve.

- 26.12 The Applicant has submitted on several occasions that it is involved in the tourism industry as is the First Respondent. The Applicant cannot advertise itself as anything other than what it is. The CIPC registration for the Applicant's name does not indicate whatsoever that the Applicant is in the tourism industry and that is found at Annexure "FA2" which appears at page 24 of the Indexed and Paginated Bundle.
- 26.13 The Applicant's Principal Description and Standard Industrial Classification is recorded in the records obtained from the CIPC as "FINANCIAL INTERMEDIATION INSURANCE, REAL ESTATE AND BUSINESS SERVICES".¹⁰
- 26.14 One would have been able or should have been able to indicate how many customers would pass through the particular nature reserve at a certain time but the Applicant has not done that. The Applicant rather relies on bold allegations that it is now entitled to use the name Mabalingwe Nature Reserve despite the fact that its entire registration is Mabalingwe Nature Reserve Share Block.
- 26.15 The First Respondent has at all relevant times since 1998 used the name Mabalingwe Game Reserve. The social media presence of the First Respondent precedes that of the Applicant as is evidenced by Annexure "JSW6"¹¹ which is dated 31 January 2011.

¹⁰ See page 4 of Annexure "FA2" Founding Affidavit which appears at page 27 of the Indexed and Paginated Bundle.

¹¹ See Annexure "JSW6" to the Opposing Affidavit which appears at page 106 of the Indexed and Paginated Bundle.

26.16 The Applicant, as evidenced by Annexure "JSW7" first changed its profile picture on the 30th day of April of 2015. The Applicant only made its first post on the 1st day of May of 2015.¹²

26.17 The First Respondent submits that all that is stated above ties into the question of good cause and the merits of the Applicant's case. It is submitted by the First Respondent that the Applicant should have been aware of the presence of the First Respondent in the market since at least 2011.

26.18 According to the First Respondent, there are around 51 entities that have incorporated the word "Mabalingwe" as part of their company names. The following is the list of the entities that have the word "Mabalingwe" as part of their reserved or registered name in accordance with the BizPortal database held by the CIPC as at 22 July 2022:¹³

Item number	Enterprise / Tracking Number	Enterprise / Tracking Number	Status
1.	BONWA PHALA AT MABALINGWE	9360223866	RESERVED
2.	MABALINGWE CONSERVANCY	9332778844	RESERVED
3.	MABALINGWE EVENTS	9363615471	RESERVED
4.	MABALINGWE PORTFOLIO COLLECTION	9270276361	RESERVED
5.	154 MABALINGWE	2002/026997/07	REGISTERED
6.	21 MABALINGWE 6	1996/016576/23	REGISTERED

¹² See Annexure "JSW7" to the Opposing Affidavit which appears at page 107 of the Indexed and Paginated Bundle.

¹³ See Annexure "JSW3" to the Opposing Affidavit of Wessels which appears at pages 99 to 102 of the Indexed and Paginated Bundle.

7.	ELANDSFONTEIN 20 MABALINGWE	2004/011597/07	REGISTERED
8.	ERF 141 MABALINGWE	2004/011696/07	REGISTERED
9.	ERF 150 MABALINGWE	2002/093397/23	REGISTERED
10.	ERF 18 MABALINGWE	2001/018052/23	REGISTERED
11.	FRIENDS OF MABALINGWE INVESTMENTS	2018/387971/07	REGISTERED
12.	LERIBENG MABALINGWE PROPERTIES	2005/020894/07	REGISTERED
13.	LODGE 77 MABALINGWE COUNTRY CLUB	2003/003013/07	REGISTERED
14.	MABALINGWE 13 EIENDOMSONTWIKKELING	2003/017736/07	REGISTERED
15.	MABALINGWE 13 EIENDOMSONTWIKKELING	1988/022491/23	REGISTERED
16.	MABALINGWE 19TH HOLE INVESTMENT	2006/160583/23	REGISTERED
17.	MABALINGWE 215	2000/075802/23	REGISTERED
18.	MABALINGWE 705	2014/061890/07	REGISTERED
19.	MABALINGWE CARAVAN PARK PROPERTY	2020/693162/07	REGISTERED
20.	MABALINGWE CHALET 132 B	1995/034894/23	REGISTERED
21.	MABALINGWE CHALET 132A	1995/034921/23	REGISTERED
22.	MABALINGWE COMMON PROPERTY ASSOCIATION	2005/015160/08	REGISTERED
23.	MABALINGWE CONSULTING SERVICES AND PROJECTS	2009/104105/23	REGISTERED

24.	MABALINGWE CONSULTING SERVICES AND PROJECTS	2009/104105/23	REGISTERED
25.	MABALINGWE COUNTRY CLUB 121	2002/030682/07	REGISTERED
26.	MABALINGWE COUNTRY CLUB 122	2003/023098/07	REGISTERED
27.	MABALINGWE COUNTRY CLUB 157	2003/002938/23	REGISTERED
28.	MABALINGWE COUNTRY CLUB 157	2016/358859/07	REGISTERED
29.	MABALINGWE COUNTRY CLUB 79 (MCC 79)	2006/012785/07	REGISTERED
30.	MABALINGWE COUNTRY LODGE	2004/023974/07	REGISTERED
31.	MABALINGWE EENHEID 102	1994/042701/23	REGISTERED
32.	MABALINGWE EVENTS	2021/461867/07	REGISTERED
33.	MABALINGWE GAME RESERVE	2017/050937/07	REGISTERED
34.	MABALINGWE HORSEBACK SAFARIS	1996/020225/23	REGISTERED
35.	MABALINGWE NATURE RESERVE SHARE BLOCK (PTY) LTD	1987/005591/07	REGISTERED
36.	MABALINGWE PORTFOLIO COLLECTION	2020/570504/07	REGISTERED
37.	MABALINGWE PROPERTIES	2018/308041/07	REGISTERED
38.	MABALINGWE TIMESHARE MARKETING	1989/031553/23	REGISTERED
39.	MABALINGWE TRAC	2011/041144/23	REGISTERED
40.	MABALINGWE TRADING	2015/325692/07	REGISTERED
41.	MABALINGWE TRADING AND EXPORT COMPANY	1992/002758/07	REGISTERED
42.	MABALINGWE US SHARE BLOCK 1	2009/019566/07	REGISTERED

43.	MABALINGWE WILD	2001/011093/07	REGISTERED
44.	MABALINGWE WOODCRAFT	1988/020338/23	REGISTERED
45.	S106 MABALINGWE	2003/051026/23	REGISTERED
46.	S8S MABALINGWE 11	2010/014518/07	REGISTERED
47.	STABILIZER PROPERTIES MABALINGWE	2004/027898/07	REGISTERED
48.	STAND 18 MABALINGWE	2004/017780/23	REGISTERED
49.	STAND 40 MABALINGWE COUNTRY CLUB	2003/006408/07	REGISTERED
50.	UNIT 8 MABALINGWE 6	1993/006646/07	REGISTERED
51.	UNITS 77-78 MABALINGWE	1989/036613/23	REGISTERED

26.19 Confronted with the list of companies which incorporate the word “Mabalingwe” in their names, the Applicant found itself stuck in sticky mud. In order to circumvent this glaring piece of evidence that goes against its entire case, the Applicant unequivocally states that its issues is not with the use of the word “Mabalingwe”. It states that the main issue in its case revolves around the use of the combination of the words “Mabalingwe Game Reserve” and “Mabalingwe Conservancy”.

26.20 Regarding the challenged reservation of “Mabalingwe Conservancy”, the First Respondent states that it does not know anything about the aforesaid reserved name. It confirmed in its Opposing Affidavit deposed to by Wessels that the First Respondent did not reserve the name “Mabalingwe Conservancy”.

- 26.21 According to the First Respondent, the greater area of Mabalingwe as depicted on the maps, is a large portion upon which different entities also have properties. Therefore, for all intents and purposes “Mabalingwe” can be referred to as a geographical area that is situated outside Bela Bela in Limpopo Province.
- 26.22 It is the First Respondent’s submission that “Mabalingwe” is a geographical area and therefore single entity is allowed to monopolise the name "Mabalingwe" because of this fact.
- 26.23 If one considers the names of the Applicant and the First Respondent side by side, objectively speaking they are not the same.
- 26.24 The First Respondent cannot make a submission as to what the actual distinction between a “nature reserve” and a “game reserve” is but it can be and must be accepted by the Companies Tribunal that those are completely descriptive terms as well.
- 26.25 For all intents and purposes then the Applicant is laying claim firstly to a wholly descriptive company name to which the First Respondent is also entitled considering the history and the evidence provided in the papers. Secondly the Applicant is asserting its rights to, or creating a monopoly over an industry in which it has no presence in terms of its established purpose and *modus operandi*.
- 26.26 The Applicant is bound, as it has correctly stated, by the provisions of Section 11 read with the provisions of Section 160 of the Act. The Applicant continues to suggest that the case law that the First

Respondent relies on is irrelevant for present purposes, but the opposite is surely the case if one considers the predominant facts in this matter.

26.27 In respect of the descriptiveness of the Applicant's company name it is important to note that there is a legal principle stating that descriptive names or the use of words that are in common use do not confer the same rights to prevent imitation as words that are invented or fanciful.

26.28 The Applicant has not stated why it chose to adopt Mabalingwe. This fact is absent from the papers and it has not demonstrated that it alone is entitled to operate as a nature reserve in the greater area of Mabalingwe.

26.29 If one considers the maps presented in this matter, it is clear that Mabalingwe is a geographical location. If one further considers these maps within the context of the 51 other entities which are using the word "Mabalingwe" as part of their names, it is a clear demonstration that there is indeed a geographical area known as Mabalingwe.

26.30 The First Respondent did make reference to the decision of *Cape Town Lodge CC. v The Registrar of Closed Corporations & Another*¹⁴, where the court stated the following:

"If a defendant uses an ordinary English word or words there is no doubt the public will be less likely to regard it as a proprietary word and associate it with a similar word registered by the plaintiff than would be the case if both words were invented words or words which had no meaning appropriate to the goods in question."

¹⁴ [2008] 2 All SA 34 (C).

26.31 The court went further and stated the following:

"Because it is descriptive it is equally applicable to any business of a like kind, its very descriptiveness ensures that it is not distinctive of any particular business and hence its application to other businesses would not ordinarily mislead the public."

26.32 It is accepted that section 11(2)(c) of the Act is akin to the common law action or remedy of passing off. Therefore, what is required in respect of a passing off application and as held by the court in *Pioneer Foods (PTY) Ltd v Bothaville Milling*¹⁵, is the misrepresentation on which it depends. This being a misrepresentation in respect of passing off the court stated the following:

"There is no dispute over the relevant legal principles. Passing off occurs when A represents, whether or not deliberately or intentionally, that its business, goods or services are those of B or are associated therewith. It is established when there is a reasonable likelihood that members of the public in the marketplace looking for that type of business, goods or services may be confused into believing that the business, goods or services of A are those of B or are associated with those of B. The misrepresentation on which it depends involves deception of the public in regard to trade source or business connection and enables the offender to trade upon and benefit from the reputation of its competitor. Misrepresentations of

¹⁵ (215/2013) [2014] ZASCA 6; [2014] 2 All SA 282 (SCA) (12 March 2014).

this kind can be committed only in relation to a business that has established a reputation for itself or the goods and services it supplies in the market and thereby infringe upon the reputational element of the goodwill of that business. Accordingly proof of passing off requires proof of reputation, misrepresentation and damage. The latter two tend to go hand in hand, in that, if there is a likelihood of confusion or deception, there is usually a likelihood of damage flowing from that.”¹⁶

26.33 The aforesaid should be contrasted with section 11(2)(c)(i) of the Act which only requires the Applicant to prove that the First Respondent's name either falsely implies or suggests or is such that would reasonably mislead a person to incorrectly believe that the Applicant is part of or associated with the First Respondent.

26.34 According to the First Respondent what is only required is evidence proving fraud or misrepresentation to the effect that the infringing party's company name fraudulently implies or suggests a link as part of or there is an association of some form 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.

26.35 The Companies Tribunal should be reminded once again that this is relevant within the context under which the Applicant has used its mark. The confusion such as there maybe, is due to the unfair and

¹⁶ *Pioneer Foods (PTY) Ltd v Bothaville Milling supra* at para 7.

unreasonable manner in which the Applicant has been marketing itself. If the Applicant used the company name in the manner that it has been registered it is submitted that the confusion upon which it relies would not have occurred.

E. SHOWING OF GOOD CAUSE IN TERMS OF SECTION 160(2)(b) OF THE COMPANIES ACT, 2008

[27] In order to determine the issue of showing of 'good cause' it is my long standing view that I should first look at the provisions of section 160 of the Act which deals with disputes concerning reservation or registration of company names. Section 160(1) of the Act grants a right to any party who is interested in the name of the company to bring, amongst others, an application, such as the one brought by the Applicant in this matter, for determination by the Companies Tribunal. The relevant parts of section 160(1) of the Act read as follows:

***“(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 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.** [Own emphasis added.]

[28] It is common cause that the Applicant did not receive notice contemplated in section 160(1) of the Act. It follows therefore that section 160(2)(a) of the Act is not applicable to the current Application. The Application falls within the ambit of section 160(2)(b) of the Act. The Applicant therefore falls in the category of any person with an interest in the name of a company as envisaged in section 160(1) of the Act. This being the case, the Applicant is required to show good cause for its name objection application to be entertained by the Companies Tribunal.

[29] It is not farfetched to imagine the adverse impact of applications challenging company names brought years after such names have been registered. This will undoubtedly affect the credibility of the Register of Companies that is kept by the CIPC in terms of the Act. Having said all that, I now turn to deal with the issue of showing “good cause” as prescribed by section 160(2)(b) of the Act.

[30] In terms of section 160(2)(b) of the Act, the Applicant is permitted to file its application to challenge registration of a name of a company by the CIPC at any time. However, the Applicant is required to show good cause as prescribed by

section 160(2)(b) of the Act in order for its Application to be adjudicated by the Companies Tribunal.

[31] I have noted and remain mindful of the fact that the Act does not define or explain what it meant by the words “showing of good cause”. In my view showing of good cause entails that, the Applicant must at least adduce evidence regarding how it became aware of the registration of the challenged company name of the First Respondent as well as when it did acquire such knowledge. In other words, the Applicant must provide a reasonable explanation which show that it did not wilfully default to make its application earlier than it did.

[32] Our courts have had countless opportunity to determine the important factors which should be considered when dealing with the issue of showing good cause in terms of their rules of processes and procedures. The Companies Tribunal had previously dealt with the requirements of showing good cause in ***Comair Limited vs Kuhlula Training, Projects and Development Centre (Pty) Limited*** CT007Sept2014. The judgment in this case was handed down on the 27th day of February 2015 by my brother *Khashane La M Manamela* and he had the following to say regarding the issue of showing of good cause:

“[6] . . . 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 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 wilfully 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”.
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.” [Own emphasis added.]

[33] In *Highly Nutrious Food Company (Pty) Ltd v Companies Tribunal and Others*,¹⁷ Twala J had the following to say which I consider to be relevant for when one deals with the issue of “showing good cause”:

“[12] It is trite that the Court has a wide discretion in evaluating 'good cause', the intention being to ensure that justice is done.

[13] In the case of *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA (SCA) the Court stated the following:

‘The courts generally expect an applicant to show good cause: (a) by giving a reasonable explanation for the default; (b) by showing that the application is made bona fide; and (c) by showing a bona fide defence to the plaintiff's claim which prima facie has some prospect of success.’

[14] In the case of *Chetty v Law Society, Transvaal*, 1985 (2) SA 756 the Court dealt with the term ‘sufficient cause’ or ‘good cause’ when

¹⁷ (91718/2016) [2017] ZAGPJHC 471 (22 September 2017) at paragraphs 12 to 16.

used in the context of an application for rescission of Judgement. It stated the following:

'For obvious reasons a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default.'

[15] In the case of *Kritzinger v CCMA and Others* (JR2254/05 (227) ZALC 85 (November 2007) in support of the principle initiated in *Melane v Santam Insurance Co. Ltd.* 1962 (4) SA (A) 532 the Court stated the following:

'These factors are not individually decisive but are interrelated and must be weighed against each other. In weighing the factors for instance, a good explanation for the delay in lateness may assist the application in compensation for weak prospects of success. Similarly strong prospects of success may compensate for the inadequate explanation and the long delays.'

[16] In *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) the Constitutional Court stated the following:

'The standard for considering an application for condonation is the interests of justice. However, the concept 'interests of justice' is so elastic that it is not capable of precise definition. It includes: the nature of the relief sought; the extent and

cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success.”

[34] In ***Bertie Van Zyl v Bertie Van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others***¹⁸ the Constitutional Court held that lateness is not the only consideration in determining whether condonation may be granted. It held further that the test for condonation is whether it is in the interests of justice to grant it. As the interests-of-justice test is a requirement for condonation and granting leave to appeal, there is an overlap between these enquiries. For both enquiries, an applicant’s prospects of success and the importance of the issue to be determined are relevant factors which should be considered during such enquiries. The factors listed in *Bertie Van Zyl* matter were also considered by the Constitutional Court in ***Ferris and Another v Firststrand Bank Limited and Another***.¹⁹

[35] In ***Highly Nutrious Foods Company*** matter, the High Court held that section 160(2)(b) does not refer only to the delay in bringing the application but also to showing good cause as to why the application must be entertained by the Companies Tribunal. According to the High Court, this section requires the applicant, in a name objection case, to furnish a reasonable explanation for the delay in filing its application with the Companies Tribunal as well as a reasonable

¹⁸ [2009] ZACC 11; 2010 (2) SA 181 (CC); 2009 (10) BCLR 978 (CC) at paragraph 14.

¹⁹ [2013] ZACC 46; 2014 (3) BCLR 321 (CC); 2014 (3) SA 39 (CC) at paragraph 10.

explanation as to why its application should be entertained by the Companies Tribunal. In other words, this section does not only require an explanation as to the delay in bringing the application but also require an explanation with regard to the merits of the application itself as well. I have no other alternative but to agree with the interpretation given to section 160(2)(b) of the Act by the court in the ***Highly Nutrious Foods Company*** case as outlined above.

[36] It therefore follows that in a name dispute application in terms of section 160(1) of the Act, an applicant will succeed in showing good cause envisaged in section 160(2)(b) of the Act by means of giving an explanation that shows how and why it took the time that it took to file its application with the Companies Tribunal. In other words, the Applicant is required to be generous with the truth regarding the time it took and the cause for the delay thereof in filing its application with the Companies Tribunal. This simply means that the Applicant must make full disclosure of all information that is relevant to the time that was taken by it to file its application. This disclosure must begin from the date that the Applicant became aware of the registration of the impugned company and the steps that it took thereafter.

[37] The Applicant makes the following submissions and allegations with regard to showing of good cause:

37.1 The Applicant only became aware of the possibility of the confusion of the general public and the potential necessity for such an application to be launched in December 2021.

- 37.2 The Applicant then investigated whether there was confusion by the public and addressed correspondence to the First Respondent's attorneys of record on 21 January 2022. The correspondence recorded the concerns and requested that the First Respondent desist from trading under the confusingly similar name.²⁰
- 37.3 Various correspondence was thereafter exchanged between the Applicant's and First Respondent's respective attorneys, culminating in the First Respondent advising the Applicant that it would not amend its name and that litigation would be required to ensue. The aforesaid correspondence was sent on 13 April 2022, whereafter the current application was then launched on the 24th day of June 2022.
- 37.4 The Applicant has provided a full explanation regarding why the application was only launched at the time when it was. In addition to the above, the Applicant has set out in detail, its prospects of success in the application, which according to the Applicant are excellent.
- 37.5 It should further be borne in mind that our courts have often held that, when determining applications for condonation (and the existence of good cause), good prospects of success may compensate for a poor explanation and *vice versa*.
- 37.6 Furthermore, the interests of justice clearly dictate that good cause exists for the Companies Tribunal to entertain the application and for it to determine the application on its merits.

²⁰ See Annexure "FA10" to the Founding Affidavit which appears at page 48 of the Indexed and Paginated Bundle.

37.7 In the premises, the Applicant submits that good cause exists and the requirements of Section 160(2)(b) of the Act have been complied with.

[38] I have noted that the Applicant provided detailed explanation regarding the date when it became aware of the registration of the First Respondent's company name in the Register of Companies. The Applicant also provided details of the steps that it took to bring its name objection to the First Respondent's company name to the attention of the First Respondent. Despite having been given a notice of name objection in respect of the First Respondent's company name (in the form of a letter of demand and several correspondence exchanged between the parties), the First Respondent failed and/or neglected and/or refused to change the First Respondent's company name.

[39] It is my view therefore that the Applicant brought its name objection application against the company name of the First Respondent within a reasonable time. It follows therefore that the Applicant managed to show good cause for its name objection application against the company name of the First Respondent to be entertained by the Companies Tribunal. I therefore proceed to adjudicate upon the current name objection application.

F. THE APPLICABLE LAW AND EVALUATION OF THE MERITS OF THE NAME OBJECTION APPLICATION

[40] The application is founded on section 11(2)(b) and (c) of the Act which reads as follows:

"Section 11(2): The name of a company must-

- (b) not be confusingly similar to the name, trademark, mark, word or expression contemplated in paragraph (a) - unless
- (i) in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies...
- (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 on entity.” [Own emphasis added.]

[41] From the reading of section 11(2)(b) and (c) it is clear that:

- 41.1 Section 11(2)(b)(i) provides that the name of a company must not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless in the case of names referred to in paragraph (a)(i), each company bearing any such similar name is a member of the same group of companies.
- 41.2 Section 11(2)(b)(iii) provides that the name of a company must not be confusingly similar to a name, trade mark, mark, word or expression unless the company, or a person who controls the company, is the registered owner of that business name, trade mark, or mark or is authorised by the registered owner to use it.
- 41.3 Section 11(2)(c)(i) provides that the name of a company must not falsely imply or suggest or be such as would reasonably mislead a person to believe incorrectly, that the company is part of, or associated with, any other person or entity.

[42] In *American Chewing Products Corporation v American Chicle Company*²¹ the court stated the following which I consider to be relevant in this matter:

"the court must not only consider the marks when placed side-by-side but must have regard to the position of a person who might at one time see or hear one of the marks and later possibly with an imperfect recollection of the mark, come across the other mark".

[43] The decision involves a value judgment and that the ultimate test is whether, on a comparison of the two marks it can properly be said that there is a reasonable likelihood of confusion if both marks are to be used together in a normal and fair manner, in the ordinary course of business.

[44] In my view, the word “similar” as used in section 11(2)(b) of the Act means “having a marked resemblance or likeness” and that the offending mark (or name) should immediately bring to mind the well-known trade mark (or name) of the complaining entity. Mere similarity is also not enough to fault the name of an entity in terms of section 11(2)(b) of the Act. The name that is the subject of a name objection application must be confusingly similar to the name of the objecting entity. When dealing with the issue of “confusingly similar”, the test should, as it is in the case of passing-off, be “reasonable likelihood” that ordinary members of the public, or a substantial section thereof, may be confused or deceived into believing that the goods or services of the former are the goods or services of the latter or that the two are connected therewith.

²¹ 1948 (2) SA 736 (A).

[45] In *Bata Ltd v Face Fashions CC and Another*, the Supreme Court of Appeal (“the SCA”), per Melunsky AJA, had the following to say in relation to the issues of “deception” and “confusion” in terms of the law of trade marks:

“[7] In the result it was not contended on the appellant’s behalf that the infringement in terms of s 34(1)(a) consisted in the respondents’ use of an identical mark. The contention was that the respondents make use of a mark so nearly resembling trade marks 83/4033, 84/2701 and B84/4186 (in so far as the latter mark relates to clothing) as to be likely to deceive or cause confusion. The respondents do not dispute that the appellant and Futura make extensive use of the word “Power”, with or without a device, on footwear and particularly on boots and shoes worn for sporting activities. They contend, however, that very little use is made of the mark on clothing and, moreover, that its use on clothing is confined to sportswear such as tracksuits, shorts, shirts and sweat tops, whereas the first respondent and Power House CC use the “Power House” name on a different type of clothing, namely leisure wear worn by the “trendy youth”. The short answer to the respondents’ contention is that in infringement proceedings a Court has regard to the notional use to which the plaintiff may put its mark, that is to

‘all possible fair and normal applications of the mark within the ambit of the monopoly created by the terms of the registration ...’

(Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A) at 641H-I). The trade marks relied upon by the appellant in respect of the alleged infringement under s 34(1)(a) relate to clothing generally. Consequently the nature of the clothing on which the mark appears, the market aimed at by the appellant and the volume of its clothing sales are irrelevant considerations. It is therefore clear that the respondents’ use of the word “Power House” is in relation to goods in respect of which three of the appellant’s trade marks are registered.

[8] The only question that has to be decided in respect of the alleged infringements under s 34(1)(a) is whether the appellant has established that a substantial number of persons will probably be deceived into believing or confused as to whether there is a material connection in the course of trade between the respondents’ clothing and the appellant’s trade mark (see Plascon-Evans at 640G-I).

[9] In considering this issue it is appropriate to apply the principles summarized by Corbett JA in Plascon-Evans at 641A-E to the facts of the case. These principles are well known and need not

be repeated in detail. It suffices to say that not only should the marks be compared side by side but consideration must be given to whether the average customer in the market place would probably be deceived or confused by their similarity. Corbett JA made it clear that the main or dominant features of the marks in question as well as the general impression and any striking features were all factors to be considered in deciding whether there was a likelihood of confusion or deception. A similar approach was adopted by the European Court of Justice in *Sabel BV v Puma AG, Rudolf Dassler Sport* [1998] RPC 199. At 224 it was said that the likelihood of confusion must “be appreciated globally” and that the

‘global appreciation of the visual, aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components.’

(See also *The European Limited v The Economist Newspaper Limited* [1997] EWCA Civ 2771; [1998] FSR 283(CA) at 290.).”

[Own emphasis added.]²²

[46] It is common cause that the Applicant is a private company which has Shareholders and which is incorporated to operate a time sharing scheme within a Share Block Company. Consequently, the Applicant is required to conduct all

²² (206/98) [2000] ZASCA 192 (29 September 2000); 2001 (1) SA 844 (SCA) at paras [6] to [9].

its affairs in line with the applicable provisions of the Act, SBC Act, the PTSC Act and the Use Agreement. Just like the Memorandum of Incorporation of the Applicant, section 1 of the SBC Act does contain several definitions of several words used in therein. I have however picked up the definitions listed below from section 1 of the SBC Act because I consider them to be relevant for current purposes:

46.1 The "Registrar" means the Commissioner, appointed in terms of section 189 of the Companies Act.

46.2 A "share" –

46.2.1 means a share as defined in section 1 (1) of the Companies Act in relation to a company, and includes a debenture of a company and a right to or an interest in any such share or debenture;

46.2.2 includes any other interest in a company; and

46.2.3 does not include a right to or an interest in the assets of a company derived from a lease in respect of such assets.

46.3 A "share block company" is defined to mean a company the activities of which comprise or include the operation of a share block scheme.

46.4 A "share block scheme" is to mean any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property.

46.5 The "use agreement" is defined to mean any agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated.

[47] In my view, the evident intention of the legislature to give the SBC Act a wide embrace for determining whether an undertaking qualified as a share block scheme is underscored by the breadth of the SBC Act's special definition of the word "share".

[48] In addition, the SBC Act does incorporate a provision in section 4 regarding the presumption of the operation of share block scheme by a company and it reads as follows:

"For the purposes of this Act a company shall be presumed to operate a 'share block scheme if any share of the company confers a right to or an interest in the use of immovable property or any part of immovable property." [Own emphasis added.]

[49] Section 7 of the SBC Act outlines the main object of share block company and Use Agreement. The relevant provisions of section 7 of the SBC Act read as follows:

- "(1) The main object and business of any share block company shall be to operate a share block scheme in respect of immovable property owned or leased by it.
- (2) The memorandum of incorporation of a share block company shall provide that a member shall be entitled to the use of a specified part of the immovable property in respect of which the company operates the share block scheme, on the terms and conditions contained in a use agreement entered into between the company and such member.

- (3) A copy of every signed use agreement and any amendment thereof shall be kept by the company at the immovable property in respect of which it operates the share block scheme or at the place of which the Registrar was notified in terms of section 110(4) of the Companies Act.
- (4) The provisions of section 113 of the Companies Act relating to inspection and copies of and extracts from the register referred to in section 110 of that Act, shall *mutatis mutandis* apply to any copy of a use agreement kept under subsection (3).
- (5) A copy of the use agreement to be used by a company in connection with any share block scheme to be operated by it, shall before any such agreement is entered into, be lodged by the company with the Registrar in the prescribed manner.”

[50] Generally, a share block scheme refers to a scheme in terms of which a property is divided in relation to its form of ownership or use rights. Share block scheme properties are typically found in resorts, in which multiple parties hold rights to use the time share scheme property and each owner of the same accommodation is allotted their period of time to occupy these time share scheme properties. Share block scheme units may be sold as a partial ownership, lease, or a “right to use”, in which case the latter holds no claim to ownership of the time share property.

[51] In the past, share block buyers were typically locked into one week at a single property. In recent years, we have seen some development in this area and

many share block schemes have implemented a point system that provides more flexibility regarding the type of vacation property and the buyer's choice of vacation days.

[52] Be that as it may, a share block scheme enables a person to buy a share in a share block company or scheme. This type of ownership gives the share owner the right to occupy specific room or rooms in a specific resort (share block scheme) at a specific time. The share block owner also has full access to all the amenities and service facilities offered at the share block property. A share block property is therefore a type of vacation property with a shared ownership model. With a typical share block scheme, one shares the cost of the share block property with other buyers, and in return, one receives a guaranteed amount of time at the share block property each year. In many cases, share block properties comprise of smaller units within a larger resort property.

[53] In terms of the share block scheme arrangement, the purchasers individually buy a grouping or block of shares in which the holder is granted specific rights. The Share Block Company acquires ownership and title to the property by means of a registered title or by renting the land from the owner. In terms of section 9 of the SBC Act, the share block companies are required to specifically include the expression "*share block*" or "*aadeleblok*" in their names. The relevant provisions of section 9 read as follows:

“(1) No share block scheme shall be operated by any company, unless the expression "share block" or "aadeleblok" is included in or forms part of the name of that company.

- (2) If any company changes its name to comply with the provisions of subsection (1), no fees shall be payable to the Registrar in respect of such change of name.
- (3) A company which operates a share block scheme shall not carry on business under any name, title or description other than the name under which it is incorporated or registered, being a name which complies with the provisions of subsection (1): Provided that this subsection shall not be so construed that the provisions thereof apply in respect of the name of any building on immovable property in respect of which the company operates a share block scheme.” [Own emphasis added.]

[54] Section 10 of the SBC Act makes provisions of the rights attaching to shares of a share block company. The relevant provisions of section 10 reads as follows:

- “Any share of a company which after the commencement of this Act –
- (a) brings a share block scheme into operation, shall confer the same vote as every other share of the company; or
- (b) operates a share block scheme, shall confer a right to or an interest in the use of immovable property.” [Own emphasis added.]

[55] In its basic form and in line with the provisions of the SBC Act, the arrangement can be described as the legal arrangement in terms of which the share block company holds the immovable property while the shareholders hold shares in the

share block company and a right to use some or all of the property of the share block company exclusively.

[56] In terms of the share block scheme legal arrangement, the purchasers of specific units in the share block scheme become shareholders in the share block company and usage rights in respect of the land are then conferred by the share block company to the shareholders. This is governed in terms of the Memorandum of Incorporation and a use agreement is entered into between the parties to the share block scheme legal arrangement.

[57] The Use Agreement must clearly define which portion of the property each shareholder has the right to use and occupy. One of the duties of a shareholder in this legal arrangement is the purchase of an “*allocated loan*”. The shareholder essentially takes over a portion of the liability and pays monthly instalments which go towards paying the general expenses of the share block scheme. The shareholder is thus the owner of the shares in the share block company that owns the immovable property and does not acquire ownership of the immovable property itself.

[58] In *Trustees for the Time Being of the Hunter Family Trust v Duin-en-See (Pty) Ltd and Others*²³ the Court stated the following:

“[10] In my judgment, there is no merit in the first defendant’s contention that the relevant right or interest in the use of the immovable property had to be provided for in the definition of the relevant class of shares in the company’s memorandum of

²³ (5035/2017) [2022] ZAWCHC 141; [2022] 4 All SA 260 (WCC) (26 July 2022) at para 10.

incorporation. The SBC Act was brought into being to regulate a state of affairs that had obtained since at least the 1950's whereby, prior to the inception of sectional title ownership of immovable property, persons sought to obtain something akin to separate ownership of parts of buildings. To achieve that object, it was necessary to devise a means of getting around the common law doctrine of *superficies solo cedit*. A commonly adopted means of doing so was to use a company as the property owner, with the shares issued in it conferring exclusive use and benefit rights for the holders thereof in respect of identified sections of the property; cf *Rosslare (Pty) Ltd and Another v Registrar of Companies* 1972 (2) SA 524 (D) at 525fin -526A.” [Own emphasis added.]

[59] The Court continued to deal with the share block scheme legal arrangement and stated the following which I consider to be relevant for present purposes:

“[13] It follows clearly, in my view, that the agreement pleaded by the plaintiffs would, if established at trial, constitute a manner by which the holding of the respective blocks of shares referred to therein conferred a right to or an interest in the use of identified parts or parcels of the company's immovable property. It would not be necessary for the relevant right or interest in the use of the immovable property to be provided for in the definition of the relevant class of shares in the

company's memorandum of incorporation in order for the alleged agreement to be effective.

[14] The objects of the SBC Act would be substantially undermined were its provisions construed in the manner suggested by the first defendant's first ground of exception. The clear intention of the enactment is to draw under the aegis of the legislation all companies that operate share block schemes as defined. As already mentioned, the extremely wide definition of the term 'share block scheme' expressly acknowledges that such schemes might be devised in various ways. The essential requirement is some connection between the holding of shares in the company and the holders' entitlement by virtue thereof to a right or interest in the use of the company's immovable property. As Grosskopf JA noted in Van Staden v Fourie 1989 (3) SA 200 (A) at 211B '... het die Wet te doen met met skemas waarkragtens die houers van aandele in 'n maatskappy 'n reg of belang in die gebruik van vaste eiendom het uit hoofde van hul aandeelhouding, en met maatskappye wat sulke skemas bedryf'." [Own emphasis added.]

[60] The Applicant is therefore a private company which has Shareholders and which is incorporated to operate a time-sharing scheme within a Share Block Company. Consequently, the Applicant is required to conduct all its affairs in line with the applicable provisions of the Act, SBC Act, the PTSC Act and the Use

Agreement. In addition, section 9 of the SBC Act requires the share block companies to specifically include the expression “*share block*” or “*aadeleblok*” in their names. In addition, **a company which operates a share block scheme shall not carry on business under any name, title or description other than the name under which it is incorporated or registered.** [Own emphasis added.]

[61] It follows therefore that the Applicant is required, in terms of section 9 of the SBC Act, to use its full name as registered in the Companies Register held by the CIPC. The Applicant is not allowed to only use the name “Mabalingwe Nature Reserve” as its trade name unless such a name is registered with the CIPC.

[62] I have also noted that the Applicant failed to show any evidence which points to the fact that it serves members of the general public by offering them tourism related services. I am therefore unable to find any evidence which suggests that the Applicant and the First Respondent are competitors in the tourism industry. The evidence presented by both parties point towards the fact that the Applicant operates in the time-sharing (share block) industry while the First Respondent operates in the tourism industry.

[63] I did do a CIPC Multi Company search on all the entities which has incorporated the word “Mabalingwe” as part of their names on the Searchworks database. The aforementioned search revealed that there currently 65 entities which incorporate or which previously incorporated the word “Mabalingwe” as part of their company names. Below is the schedule of the 65 entities as per the Searchworks’ CIPC Multi Company search report:

Item No.	Company Name	Previous Company Name	Registration Number	Status
1.	154 MABALINGWE		2002/026997/07	ANNUAL RETURN DEREGISTRATION
2.	21 MABALINGWE 6		1996/016576/23	IN BUSINESS
3.	37 YORK STREET	GOLF ESTATE MABALINGWE	2004/027583/07	IN BUSINESS
4.	ABVP HOLDINGS	S8S MABALINGWE 11	2005/018856/07	AR FINAL DEREGISTRATION
5.	AMANZINTABA RESORT SHARE BLOCK	MABALINGWE SPA	1990/006747/07	AR FINAL DEREGISTRATION
6.	AMANZINTABA RESORT SHARE BLOCK	MABALINGWE SPA SHARE BLOCK	1990/006747/07	AR FINAL DEREGISTRATION
7.	BUSH LODGE 6 MORKEL	BUSH LODGE 6 MABALINGWE	2004/099624/23	IN BUSINESS
8.	ELANDSFONTEIN 20 MABALINGWE		2004/011597/07	AR FINAL DEREGISTRATION
9.	ERF 141 MABALINGWE		2004/011696/07	IN BUSINESS

10.	ERF 150 MABALINGWE		2002/093397/23	AR FINAL DEREGISTRATION
11.	ERF 17 ITAGA	MABALINGWE GAME LODGE	2003/030239/07	AR FINAL DEREGISTRATION
12.	ERF 18 MABALINGWE		2001/018052/23	AR FINAL DEREGISTRATION
13.	FINN POINT PROPERTY DEVELOPMENTS	MABALINGWE MARKETING	1990/023503/23	AR FINAL DEREGISTRATION
14.	FRIENDS OF MABALINGWE INVESTMENTS		2018/387971/07	IN BUSINESS
15.	KHOLOLO CHALET 132A SHARE BLOCK	MABALINGWE CHALET 132A SHARE BLOCK	1995/012098/07	IN BUSINESS
16.	LE FERA MABALINGWE		2013/129083/07	DEREGISTRATION FINAL
17.	LERIBENG MABALINGWE PROPERTIES		2005/020894/07	AR FINAL DEREGISTRATION
18.	LODGE 77 MABALINGWE COUNTRY CLUB		2003/003013/07	DEREGISTRATION PROCESS
19.	MABALINGWE 13 EIENDOMSONTWIKKELING		1988/022491/23	CONVERSION CO/CC OR CC/CO

20.	MABALINGWE 13 EIENDOMSONTWIKKELING		2003/017736/07	AR FINAL DEREGISTRATION
22.	MABALINGWE 19TH HOLE INVESTMENT		2006/160583/23	IN BUSINESS
23.	MABALINGWE 215		2000/075802/23	IN BUSINESS
24.	MABALINGWE 705		2014/061890/07	AR FINAL DEREGISTRATION
25.	MABALINGWE CARAVAN PARK PROPERTY		2020/693162/07	IN BUSINESS
26.	MABALINGWE CHALET 132 B		1995/034894/23	AR FINAL DEREGISTRATION
27.	MABALINGWE CHALET 132A		1995/034921/23	AR FINAL DEREGISTRATION
28.	MABALINGWE COMMON PROPERTY ASSOCIATION		2005/015160/08	IN BUSINESS
29.	MABALINGWE CONSULTING SERVICES AND PROJECTS		2009/104105/23	AR FINAL DEREGISTRATION
30.	MABALINGWE COUNTRY CLUB		2003/013341/07	AR FINAL DEREGISTRATION
31.	MABALINGWE COUNTRY CLUB 121		2002/030682/07	IN BUSINESS

32.	MABALINGWE COUNTRY CLUB 122		2003/023098/07	IN BUSINESS
33.	MABALINGWE COUNTRY CLUB 157		2016/358859/07	IN BUSINESS
34.	MABALINGWE COUNTRY CLUB 157		2003/002938/23	CONVERSION CO/CC OR CC/CO
35.	MABALINGWE COUNTRY CLUB 79		2006/012785/07	IN BUSINESS
36.	MABALINGWE COUNTRY LODGE		2004/023974/07	BUSINESS RESCUE
37.	MABALINGWE EARTHWORKS		2008/233966/23	DEREGISTRATION FINAL
38.	MABALINGWE EENHEID 102		1994/042701/23	IN BUSINESS
39.	MABALINGWE EVENTS		2021/461867/07	IN BUSINESS
40.	MABALINGWE GAME RESERVE		2017/050937/07	IN BUSINESS
41.	MABALINGWE HORSEBACK SAFARIS		1996/020225/23	AR FINAL DEREGISTRATION
42.	MABALINGWE NATURE RESERVE SHARE BLOCK		1987/005591/06	IN BUSINESS

43.	MABALINGWE NATURE RESERVE SHARE BLOCK	MABALINGWE NATURE RESERVE	1987/005591/06	IN BUSINESS
44.	MABALINGWE NATURE RESERVE SHARE BLOCK (PTY) LTD		1987/005591/06	IN BUSINESS
45.	MABALINGWE NATURE RESERVE SHARE BLOCK (PTY) LTD	MABALINGWE NATURE RESERVE	1987/005591/07	IN BUSINESS
46.	MABALINGWE PORTFOLIO COLLECTION		2020/570504/07	IN BUSINESS
47.	MABALINGWE PROPERTIES		2018/308041/07	IN BUSINESS
48.	MABALINGWE SIXTEEN GAME LODGE		1997/018060/07	DEREGISTRATION FINAL
49.	MABALINGWE TIMESHARE MARKETING		1989/031553/23	AR FINAL DEREGISTRATION
50.	MABALINGWE TRAC		2011/041144/23	AR FINAL DEREGISTRATION
51.	MABALINGWE TRADING		2015/325692/07	DEREGISTRATION PROCESS
52.	MABALINGWE TRADING AND EXPORT COMPANY		1992/002758/07	AR FINAL DEREGISTRATION

53.	MABALINGWE US SHARE BLOCK 1		2009/019566/07	AR FINAL DEREGISTRATION
54.	MABALINGWE WILD		2001/011093/07	IN BUSINESS
55.	MABALINGWE WOODCRAFT		1988/020338/23	AR FINAL DEREGISTRATION
56.	S106 MABALINGWE		2003/051026/23	AR FINAL DEREGISTRATION
57.	S8S MABALINGWE 11		2010/014518/07	AR FINAL DEREGISTRATION
58.	STABILIZER PROPERTIES MABALINGWE		2004/027898/07	IN BUSINESS
59.	STAND 12 CYFERFONTEIN	STAND 12 MABALINGWE	2004/010596/07	DEREGISTRATION FINAL
60.	STAND 18 MABALINGWE		2004/017780/23	AR FINAL DEREGISTRATION
61.	STAND 40 MABALINGWE COUNTRY CLUB		2003/006408/07	IN BUSINESS
62.	SYNDIC8 PROPERTY SOLUTIONS	S8S MABALINGWE 11	2005/027136/07	DISSOLVED
63.	UNIT 8 MABALINGWE 6		1993/006646/07	IN BUSINESS
64.	UNITS 77-78 MABALINGWE		1989/036613/23	AR FINAL DEREGISTRATION

65.	ZEBULA LODGE 132	MABALINGWE LODGE 132	1996/009798/07	IN BUSINESS
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[64] According to the First Respondent, there are around 51 entities that have incorporated the word “Mabalingwe” as part of their company names. In order to circumvent this glaring piece of evidence which goes against the Applicant’s entire case, it unequivocally stated that its issues is not with the use of the word “Mabalingwe. It states that the main issue in its case revolves around the use of the combination of the words “Mabalingwe Game Reserve” or “Mabalingwe Conservancy”. I am therefore forced to look at the meanings of the two combinations of the above words as part of my analysis of the merits of the Applicant’s argument.

[65] According to the *Cambridge Advanced Learner's Dictionary & Thesaurus*, Copyright © Cambridge University Press, the word “game reserve” is defined to mean the following:

“a game reserve is a protected area of land where wild animals can live safely or be hunted in a controlled way.” [Own emphasis added.]

[66] According to *Collins COBUILD Advanced Learner's Dictionary*, Copyright © HarperCollins Publishers the word “game reserve” is defined to mean the following:

“a game reserve is a large area of land, especially in Africa, where wild animals can live safely.” [Own emphasis added.]

[67] According to the *Cambridge Advanced Learner's Dictionary & Thesaurus*, Copyright © Cambridge University Press, the word “conservancy” is defined to mean the following:

“a conservancy is an area of land kept in its natural state, especially for wild animals and plants to live in and be protected.” [Own emphasis added.]

[68] According to *Collins COBUILD Advanced Learner's Dictionary*, Copyright © HarperCollins Publishers the word “conservancy” is defined to mean the following:

“conservancy means conservation of natural resources.” [Own emphasis added.]

[69] According to the *Cambridge Advanced Learner's Dictionary & Thesaurus*, Copyright © Cambridge University Press, the word “nature reserve” is a countable noun and it is defined to mean the following:

“a nature reserve is an area of land that is protected in order to keep safe the animals and plants that live there, often because they are rare.” [Own emphasis added.]

[70] According to *Collins COBUILD Advanced Learner's Dictionary*, Copyright © HarperCollins Publishers the word “nature reserve” is a countable noun and it is defined to mean the following:

“a nature reserve is an area of land that is protected and managed in order to preserve a particular type of habitat and its flora and fauna which are often rare or endangered.” [Own emphasis added.]

- [71] I have noted that the words “conservancy” and “nature reserve” are synonymous and they mean **an area of land that is protected and managed in order to preserve both animals and plants (resources) that live or are found in that protected area often because they are rare or endangered.** On the other hand, the word “game reserve” means **an area of land that is protected and managed in order ensure that wild animals can live safely or can be hunted in a controlled way.** It follows therefore that the words “nature reserve” and “game reserve” are not synonymous. The word “game reserve” is limited to a protected area of land where wild animals are kept safely or where they can be hunted in a controlled way.
- [72] It is clear from the information presented that the greater area of Mabalingwe as depicted on the maps, is a large portion upon which different entities also have properties. I am therefore satisfied that for all intents and purposes “Mabalingwe” can be referred to as a geographical area. I therefore agree with the First Respondent’s submission that “Mabalingwe” is a geographical area and therefore no single entity can monopolize the name "Mabalingwe" because of this fact.
- [73] If one considers the names of the Applicant and the First Respondent side by side it is my objective view that these names are not the same. It is my view that the Applicant is laying claim a claim to a wholly descriptive company name to which the First Respondent is also entitled to use considering the history and the evidence provided in the papers before the Companies Tribunal. Secondly the Applicant is asserting its rights to or it is creating a monopoly over an industry in

which it has not been established to operate. The Applicant is clearly a share block company which operates in a time-sharing industry.

[74] Regarding the challenged reservation of “Mabalingwe Conservancy”, the First Respondent states that it does not know anything about the aforesaid reserved name. It confirmed in its Opposing Affidavit deposed to by Wessels that the First Respondent did not reserve the name “Mabalingwe Conservancy”. The Applicant did not adduce any proof regarding the person or entity that reserved the name “Mabalingwe Conservancy”. In the result, this challenge to the name reservation “Mabalingwe Conservancy” cannot succeed and it is therefore dismissed.

[75] In my view, the Applicant did not manage to adduce the necessary proof to show that the name of the First Respondent is confusingly similar to the name of the Applicant as contemplated in section 11(2)(b)(i) of the Act. Similarly, the Applicant did not adduce the necessary proof to show that the name of the First Respondent falsely imply or suggest or is such as would reasonably mislead a person to believe incorrectly so, that the First Respondent is part of or associated with the Applicant.

[76] As I have already indicated above and save for the incorporation of the word “Mabalingwe” the two company names are not similar. The Applicant correctly conceded that it does not have any monopoly over the word or name “Mabalingwe”. As I have already outlined above that the words “nature reserve” and “game reserve” are not synonymous because their definitions and/or meanings are clearly different.

[77] I agree with the First Respondent's submissions that any confusion which might exist or which existed amongst members of the public cannot be directed at the similarity of the names but the misleading use of the Applicant's name and the manner in which the Applicant markets its goods and products. The Applicant markets itself as Mabalingwe Nature Reserve whereas its registered name is Mabalingwe Nature Reserve Share Block (Pty) Ltd.

[78] The manner in which the Applicant calls and conducts itself during the conduct of its business of a share block scheme is in my view illegal and contrary to the provisions of section 9 of the SBC Act. It is my view that the Applicant did not succeed to show that the First Respondent's name contravenes section 11(2)(b) and (c) of the Act. Consequently, the application cannot succeed and it stands to be dismissed.

[79] I am however not convinced that this is a matter where I should order any party to pay the costs. It is clear that the dispute is genuine and it needed to be brought before the Companies Tribunal for adjudication. I proceed to make my order below.

G. THE ORDER

[80] I therefore make the following order:

80.1 The name objection application lodged by the Applicant against the registration of the company name of the First Respondent, being MABALINGWE GAME RESERVE (PROPRIETARY) LIMITED, in the Register of Companies by the CIPC is hereby dismissed; and

80.2 There is not order as to costs.

LINDELANI DANIEL SIKHITHA

Member of the Companies Tribunal

08 June 2023

Appearances:

For the Applicant:

Advocate Natalie Marshall

Instructed by J A. Du Randt Incorporated

For the First Respondent:

Advocate H. Worthington

Instructed by Haasbroek & Boezart Incorporated