



IN THE COMPANIES TRIBUNAL REPUBLIC OF SOUTH AFRICA

CASE NUMBER: CT02066/ADJ/2024

In the matter between

AFRICAN RAINBOW MINERALS LIMITED

APPLICANT

And

AFRICAN RAINBOW FARMING (PTY) LTD

FIRST RESPONDENT

REGISTRATION NO.2023/904444/07

COMMISSIONER OF COMPANIES

SECOND RESPONDENT

DECISION

DATE OF DECISION: 28/01/2025

NAME OF MEMBER: FS MUDZUNGA

INTRODUCTION

1. The Applicant herein has filed a default order application before the Tribunal and request for an order that the First Respondent's be ordered to change its name "AFRICAN RAINBOW FARMING (PTY) LTD", to a new name. this application is not opposed by any of the respondent(s).

BACKGROUND

2. The applicant is African Rainbow Minerals Limited, a company duly incorporated and registered in terms of laws of the Republic of South Africa with its registration number 1933/004580/06 while on the other hand, the first respondent was incorporated on 28 July 2023. Applicant became aware of the registration of the first respondent in September 2023 of that same year when they were informed by their attorneys after searching online records at the company register books.
3. It is the submission of the applicant that Immediately when applicant became aware about registration of the first respondent, it caused for the letter of demand to be issued and served to the first respondent calling on it to change its company name. copies of the emailed letters are attached to this application as proof.
4. On the 02nd of November 2023, the director of the first respondent replied to the emails and confirmed that it will change the company name, the said email copy is attached to the application, however the respondent has not changed its name.
5. Applicant has indicated in this application that it has an interest in the name of the first respondent for the purposes of section 160 of the Companies Act, as the first two words of the first Respondent's company name are identical to the first two words in applicant's well-known and prior registered AFRICAN RAINBOW MINERALS trade mark, in which the applicant has a major and direct commercial interest. Extracts from the CIPC'S online records for the trade mark's register confirming the details of the applicant's aforementioned trade mark applications and registration have been attached to the founding statement for this application by applicant.
6. Applicant submits that the first and therefore dominant element of the first respondent's company name, African Rainbow Farming, is the phrase AFRICAN RAINBOW, which is visually, phonetically, and conceptually identical to the applicant well known African rainbow trade mark and is also confusingly similar to

the applicants prior registered and well-known African rainbow minerals trade mark. The addition of the word farming is not sufficient to avoid confusion in the marketplace.

7. Applicant submits that the use by the first respondent of the trade mark African rainbow as the first part of its company name, is likely to lead to confusion and deception in the marketplace as to the possible existence of a connection between the parties. The first respondent's name falsely implies, suggests, or would reasonably mislead consumers that the company is part of the same group of companies as the applicant when it is not.

APPLICABLE LAW

8. **Section 11(2) of the Companies Act 2008 provides that:**

2) *The name of a company must—*

(a) not be the same as, or confusingly similar to—

- (i) the name of another company, registered external company, close corporation or co-operative unless the company forms part of a group of companies using similar names;*
- (ii) a name registered for the use of a person as a business name in terms of the Business Names Act, 1960 (Act No. 27 of 1960);*
- (iii) a registered trade mark belonging to a person other than the company, or a mark in respect of which an application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 194 of 1993); or*
- (iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act No. 17 of 1941), except to the extent permitted by or in terms of that Act;*

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

(i)

(ii)

(iii)

(iv)

(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.....

(ii) ...

(iii) ...

(iv) ...

9. Section 160 of the of the Companies Act 71 of 2008 states the following and I quote only the relevant portion for purposes of this application, being the following:

(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 name, or any other person with an interests 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.....”.

10. Regulation 142 of the Companies Regulation, 2011 further provides as follows:

- 1. A person may apply to the tribunal for an order in respect of any matter contemplated by the Act, or these regulations, by completing and filing with the Tribunal's Recording officer-*
 - (a) An application in Form CTR 142; and*
 - (b) Supporting affidavit setting out the facts which the application is based.*
- 2. The Applicant must serve a copy of the application and affidavit on each respondent named in the 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 of 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.*

11. Regulation 143 (1) of the companies' regulations, 2011 states as follows:

- (1) Within 20 business days after being served with a complaint referral, or an application, that has been filed with the tribunal. A respondent who wishes to oppose the complaint or application must....*
 - (a) Serve a copy of an answer on the initiating party; and*

(b) File the answer with proof of service.

12. Regulation 153 of the companies' regulations, 2011 provides the following:

(1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the tribunal.....

(2) On an application in terms of subsection (1), the tribunal, may make an appropriate order

(a) After it has heard any required evidence concerning the motion; and

(b) If it is satisfied that the notice or application was adequately served.....”.

13. APPLYING LAW TO THE FACTS

(a) I am convinced that the applicant did not delay in bringing this matter to the tribunal and that the matter must be decided on the merits in terms of Regulations 153 of the Companies Act as an unopposed matter since the respondent(s) have failed to file answering papers despite being adequately served with the initiating documents.

(b) I am persuaded that the first and therefore dominant element of the first respondent's company name, African Rainbow Farming, is the phrase AFRICAN RAINBOW, which is visually, phonetically, and conceptually identical to the applicant well known African rainbow trade mark. The addition of the word farming is not sufficient to avoid confusion in the market place. the use by the first respondent of the trade mark African Rainbow “**as the first part of its company name**”, is likely to lead to confusion and deception in the marketplace as to the possible existence of a connection between the parties.

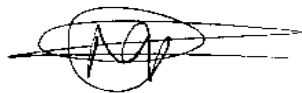
(c) It is obvious from the documents provided that there is no connection between the Applicant's company and that of the First Respondent, and the First Respondent will undoubtedly profit from the goodwill and reputation of the Applicant which the Applicant has built over the years. Consequently, the First Respondent's company

name does not adhere to the requirement set forth in section 11 of the Companies Act 71 of 2008.

14. ORDER

I therefore make the following orders

- a. The first Respondent is hereby directed to change its company name, to one which does not incorporate any of the Applicant's "**AFRICAN RAINBOW**" name as the first part of its company name or any other word or phrase which is confusingly and/or deceptively similar to it, within a period of 60 days from date of granting of this order;
- b. In the event that the first respondent fails to comply with the order set out in paragraph (a) above within 60 days from the date of the granting of the order, the second Respondent is directed in terms of s 160 (3)(b)(ii) read with s 142 of the Act to change the First Respondent's company name to an alternative name not incorporating or confusingly similar to the Applicant's name and or to change it to its registration number 2023/904444/07, as the first respondent's interim company name on the registrar.
- c. No order as to costs.



MUDZUNGA FS