IN THE COMPANIES TRIBUAL OF SOUTH AFRICA

CASE NO: CT02082/ADJ/2024

In the matter between:

YOLANDA WELTHAGEN Applicant

And

YOLANDA ODENDAAL (DE VILLIERS) Respondent

Presiding Member of the Companies Tribunal: H. K .Dlepu

Date of Decision: 20 March 2025

Opposed

DECISION AND REASONS

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1. INTRODUCTION

1.1 The applicant is Yolanda Welthagen an adult female and co-director of **Amazing Life Centre (Pty)** Ltd, a private company duly incorporated in accordance with the company laws of the Republic of South Africa, with registration number **2019/280613/07**, residing at no 15 Neshout Street, Eldorette Park, Nelspruit, Mpumalanga.

1.2 The respondent is Yolanda Odendaal (De Villiers), an adult female and co-director of **Amazing Life Centre (Pty**) Ltd, a private company duly incorporated in accordance with the company laws of the Republic of South Africa, with registration number **2019/280613/07,** residing at no 6 Olienhout Street, Nelspruit, Mpumalanga,1201.

1.3 Both parties are 50% percent shareholders in the Company. The Company was registered on the 07th of June 2019.

1.4 The Applicant did not specify under which section of the Companies Act she sought the removal of the Applicant, however what she stated in the relief sought in terms of the CTR 142, she sought a relief from the Companies Tribunal for the removal of the Respondent as both the Company Director and Shareholder.

2. THE APPLICANT'S SUBMISSIONS

2.1 The Applicant is requesting that the Tribunal grant an order for the removal of the Respondent as Director and Shareholder due to the following reasons:

2.1.1 That both parties are Directors and 50% each shareholder in the company.

2.1.2 That the applicant wishes to continue with the Company but the Respondent refuses to sign the mandatory documents to submit the Beneficial Ownership, and outstanding Annual Returns of the Company and that the Respondent also refuses to resign as director of the Company.

2.1.3 That the Respondent does not respond to emails, WhatsApp messages, and requests for phone calls

2.1.4 That the Company is in danger of being deregistered with the CIPC.

2.1.5 That the Applicant wishes to continue with the Company and that another er third party namely Ms Helena Pieterse, a director of Woman of Spice should stop trading as Amazing Life Centre as she has no written consent from the Applicant.

2.1.6 That the Company is dormant and both parties have other companies. the Respondent has another company which under which she trades namely Women of Spice (Pty) Ltd and that Amazing Life Centre has never traded but the name is used **as trading as name**.

3. THE RESPONDENT'S SUMISSION

3.1 The Respondent in her replying affidavit also requested that the Tribunal remove the Applicant as a director of Amazing Life Centre (Pty) Limited and further alleges that:

3.1.1 That the Respondent is a co-director and shareholder in Amazing Life Centre together with the Applicant.

3.1.2 That both directors and shareholders never traded as under Amazing Life Centre (Pty)Limited after registration, that she always traded under her company Woman of Spice (Pty) Limited Trading as Amazing Life Centre and has always regarded herself as part of Amazing Life Centre and her and her logo has been designed reflecting Amazing Life Centre.

3.1.3 That she has invested in the design of the logo and the registered address of Amazing Life Centre is her place of residence and that she wants

the Applicant to resign as Director and Shareholder of Amazing Life Centre (Pty) Limited

3.1.4 That she is the rightful director and shareholder to keep the Company Amazing Life Centre (Pty) Limited.

3.1.5 That the relationship between the two Directors has broken down irretrievably and the trust between the Directors has been broken with no chance of reconciliation. The continued presence of the Applicant as the Director and Shareholder of the Company is not in the best interest of the company and will result in the company being unable to proceed with its business activities.

3.1.6 That the Company was dormant and wanted to keep the name and trade in it.

4. APPLICABLE LAW

Section 71 (1)-(8) read with Section 69(1)-(12) of the Companies Act deals with the removal of directors and shareholders depending on which section is applicable to the matter and reasons thereof before the Tribunal.

Section 71(1) of the Act provides as follows:

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

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

a) The director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether the director is a shareholder of the company; and

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

3) If a company has more than two directors, and a shareholder or director has alleged that a director of the company.

a) Has become:

i) Ineligible or disqualified in terms of Section 69, other than on the grounds contemplated in Section 69(8)(a); or

ii) Incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

b) Has neglected, or been derelict in the performance of, the functions of director, the board, other than the director concerned, must determine the matter by resolution, may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

4) Before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given:

a) Notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonable permit the director to prepare and present a response; and

b) A reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

5) If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66(4)(a)(i), if applicable, may apply within 20 business days to a court to review the determination of the board.

6) If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be; -

a) any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director, may apply to a court to review the determination of the board, and

b) the court, on application in terms of paragraph (a), may

i) confirm the determination of the board; or

ii) remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated, or has been negligent or derelict.

7) An applicant in terms of subsection (6) must compensate the company, and any other party, for the costs incurred in relation to the application, unless the court reverse the decision of the board.

8) If a company has fewer than 3 directors

a) subsection 3 does not apply to the company

b) in any circumstances contemplated in subsection 3, any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection; and

c) subsections (4)(5) and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.

9) Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have a common law or otherwise to apply to a court for damages or other compensation for:

a) loss of office as a director; or

b) loss of any other office as a consequence of being removed as a director.

10) this section is in addition to the right of a person, in terms of section 162, to apply to a court for an order declaring delinquent or placing a director on probation.

5. EVALUATION

5.1 The issue before the Tribunal relate to the removal of both the Applicant and the Respondent as Directors and Shareholders of the Company at the insistence of each party and costs, although both Applicant and Respondent did not identify which section nor the subsection they sought the Removal of either of them it is clear from the facts that both parties sought the removal under section 78(8),it is clear from the facts the particular section is relevant *Bato Star Fishing (Pty) v Minster of Envvironmental Affairs and Tourism and others 2004 (4) SA 490 (CC)*.

5.2 The Tribunal is therefore, obliged to decide on whether any of the grounds set out in Section 71(3) of the Act are present. This aligns with the purposes

of the Act and the necessity of the Tribunal's involvement to protect the interest of a company and its stakeholders.

5.3 In this instance and the case before me case each party acknowledges that the Company was dormant. The Tribunal has to consider the allegations only in so far as they relate to whether there exist grounds for removal of either party.

5.4 Having considered the provisions of section 71 of the Act and the documentation presented to me and the submission made by both parties I am of the considered view that none of the requirements the of Section 71(1) -(8) of the Act have been met fall outside the ambit Section 71.

5.3 Consequently I am not persuaded that there a functional company exist and neither party has made out a case for the removal of the other as a director nor shareholder as their reasons are a far cry from what the Section 71 of the Act envisaged. The parties are fighting to keep the name of a dormant company and as such I cannot find for either party.

6. **ORDER**

I therefore make the following order:

i. The Application for the removal of either director is dismissed.

HLALELENI KATHLEEN DLEPU