



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02209ADJ2025

In the matter between:

MR. DAYALAN MOODLEY

APPLICANT

and

LUHLOSI ENERGY PROPRIETARY LIMITED

FIRST RESPONDENT

(2015/426868/07)

NTOMBIZODWA ZANELE MADLAKANA

SECOND RESPONDENT

Presiding Member of the Companies Tribunal: MINAH TONG-MONGALO

Date of Decision: 20 AUGUST 2025

DECISION (Reasons and an Order)

INTRODUCTION

1. This is an application by Dayalan Moodley, a duly appointed representative of Ms Savanthalay Moodley and Ms Inacia Moodley, who are purportedly 60% shareholders in the First Respondent and have issued the Applicant with a general power of attorney. Dayalan Moodley is the chief executive of Tier One Capital, registration number 2010/001671/07.

2. The Applicant has requested this Honourable Tribunal to:
 - 2.1. compel the First Respondent to provide the 60% shareholders, namely, Ms Antoinette Moodley and Ms Savanthalay Moodley, with copies of the memorandum of incorporation.
 - 2.2. compel the Second Respondent to convene a shareholders' meeting.
3. The First Respondent was served with the application but failed to reply within the prescribed period.

SHARES ACQUISITION

1. Tier One Capital and the First Respondent concluded an agreement, in terms of which Tier One was appointed to raise capital to fund its business.
2. The First Respondent had won a tender, in terms of which an upfront payment was required. The First Respondent was in financial distress, owed money to Vodaland Financial Services, and the Second Respondent had signed a surety. Moreover, the capital raised was intended to cover the First Respondent's salary for three months and also pay the amount due to Vodaland.
3. The First Respondent passed a resolution dated 30 August 2024, in terms of which it issued 75 ordinary, no-par-value shares to Ms Savanthalay Moodley and Ms Inacia Moodley, each at a cost of R75, and share certificates were issued accordingly.

THE DISPUTE

4. On 7 April 2025, the Applicant requested a copy of the MOI and also that the director convene the shareholder meeting. On an even date, the Second Respondent informed the Applicant telephonically that she would not be providing a copy of the MOI. On 17 April 2025, the Applicant sent a letter of demand to the First Respondent, acknowledging receipt of the demand but making no commitment to the submission of the MOI.
5. As a result of the above, the Applicant applied to this Tribunal for relief.

LEGAL FRAMEWORK

6. **Section 61 (3)** provides that: A shareholders' meeting must be called if one or

more shareholders holding at least 10% of the voting rights entitled to be exercised on a matter request such a meeting.

7. **Section 61(11)** of the Companies Act states:

“If a company is unable to convene a meeting as required in terms of this section because it has no directors, or because all of its directors are incapacitated—

(a) another person authorised by the company’s Memorandum of Incorporation may convene the meeting; or

(b) if no person has been authorised as contemplated in paragraph (a), the Companies Tribunal, on a request by any shareholder, may issue an administrative order for a shareholders’ meeting to be convened on a date, and subject to any terms, that the Tribunal considers appropriate in the circumstances.”

8. **Section 26 (1)** provides that:

A beneficial interest holder or holder of security is entitled to inspect and copy the company’s Memorandum of Incorporation, records of directors, reports or other prescribed documents.

9. **Section 26 (5)** provides that:

These documents must be made available at the company’s registered office or another prescribed location during office hours

10. **Section 26(9)** further makes it an offence for a company to fail, without reasonable cause, to accommodate a proper request for access.

ANALYSIS AND EVALUATION

Access to the MOI

11. The Companies Act expressly grant the shareholders the right to access the MOI.

12. *Nova Property Group Holdings Ltd and Others v Cobbett and Another*¹ dealt with access to MOI by non-shareholders. In this regard it said that Section 26(2) entitles a person who does not hold a beneficial interest in any securities issued by a profit company ... to inspect or copy the securities register ... upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.”² he

¹ 2016 (4) SA 317 (SCA).

² At para 3.

court's view is that right to company's information is unqualified. Had the legislature intended for this right to be qualified, it would have done so.

13. In *Basson and Another v Pentagon Financial Solutions (Pretoria) (Pty) Ltd and Another*,³ the court was dealing with access to financial statements in terms of section 31. While acknowledging the distinction, it stated that, similar to the Supreme Court's reasoning in *Nova Property Group Holdings Ltd and Others v Cobbett and Another*, the court held that access is unqualified. In other words, it does not require justification. The court said

"Whereas it is correct that the Act does not explicitly create a presumption that the registered owner by virtue of having securities registered in his/her name, he/she is the beneficial owner of those shares, it is equally clear that by virtue of ownership, a person may participate in the distribution of shares and may exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities. It is plain that the sale of shares in terms of the settlement agreement, which the Respondents rely on for their defence, did not result in the Applicants ceasing to have beneficial interest, or no longer being entitled to exercise the rights associated with the shares in terms of sections 26 and 31 of the Act."⁴ [my emphasis]

14. Consequently, registered owners may exercise rights associated with the company's security. The sale of shares did not result in the extinction of beneficial interest, and the locus standi was retained.

15. The Applicant has successfully demonstrated that his agents are shareholders, which entitles them to rely directly on section 26(1). Therefore, the First Respondent's refusal to recognise the shareholders' security holders is unfounded.

Right to call shareholder meeting

16. Section 61(3) of the Companies Act grants shareholders with 10% or more voting rights the right to call a shareholders' meeting. This is a statutory remedy that exists independent of what the MOI states.

17. The shareholders have produced evidence of their ownership, which amounts to a 60% shareholding.

18. The shareholders did request the meeting in writing. The First Respondent, the sole director, has not given a response to this request or provided reasons why this request should not be honoured.

19. Consequently, shareholders have two remedies: to apply to the Companies Tribunal in terms of section 61(11) or to the court in terms of section 61(12).

³ (13917/20) [2022] ZAWCHC 45 (14 February 2022).

⁴

20. The Tribunal has jurisdiction in instances where the company is unable to convene a shareholders' meeting due to the director's incapacity or the absence of a director.⁵ If all directors are incapacitated or unavailable, the person authorised under the MOI may convene the meeting; failing this, the Tribunal may, upon application by any shareholder, issue an administrative order for a shareholder's meeting to be convened.
21. In my opinion, the remedy in section 61 (11) (a) and (b) is dependent on the incapacity of the directors or the unavailability of the directors. However, the legislature did not address a scenario where the director is neither incapacitated nor absent. In this case, the director ignores the shareholder. This is a gap that the legislature must close. It will be futile to expect small businesses to have the resources to litigate in the high court when the directors demonstrate a lack of commitment. Consequently, while I acknowledge that from the reading of section 61 (11) it appears that the Tribunal's jurisdiction is only limited in cases of a director's incapacity and absence, that should be reformed to enable a more forceful remedy. In this case, the director refused to provide the MOI and failed to convene a meeting, which actions may be designed to frustrate the shareholders.
22. Consequently, the application for administrative relief to compel the Second Respondent to convene a shareholders' meeting is dismissed for lack of jurisdiction.
23. Other remedies available to the Applicant include the removal of a director under section 71.

ORDER

24. The Applicant, being a shareholder of the Respondent, made a lawful demand for access to the First Respondent's MOI in terms of section 26(1) of the Companies Act 71 of 2008.
25. The Respondent has failed and/or refused to provide access to the said record as required by the Companies Act.
26. It is an offence for a company to fail, without reasonable cause, to accommodate a proper request for access.
27. Accordingly, the Tribunal orders that:

⁵ Per section 61 (11).

- 27.1. The Respondent shall, within 10 (ten) business days of the date of this order, provide the Applicant with a copy of its current Memorandum of Incorporation, as required under section 26(1).
- 27.2. The Respondents shall bear the costs of making such copy available.
- 27.3. The application for administrative relief to compel the Second Respondent to convene a shareholders' meeting is dismissed for lack of jurisdiction.

MINAH TONG-MONGALO