



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02785/ADJ/2026

In the matter between:

Tsepo Clifford Henry Maele

APPLICANT

and

Lentswe Tshipi Mining (Pty) Ltd

RESPONDENT

Presiding Member: Dr. Minah Tong-Mongalo

Panel Members: Diane Terblanche and Richard Bradstreet

Hearing: 8 September 2026 (Microsoft Teams)

Date of decision: 14 October 2026

DECISION AND REASONS

A INTRODUCTION AND SCOPE

- [1] The applicant seeks the Tribunal's intervention in a dispute concerning access to company information, the holding of meetings and participation in the affairs of Lentswe Tshipi Mining (Pty) Ltd (the company). The question presently for determination is whether the Companies Act 71 of 2008 (the Act) empowers the Tribunal to grant the relief sought in this application.
- [2] At the hearing on 8 September 2026, the Tribunal heard the parties on the respondent's preliminary objections regarding the two Forms CTR 142 and the applicant's standing, and on the relief the applicant seeks and the Act provisions on which he relies. The Presiding Member explained that the panel would decide whether the Tribunal is the correct forum to hear the application, because it would be futile to consider the merits if it is not.¹ When the respondent asked whether the panel was ruling on the points in limine or hearing the merits, the Tribunal explained that questions about the Tribunal's statutory powers go to jurisdiction and not to the merits.[2] The Tribunal reserved its decision and did not determine the merits.² For the reasons below, the Tribunal must dismiss the application for want of jurisdiction.

¹ Transcript of the hearing on 8 September 2026 (Transcript), pp 53–54. Transcript references in this decision use its printed pagination; printed page 1 is page 3 of the PDF.

² Transcript, pp 51–52.

B THE APPLICATION AND THE PARTIES' SUBMISSIONS

[3] The applicant appeared in person. Mr. Nischal Khandai addressed the Tribunal on behalf of the respondent. The applicant explained that he is a director and a shareholder representative of the company bearing registration number 2007/028717/07. The respondent's answering affidavit expressly acknowledges his directorship of that company. However, it disputes that he is a shareholder in his personal capacity and challenges his authority to assert shareholder rights.³

4A. Two Forms CTR 142 were filed under this case number. The first, dated 4 June 2026, was stamped by the Tribunal on 9 June 2026 and emailed to the respondent on 10 June 2026. It names 'Nitin Agrawal' as respondent, with an identity number and the company's address, and identifies Lentswe Tshipi Mining (Pty) Ltd and its registration number as the company concerned. It records that the applicant was denied access to financial statements, geological data, assay reports, and information about possible clients and the cost of material, requested over approximately fifteen years, and states that, without them, he cannot seek funding for his portion of the project shares.

4B. The second is dated 19 June 2026 and was stamped by the Tribunal at 15:12 that day. It names 'Lentswe Tshipi Vanadium c/o Mr. Nitin Agrawal' as respondent, under registration number 2007/028717/07, which is the registration number of Lentswe Tshipi Mining (Pty) Ltd. It asks for access to company information, active

³ Transcript, pp 1–3 and 34–35; answering affidavit of Junadi van der Merwe (Answer), paras 27, 29 and 35–39.

participation in the daily matters of the company, and participation in decisions which may affect the applicant as an individual in relation to SARS, CIPC, and the DMRE. The respondent received it on 22 June 2026. The applicant says it is the operative form. It was not included in the bundle but was sent later via email.

[5] The first form was accompanied by an unsigned and unsworn statement whose jurat is dated 4 April 2025. The second was accompanied by the applicant's affidavit signed on 19 June 2026, on which the Tribunal relies. The affidavit describes a longstanding dispute with the company's majority interests. The Applicant alleges exclusion from information and decision-making, that the company has not held annual general meetings since 2015, that his attempts to have board meetings called went unanswered, and that there is a lack of accountability for mining activities. He says he has been denied assay reports, a competent person's report, audited financial statements, bank statements and survey reports. He says the DMRE was asked to intervene, that a meeting followed, and that the issues remained unresolved. These allegations are disputed. They are recorded to identify the nature of the application and are not findings of fact.⁴

[6] The respondent's first point *in limine* is that the two forms do not cite the same respondent, that it received no notice withdrawing the first, and that the resulting uncertainty prejudiced it. The applicant says he withdrew the first form, that the second corrected the citation to cite the company, and that both forms have the

⁴ Applicant's affidavit signed and commissioned on 19 June 2026, paras 7–8 and 11–21; Answer, paras 88–122.

same content. The respondent adds that the second form's reference to 'Lentswe Tshipi Vanadium' cites an entity of which the applicant is neither a director nor a shareholder representative, and it questions whether the two documents are identical in content.

[7] For the purpose of deciding jurisdiction, the Tribunal considers the application on the footing most favorable to the applicant. The Tribunal treats the second Form CTR 142 as the operative application and Lentswe Tshipi Mining (Pty) Ltd as the intended respondent. We treat the relief as including the wider relief described at the hearing. This does not determine any application for amendment or substitution, nor does it resolve the respondent's objections concerning service, joinder or representative authority.

[8] At the hearing, the applicant placed particular emphasis on an order compelling properly constituted board and shareholder meetings. He submitted that those meetings would enable him to obtain the information he seeks. That relief appears in neither Form CTR 142 nor the affidavit of 19 June 2026. It first appears in the replying affidavit of 28 July 2026. That affidavit also asks the Tribunal to declare the respondent in breach of sections 26, 30, 61, 66 to 68, 76, 86, and 163 of the Act; to direct access to records; to order proof of DMRE notification and competent appointments for care and maintenance; to declare that the board must appoint a company secretary under section 86; to strike out paragraphs 60 to 67 of the answering affidavit; and to award costs.[1] A panel member observed that relief is ordinarily set out in the founding papers so that

the respondent can answer it.[2] We nevertheless consider it, for the reasons in paragraph 7.

[9] At the hearing the applicant relied on sections 66, 61(7) and 195 of the Act. He referred to section 167 in conjunction with section 195 and, when asked what section 167 provides, accepted a panel member's suggestion that he meant section 163.[3]

[10] The respondent raises nine points *in limine*: irregularity and defective service arising from the two forms; lack of jurisdiction; misjoinder, non-joinder and wrong respondent; lack of standing; vagueness; delay; abuse of process; alternative remedies; and forum shopping and vexatious conduct. On jurisdiction, it contends that the Tribunal is a creature of statute with no general supervisory jurisdiction over the internal affairs of companies, and that the applicant identifies no provision of the Act empowering it to grant the relief sought. The Tribunal noted that because jurisdiction is dispositive, the other objections need not be decided.

C THE SOURCE AND LIMITS OF THE TRIBUNAL'S POWERS

[11] Section 193 of the Act establishes the Tribunal. Its authority is statutory. Section 193(1)(b) confers jurisdiction throughout the Republic; that territorial provision does not give the Tribunal unlimited jurisdiction over the subject matter of company disputes. Section 193(1)(c) requires it to perform the functions

assigned to it by or in terms of the Act.⁵ The applicant's Forms CTR 142 and his 19 June 2026 affidavit do not identify any provision of the Act that empowers the Tribunal to grant the relief sought.

[12] Section 195(1)(a) empowers the Tribunal to adjudicate applications that may be made to it under the Act and to make orders for which the Act provides. It must therefore be read with the provision authorising the application and remedy. It does not, by itself, confer a general power to enforce every right or obligation arising under the Act.⁶ At the hearing, the applicant submitted that section 195 empowers the Tribunal to adjudicate disputes concerning company records and shareholder rights. The Presiding Member pointed out that section 195 makes no mention of company records or meetings.

[13] There is a distinction between the existence of a substantive right and the jurisdiction of this Tribunal to enforce it by the order requested. Equally, the provisions governing hearings and procedure do not create an independent cause of action or enlarge the Tribunal's substantive remedial powers. Neither acceptance of an application by the registry nor the use of Form CTR 142 establishes jurisdiction.⁷

[14] The applicant's absence of legal counsel does not exempt the Tribunal from its obligation to thoroughly examine the merits of his case. As clarified during the

⁵ Companies Act 71 of 2008, s 193(1)(a)–(c).

⁶ Act, s 195(1)(a). See also s 156(a), which permits an application to the Tribunal where the Act permits it.

⁷ Act, ss 180–184, read with ss 193 and 195.

hearing, it is the responsibility of the applicant to substantiate his claims and demonstrate the source of the Tribunal's authority. Nonetheless, the application is not dismissed solely due to the incorrect citation of a legal provision or the failure to identify the most appropriate legal basis for his request. We have duly considered the various provisions that could potentially apply to the relief sought, including those not explicitly cited by the applicant. Based on the facts presented, none of these provisions confer the requisite jurisdiction for these proceedings.

D ACCESS TO RECORDS AND COMPANY INFORMATION

[15] Sections 26 and 31 regulate rights of access to specified company records and financial statements. Neither section authorizes a free-standing application to this Tribunal for an order compelling the production of all the financial, geological, operational and commercial information sought here. Section 26 does not mention the Tribunal, and section 156(a) permits an application to the Tribunal only where the Act provides for one. It is therefore unnecessary to determine which requested documents fall within those provisions or whether the applicant satisfies their requirements.⁸

[16] The applicant's directorship does not alter that jurisdictional conclusion. A director may have information rights that differ from those of a shareholder or a member of the public. The board charter included in the March 2026 meeting pack also contains a provision dealing with directors' access to information. Even if the applicant can establish the rights upon which he relies, those rights do not

⁸ Act, ss 26 and 31. Section 31 was also discussed at the hearing: Transcript, p 51.

themselves confer on this Tribunal a power to make the requested disclosure order.⁹

[17] The Act provides distinct enforcement mechanisms, including complaints to the Companies and Intellectual Property Commission (CIPC) and, in appropriate circumstances, court proceedings. The Tribunal's power to review a compliance notice under section 172 is a specific statutory function. This application is not an objection to a compliance notice and cannot be treated as one. We express no view on the merits or availability of any other enforcement route in the applicant's circumstances.¹⁰

E SHAREHOLDER MEETINGS AND BOARD MEETINGS

[18] The applicant invokes section 61(7) as requiring regular meetings. That subsection concerns annual general meetings of public companies. It also gives the Tribunal a limited power, on good cause shown, to extend the period contemplated in section 61(7)(b). The respondent is a private company, and the applicant is not seeking an extension of time for a public company's annual general meeting. Section 61(7) therefore does not authorise the order sought.¹¹

[19] This does not mean that a private company can never be obliged to hold a shareholder meeting or an annual general meeting. Obligations may arise under the Act or the company's memorandum of incorporation. Section 61(2), for

⁹ "13 March Board Meeting" pack, PDF p 12, clause 3.16 of the board charter included in that pack. No finding is made about the charter's adoption or enforceability.

¹⁰ Act, ss 156 and 168–174, particularly s 172.

¹¹ Act, s 61(7); Transcript, p 40; Form CTR 142 dated 4 June 2026, company details.

example, identifies circumstances in which shareholder meetings must be held. The question remains which body the Act empowers to enforce the obligation.¹²

[20] Section 61(11) does confer a power on the Tribunal to order a shareholder meeting in defined circumstances. It applies where the company cannot convene a meeting required by section 61 because it has no directors or all its directors are incapacitated. If no person has been authorised by the memorandum of incorporation to convene the meeting, the Tribunal may, on a shareholder's request, make an administrative order for it to be convened on appropriate terms.¹³ Neither party referred to section 61(11) at the hearing. The Tribunal considers it for completeness, because it is a provision under which the Tribunal may order a shareholder meeting.

[21] The relevant jurisdictional facts are absent in this case. The applicant's complaint pertains to alleged exclusion, failure to meet with sufficient frequency, and refusals to provide information. He does not assert that the company lacks directors or that all directors are incapacitated. He personally affirms his role as a director and acknowledges a board meeting scheduled for 13 March 2026. The Answer indicates that the board comprises five directors, and the notice for that meeting enumerates five individuals, including the applicant. The answering affidavit also lists the board and shareholder meetings purportedly held by the respondent, showing considerable intervals between meetings. The applicant criticizes these intervals. We do not offer a position regarding that complaint.

¹² Act, s 61(2), read with s 61(3)– (4) and (12).

¹³ Act, s 61(11)(a)–(b).

[22] An allegation that directors have failed or refused to convene meetings does not, without more, establish the absence or incapacity contemplated by section 61(11). Nor does a dispute about one director's appointment establish either condition. The Tribunal cannot use that exceptional power as a general mechanism to supervise the frequency or conduct of company meetings.

[23] Section 61(12) addresses failures to convene meetings for reasons other than those contemplated in section 61(11), where a meeting is required by the memorandum of incorporation, by a qualifying shareholder demand under section 61(3), or within the period prescribed by section 61(7). It provides for an application by a shareholder to a court. Whether the applicant could meet the requirements of that remedy is not before us.¹⁴

[24] Board meetings must also be distinguished from shareholder meetings. Section 66 concerns the board's management of the company's business and affairs, while section 73 regulates board meetings. Neither provision confers a general power on the Tribunal, in a direct adjudication application of this kind, to compel board meetings, prescribe an ongoing meeting programme or allocate participation in the company's day-to-day management.¹⁵ The applicant's replying affidavit also invokes sections 30, 76 and 86. Section 30 concerns annual financial statements, section 76 the standards of directors' conduct, and section 86 the appointment of a company secretary. None of these provisions is

¹⁴ Act, s 61(12).

¹⁵ Act, ss 66(1) and 73; Transcript, pp 35–37.

shown to give the Tribunal a power to make the declarations or directions the applicant seeks.

F ALLEGED OPPRESSIVE CONDUCT AND PARTICIPATION IN COMPANY AFFAIRS

[25] The applicant describes his exclusion as oppressive conduct by the majority interests. Section 163(1) permits a shareholder or a director to apply to a court for relief from oppressive or unfairly prejudicial conduct, or conduct that unfairly disregards the applicant's interests. Its reference to a court does not include this Tribunal.¹⁶

[26] The breadth of the remedies in section 163(2) does not change the forum designated by that section. Those remedies include orders regulating the company's affairs and directing the production of financial statements or an accounting. They are powers conferred on the court in proceedings under section 163, rather than a source of general adjudicative authority for the Tribunal.¹⁷

[27] Accordingly, we do not determine whether the applicant has proved oppression, exclusion or a breach of a director's or shareholder's rights. Nor is it necessary to decide whether he personally holds shares. Section 163 refers separately to directors and shareholders. The respondent's dispute about personal

¹⁶ Act, ss 1 (definition of "court") and 163(1); Transcript, pp 41–45.

¹⁷ Act, s 163(2), particularly paras (d) and (i).

shareholding cannot be converted into a finding that a person whose directorship is acknowledged is necessarily without a possible remedy under that section.

[28] For completeness, the Tribunal's limited jurisdiction under section 71(8) is different. It concerns a determination of the kind contemplated by section 71(3) where a company has fewer than three directors. It is not a general jurisdiction to remedy oppression. This application seeks information and governance measures, not a determination on the removal of a director, and the case presented does not meet the numerical condition in section 71(8).¹⁸

G ALTERNATIVE DISPUTE RESOLUTION

[29] The conclusion on direct adjudication must not be understood as excluding the Tribunal's separate alternative dispute resolution functions under Part C of Chapter 7. Section 195(1)(b) recognises those functions. Section 166, as amended with effect from 22 May 2026, provides a statutory route involving mediation or conciliation and an arbitration mechanism following the prescribed non-resolution process. The Tribunal's powers under that route must be distinguished from its powers in an ordinary adjudication application.¹⁹

[30] This matter was presented and heard as an opposed application for adjudicative orders. No referral engaging a mediation or conciliation process under section

¹⁸ Act, s 71(3) and (8); Answer, para 27. The applicant's oral criticism of an appointment appears in the Transcript, pp 36–37.

¹⁹ Act, ss 166 and 195(1)(b); Companies Amendment Act 16 of 2024, s 19; Proclamation 313 of 2026, Government Gazette 54722 of 22 May 2026 (commencement of s 19).

166, certificate of non-resolution or consequent arbitration referral is relied upon. The applicant's account of intervention by the mining authorities and an unresolved company meeting does not establish that the statutory process under section 166 occurred. No resolution of the dispute capable of being recorded under section 167 is before us either.²⁰

[31] We therefore make no finding that the underlying dispute is incapable of being addressed through a properly invoked alternative dispute resolution process. We find only that the necessary basis for exercising those powers has not been established in this application. A request that the Tribunal intervene because other efforts have failed cannot substitute for the applicable statutory requirements.

H CONCLUSION AND COSTS

[32] We recognise that the applicant considers the alleged exclusion serious and longstanding. However, the importance of the information to him, and his dissatisfaction with previous attempts to obtain it, cannot supply a power that the Act has not conferred in these proceedings. The deficiency is jurisdictional and cannot be cured merely by correcting the respondent's name, establishing representative authority or clarifying the documents requested.

[33] The respondent's jurisdictional objection therefore succeeds. We do not decide the remaining preliminary objections or the merits of the allegations about

²⁰ Applicant's affidavit of 19 June 2026, para 20; Transcript, pp 35–41 and 53–54; Act, ss 166–167.

disclosure, governance, appointments, mining activities or statutory compliance. This decision does not endorse the respondent's refusal of any request for information. Nor does it rest on the allegations in paragraphs 60 to 70 of the answering affidavit. The applicant's request that some of them be struck out therefore falls away, and we make no finding on them.

[34] Both parties refer to earlier High Court proceedings. It is unnecessary to determine their scope or effect for purposes of this ruling. Nothing in this decision sets aside or qualifies any existing court order, decides an issue of *res judicata*, or grants permission to relitigate an issue already determined. Any further proceedings would remain subject to the applicable jurisdictional, standing, procedural and substantive requirements.²¹

[35] The Tribunal disposed of the application on preliminary jurisdictional grounds after hearing the applicant's explanation of the relief sought. The Tribunal has not adjudicated the merits and has made no finding of abusive conduct. In these circumstances, we consider it appropriate to make no order as to costs.²²

²¹ Applicant's affidavit of 19 June 2026, para 16; Answer, paras 51–55 and 61–70.

²² Companies Regulations, 2011, reg 156(1).

I ORDER

[36] The following order is made:

- (a) The respondent's objection to the Tribunal's jurisdiction is upheld.
- (b) The application is dismissed for want of jurisdiction, without determination of its merits.
- (c) There is no order as to costs.

Dr. Minah Tong-Mongalo

Presiding Member

For the Companies Tribunal