IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT02858ADJ2026

In the matter between:

MATOME MAMOROBELA APPLICANT

and

MASOMA THOMAS MOLOMATAU RESPONDENT

Presiding member: Nomagcisa Cawe

Date of Decision: 18 September 2026

DECISION

INTRODUCTION

1. The Applicant is MATOME MAMOROBELA and the Respondent is MASOMA THOMAS MOLOMATAU. Both Applicant and Respondent are the directors of FESAMA INVESTMENTS (Registration number 2019/442551), a public company duly incorporated in accordance with the company laws of South Africa, and having its registered address at 26 Boardwalk Street, United 107, Midrand, 2189.

2 This is an application in terms of sections 71(8)(b) of the Companies Act No. 71 of 2008 ('the Act') for an Administrative Order determining the removal of the Respondent as a director of FESAMA INVESTMENTS ("the company").

APPLICANT'S SUBMISSIONS

3 The Applicant alleges that the Respondent has not participated in the company's affairs since 6 October 2022. According to the Applicant this has affected the operations of the company.

4 Applicant, in his sworn statement, avers further that the company loan arrangement with Moephathutse (Pty) Ltd for a tender in Polokwane. The loan money was paid into the company's account. It is not clear to me what bearing this averment has on the removal of the Respondent as a director of the company.

ISSUE TO BE DECIDED

5 The issue to be decided is whether or not Respondent should be removed as a director of the company, on the basis of the allegation by the Applicant in his statement.

APPLICABLE LAW

6. Section 71.8 (removal of directors) of the Act gives the Tribunal jurisdiction to make an order for the removal of a director where there are only two directors in a company. From Applicant's papers it would seem

that the company has only two directors, and thus falls within the ambit of this section. In order for the Tribunal to make the determination contemplated in Section 71(3) of the Act, it has to establish whether the Applicant has proven that the Respondent has fallen foul of the section, in that he has neglected or been derelict in the performance of his duties as a director.

7. Section 71 of the Act, deals with the removal of directors as follows:

> *71. (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, a director may be removed by an ordinary resolution adopted at a shareholders 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 or not the director is a shareholder of the company; and (b) thedirector 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) hasneglected, or been derelict in the performance of, the functions of director, the board, other than the director concerned, must determine the matter by resolution, and 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 reasonably 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 ineligible or disqualified, incapacitated, or has 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 costs incurred in relation to the application, unless the court reverses the decision of the board. (8) If a company has fewer than three 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 5 10 15 20 25 30 35 40 45 50 55142 (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 at 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 a director delinquent, or placing a director on probation

8. The Tribunal has to establish whether the Respondent performed his functions as a director with the degree of care, skill and diligence that ma reasonably be expected of a person, having the general knowledge, skill and experience of that director, in terms of Section 76(3)(c) of the Act. If not, the director can be removed. This aspect of the Act was not canvassed by the Applicant.

EVALUATION AND FINDINGS

9. The main issue is whether the Respondent has been negligent or derelict in his duties as director. Having considered the provisions of section 71, in this application I do not find that the Applicant has made out a case for the finding of the conduct of the Respondent amounting to negligent or derelict behavior within the meaning of Sections 71(8) and 76(3) of the Act. Applicant's submission is just a basic allegation that Respondent stopped participating in the affairs of the company in 2022 without any elaboration as to what led to Respondent's attitude.

10. The application was brought on a default basis but the Applicant's papers do not show how same was served on the Respondent. There is a possibility that the Respondent is unaware of the present proceedings, which means he was denied the opportunity to answer to the allegations made against him.

11. In summary, I am unable to find that the Applicant has made out a case for the removal of the Respondent as a director of the company, both substantively and procedurally.

12. In the circumstances, I issue the following order:

ORDER

13. The relief sought by the Applicant is dismissed.

14. Applicant may, if he so wishes, re-submit his application and set out his case properly. This should address procedural and statutory deficiencies.



NOMAGCISA CAWE :MEMBER OF THE COMPANIES TRIBUNAL