



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

(“The Tribunal”)

CASE NO: CT017MAR2016

Re: In an ex parte application in terms of the
Companies Act 71 of 2008 (“the Act”).

In the matter between:

HIGHER EDUCATION NETWORK NPO

(116-851)

APPLICANT

AND

HIGHER EDUCATION NETWORK NPC

(2016/046790/08)

FIRST RESPONDENT

THEKISHO LEMPIDITSHE LUCKY

SECOND RESPONDENT

MAKANETA HENDRICK

THIRD RESPONDENT

Coram K. Tootla

Decision delivered on 20 May 2016

DECISION

INTRODUCTION:

- [1] The Applicant, **HIGHER EDUCATION NETWORK NPO NO: 116-851**, is an NPO registered with the department of social development, whose principal place of business is 54 Erica Road, Bloubergstrand, Table View brings an urgent application to de-register the First Respondent with the same name as the Applicant which is an NPC registered with the Companies and Intellectual Property Rights Commission (CIPC) amongst other claims against all the Respondents.
- [2] The First Respondent is **HIGHER EDUCATION NETWORK NPC**, a company incorporated in terms of the Companies Act under registration number **(2016/046790/08) c** and having its registered place of business at Rentbel Towers, 714-715 Bureau Lane, Pretoria.
- [3] The Second Respondent is L.I.Thekisho, an adult male, practicing attorney at 715 Rentbel Towers, Bureau Lane, Pretoria.
- [4] The Third Respondent is Y. H. Makaneta, an adult male, school teacher, residing at 1014 Cura Villa 8800 Cura Avenue Equestria. 0184.

PROCEDURE:

- [5] It is common cause that the application came to the notice of the Respondents'; the parties exchanged pleadings; and subsequently appeared before the Tribunal on 6 May 2016.
- [6] The Applicant brought an urgent application coupled with various claims in terms of unknown sections of the Act for the First Respondent to be de-registered and for condonation for late filing of papers; that the unlawful and fraudulent application by first respondent to register the logo of the Applicant be de-registered; the trademark of Applicant be confirmed; that first, second and third respondents be interdicted from any further misrepresentations in the name and trademark of the Applicant; costs against all Respondents jointly and severally, the one paying the other to be absolved.

EVALUATION

- [7] Mr. Legoabe represented the Applicant. Mr. Matsetela, counsel represented the Respondents.
- [8] At the outset, the Tribunal requested the Applicant to address the issue of whether the Tribunal has jurisdiction to hear this matter firstly as urgent; secondly can it grant an interdict like the High Court; whether it has jurisdiction to de-register a company from the register of companies; and to declare the alleged actions of the Respondents as fraudulent.
- [9] Since the Respondents' counsel consented to the condonation application, that matter does not need to be dealt with.
- [10] The Applicant in its response to the Tribunal referred the Tribunal to Section 20 (9) of the Act which speaks of the power of the High Court to pierce the corporate veil and to declare that a company be deemed to not to be a juristic personality. It is clear that the section does not refer to the Tribunal.
- [11] After hearing lengthy arguments, the Tribunal examines the relevant sections and addresses the issues, Law and its powers.
- [12] It is clear from Section 20 (9) that the Tribunal has no jurisdiction to entertain a matter in terms of this subsection. In addition, the Tribunal does not have the power to de-register a company as that is the domain of CIPC under certain circumstances and ultimately the High Court.

[13] The kernel of the Applicant's argument was based on the fact that it believed that since the Respondents' registered the name of the Applicant as the name of their company, the Applicant was of the view that it was fraudulent and that certain public statements made by the Respondent were a misrepresentation.

Apart from the aforesaid, there were no reasons provided which show that this Tribunal has jurisdiction to hear the merits of the matter and why the relief sought was possible in terms of the Act and the Tribunal's adjudicative powers.

[14] The Respondents' counsel, Mr. Matsetela submitted that since the Applicant had already obtained an interim interdict from the High Court under exactly the same circumstances, they were not entitled to any relief from this Tribunal. He argued that the matter was about to be heard within a few days in the High Court and this application was a duplication of those proceedings and also adding to unnecessary costs for his clients.

[15] It was pointed out to the Applicant's representative that the Tribunal had no jurisdiction to hear the matter on the claims made by the Applicant; that it would be in the interest of the Applicant to withdraw the application and commence de novo in respect of a name dispute depending on whether the Applicant can found jurisdiction with regard thereto, which cannot be pre-empted as that matter would have to be heard by another Tribunal member.

[16] The Applicant's representative then requested an amendment to its order to hear the matter in terms of the correct section; as well as a postponement to amend its papers and to reserve the issue of costs. The Respondents' counsel opposed the amendment and stated that it would prejudice his clients; that the Applicant has not addressed the merits of the matter and hence an amendment would not be in the interest of the administration of justice.

- [17] The Tribunal refuses the amendment on the basis that the Applicant has filed papers which the Respondents have answered on those issues alleged by the Applicant; and if an amendment is granted it would not be in the interest of either party as this would hamper rather than enhance the administration of justice and delay the matter further.
- [18] Since the Applicant has already brought an incorrect application before the Tribunal, the Tribunal is of the view that it would serve the Applicant's interest if the Applicant appointed an attorney to represent it which would then decide on the best course of action. Although the Applicant is represented by an employee who is familiar with the matter, he is an ex law student and it seems not familiar with the Companies Act.
- [19] In the circumstances, the amendment was refused and the application dismissed due to lack of jurisdiction as well as not being brought in terms of a particular section/s of the Act.
- [20] Thereafter, both parties argued strongly in favour of attorney –client costs in their favour. The Applicant argued that due to the Respondents conduct in this matter of fraudulently adopting its logo and trademark as its own, the Respondents need to be restrained from doing this and hence costs should be awarded against the Respondents.
- [21] The Respondents' counsel argued that the Applicant is bringing unnecessary applications against his clients in the High Court and now duplicating same in the Tribunal and that Applicant's claim for costs should be refused. In fact he claimed that punitive costs should be awarded against the Applicant for the inconvenience caused to his clients.

[22] Due to the fact that the Applicant has brought an incorrect application against the Respondents which lacks jurisdiction; and the duplication of matters firstly against the Respondents in the High Court and thereafter in the Tribunal on the same grounds, costs are awarded against the Applicant on a party and party scale. It is to be noted that an interim interdict has been granted against the Respondents' by the High Court and as such there was no need in Law to approach the Tribunal on exactly the same basis.

[23] The Tribunal takes the opportunity in thanking both representatives for their appearance.

ORDER:

[24] The application for an interdict in respect of all the orders are refused as the Tribunal has no jurisdiction to issue an interdict or a mandatory order.

[25] Copy of this decision is to be served on the compliance department of CIPC.

k.y. tootla (electronically signed)

KHATIJA TOOTLA

Member of the Companies Tribunal

20 May 2016