COMPANIES TRIBUNAL REPUBLIC OF SOUTH AFRICA

CASE NUMBER: CT02281ADJ2025

IN THE MATTER BETWEEN:

THE ESTATE OF THE LATE HENDRIK OOSTHUIZEN HEYNS	**Applicant**
and	
MIDDELPLAAS PAARL (PTY) LTD (Registration Number: 2016/352743/07)	**First Respondent**
SUSANNA MARIA DE VILLIERS	**Second Respondent**

Tribunal Member: D Terblanche

Date: 28 August 2025

DECISION AND REASONS

INTRODUCTION

1. This is an default application in terms of sections 26 and 31 of the Companies Act 71 of 2008 (the Act), which deals with the rights of shareholder to access and receive company records and related information, to the Companies Tribunal (the Tribunal).

2. The Applicant is the Estate of the Late Hendrik Oosthuizen Heyns ("the Deceased"), who passed away on 18 June 2024. Johan Heyns ("the Executor") brought this application in his capacity as the Executor of the Deceased Estate. The requisite letters of executorship authorising this application are contained in the record.

3. The First Respondent is Middelplaas Paarl (Pty) Ltd, a private company duly incorporated under the company laws of the Republic of South Africa with registration number 2016/352743/07. Its registered address is Farm 520 Middelplaas Paarl, Malmesbury Road, Northern Paarl, 7646.

4. The Second Respondent is Susanna Maria De Villiers, an adult female who is a director and 44% shareholder of the First Respondent. She resides at Farm 520 Middelplaas Paarl, Malmesbury Road, Northern Paarl, 7646.

BACKGROUND

5. At the time of his death, the Deceased held 280 ordinary shares in the First Respondent, representing a 28% shareholding. The complete shareholding structure of the First Respondent is as follows:

5.1. Business Partners Limited: 280 shares (28%);
5.2. The Estate of the Late H.O. Heyns: 280 shares (28%);
5.3. Susanna Maria De Villiers: 440 shares (44%).

6. Furthermore, the Deceased held a loan account with the First Respondent. According to the company's financial records as of 28 February 2021, the balance of this loan account was R1,950,000.00 (One Million Nine Hundred and Fifty Thousand Rand).

7. The governance of the First Respondent and the relationship between its shareholders are governed by:

7.1. Its Memorandum of Incorporation ("MOI"), adopted under the Companies Act, 2008 (Act 71 of 2008); and

7.2. A Shareholders Agreement entered into between the First Respondent, Business Partners Limited, the Deceased, and the Second Respondent.

(Copies of these documents are annexed to this application.)

THE APPLICANT'S SUBMISSIONS

8. The Applicant's right to the requested information is grounded on:

8.1. The Companies Act 71 of 2008: Specifically, Sections 26 (Access to Company Records) and 31 (Access to Financial Statements).
8.2. The Memorandum of Incorporation ("MOI"): Specifically, Articles 15 and 23.1.2, which enshrine shareholders' rights to information.
8.3. The Shareholders Agreement: Specifically, Clauses 11.2 to 11.4, which impose specific reporting obligations on the company.

9. The Estate requires the following specific information to fulfil its fiduciary and statutory duties -

9.1. Audited annual financial statements for the financial years 2021 to 2025.
9.2. Monthly management accounts and reports from April 2024 to the present date.
9.3. The most recent independent third-party valuation of the company's assets, particularly the property.
9.4. A full and detailed statement of the loan account in the name of the late Hendrik Oosthuizen Heyns.
9.5. Minutes of all shareholders' meetings from 2021 to date, specifically any concerning the repayment of shareholders' loans.
9.6. All approved annual budgets for the financial years 2021/22 to 2025/26.

10. The Applicant submitted that he required the information to -

10.1. Determine the fair market value of the Deceased's 28% shareholding for the accurate preparation of liquidation and distribution accounts.

10.2. Verify the exact quantum of the debt owed to the Estate via the shareholder's loan account.
10.3. Assess the company's compliance with its obligations under the Shareholders Agreement and the MOI.
10.4. Enable potential purchasers to conduct necessary due diligence should the Estate opt to realise the asset by selling the shares.

11. The Applicant has made exhaustive attempts to secure this information cooperatively, all of which have been ignored or refused by the first Respondent. These attempts include –

11.1. A formal written request to the shareholders and directors.
11.2. A follow-up letter dated 18 March 2025.
11.3. Correspondence with the attorneys representing the Respondents.
11.4. The submission of a formal application in terms of the Promotion of Access to Information Act (PAIA).

12. The Respondents' consistent failure to engage or provide any documentation demonstrates a deliberate pattern of obstructing the Estate's statutory and contractual rights.

13. The First Respondent's conduct constitutes a clear breach of multiple legal and contractual obligations, including-

13.1. Sections 28 and 29 of the Companies Act: Failure to maintain adequate accounting records and prepare annual financial statements.
13.2. Section 31 of the Companies Act: Failure to provide a security holder with access to financial statements.
13.3. Section 26 of the Companies Act: Failure to provide access to company records.
13.4. Articles 15 and 23.1.2 of the MOI: Breach of the shareholders' contractual rights to information.
13.5. Clauses 11.2 to 11.4 of the Shareholders Agreement: Breach of the specific contractual duty to provide financial reports.

14. Furthermore, the conduct of the directors may constitute criminal offences in terms of Section 31(4)(a) and (b) of the Companies Act for unlawfully frustrating a security holder's reasonable exercise of their right to access financial information.

15. The First Respondent's failure to provide the requested information has caused, and continues to cause, severe and ongoing prejudice to the Estate, namely -

    15.1. Inability to Finalise the Estate: The Executor cannot prepare accurate liquidation and distribution accounts without knowing the value of the shares and the loan account balance.
    15.2. Exposure to Penalties: The Estate faces potential penalties and interest from the South African Revenue Service (SARS) for the late submission of estate duty returns, caused by the inability to value its assets.
    15.3. Inability to Settle Debts: The Estate has urgent creditor claims, including professional fees, which cannot be settled without accessing the funds in the loan account.
    15.4. Prejudice to Beneficiaries: The lawful beneficiaries of the Estate are being unjustly deprived of their inheritance due to these inexcusable delays.
    15.5. Accruing Costs: The Estate continues to incur executor's fees, legal costs, and other administration expenses as the process is unnecessarily prolonged.

16. Clause 18.1.2 of the Shareholders Agreement stipulates that shareholders' loans are repayable when "*the assets of the Company exceed its liabilities."*

17. Based on the limited available information, the company appears solvent and capable of at least a partial repayment. This is evidenced by -

    17.1. Its ownership of a valuable property (Farm 520 Middelplaas), which was valued at approximately R15 million in 2021.
    17.2. Its operation of a viable guesthouse business on the property.
    17.3. A complete absence of any indication that the company is insolvent.

18. According to the Applicant it has no adequate alternative remedy but to approach the Tribunal since –

    18.1. All informal and formal avenues, including PAIA, have been exhausted.
    18.2. The PAIA process is not an adequate alternative as it does not provide the urgent relief required to address the immediate prejudice.
    18.3. The Companies Tribunal is the specialised and appropriate forum for this dispute, given its expertise in the Companies Act, its expedited procedures, and its power to make binding orders to rectify the clear breaches identified.

ANALYSIS

19. The Applicant brought this application before the Tribunal on a default basis.

20. The Tribunal considered the records in this matter and is satisfied that it may consider this matter in the absence of the Respondent, since the Applicant served the application on the Respondents and they have not filed an answer opposing the application within the prescribed period.

21. The Applicant's case is founded on the First Respondent's failure or refusal to provide access to the company's records and financial statements, in alleged contraventions of Sections 26 and 31 of the Act. The relevant sections are summarised as follows:

    21.1. Section 26(1) of the Act grants a holder of, or person with a beneficial interest in, securities the right to inspect and copy specific company records, including the records referred to in paragraph 9 above.
    21.2. Section 26(3) of the Act extends the section 26(1) rights to the additional information rights that might be provided for in the company's MOI.
    21.3. Section 31 of the Act contains further provisions relating to access to financial statements or related information with or without demand and without charge.
    21.4. Critically, both sections 26(9) and 31(4) of the Act make it an offence for a company to unreasonably refuse access or impede the exercise of this right.

22. The preliminary and fundamental question the Tribunal has to decide is whether it possesses the jurisdiction to adjudicate this application, i.e. whether the rights under sections 26 and 31 of the Act may be exercised through the Tribunal.

23. The Tribunal is established under section 193 of the Act. The Tribunal's powers are strictly defined and limited by the provisions of the Companies Act.

24. Section 195(1) of the Act sets out the Tribunal's functions. It states that that the Tribunal "… *may adjudicate in relation to any application that may be made to it in terms of this Act*…".

25. This quoted phrasing is crucial. The Tribunal's jurisdiction is not a general power over all company law disputes but is triggered only by applications that are explicitly authorised by a specific section of the Act.

26. A review of the Act reveals that the legislature specifically designated the Tribunal to hear applications only in certain, enumerated instances. These include applications brought under:

    26.1. Section 2(3) (*With respect to any particular matter arising in terms of this Act, a court, the Companies Tribunal or the Panel may exempt any person from the application of a provision of this Act that would apply to that person because of a relationship contemplated in subsection (1) if the person can show that, in respect of that particular matter, there is sufficient evidence to conclude that the person acts independently of any related or inter-related person*.)

    26.2. Section 6(2) (*A person may apply to the Companies Tribunal for an administrative order exempting an agreement, transaction, arrangement, resolution or provision of a company's Memorandum of Incorporation or rules from any prohibition or requirement established by or in terms of an unalterable provision of this Act, other than a provision that falls within the jurisdiction of the Panel*.)

    26.3. Section 17(2) ((*2) The Commission, or a director or shareholder of a company, may apply to the Companies Tribunal for an administrative order setting aside the notice of an alteration 5 published in terms of subsection (1), only on the grounds*

that the alteration exceeds the authority to correct a patent error or defect, as contemplated in that subsection.)

26.4. Section 61(7) (*A public company must convene an annual general meeting of its shareholders— (a) initially, no more than 18 months after the company's date of incorporation; and (b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown*.)

26.5. Section 61(11) *((11) 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) any other 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.)*

26.6. Section 71(8) *((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 (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*.)

26.7. Section 72(5) *("(5) A company that falls within the category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal for an exemption from that requirement in the following manner: (a) The company must publish the intention to lodge an application for exemption with the Tribunal in the prescribed manner; and ...");*

26.8. Section 84(7) *((7) A company that has been given notice contemplated in subsection (6)(a), or a director who has been assessed any portion of the costs of a meeting, as contemplated in 50 subsection (6)(b), may apply to the Companies Tribunal to set aside the notice, or the assessment, in whole or in part.)*

26.9. Section 160 *((1) A person to whom a notice is delivered in terms of section 12(3) or section 14(3), or any other person with an interest in the name of a company,*

may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name satisfies the requirements of section 11.)
*(*Underlining added)

27. The Tribunal may not have captured all the instances where the Act provides for applications to be made to the Tribunal. Of importance is the common thread, uniting all the above quoted provisions, namely, that each one contains explicit language granting a person the option to approach the Tribunal.

28. Upon a thorough examination of the full text of sections 26 and 31 of the Act, it is evident that these sections do not contain any reference to the Tribunal. Unlike the sections quoted in paragraph 26 above, sections 26 and 31 do not mention the Companies Tribunal.

29. The Applicant contends that this Tribunal is the appropriate forum, citing its specialized expertise in the Companies Act, its expedited procedures, and its power to issue binding orders to rectify the alleged breaches of Sections 26 and 31 of the Act. It further submits that it has no adequate alternative remedy.

    29.1. However, as previously indicated, the Tribunal's jurisdiction is not a general purview over all company law matters. It is invoked exclusively by applications explicitly authorized under a specific section of the Act.
    29.2. The legislature's silence on applications concerning sections 26 and 31 of the Act is a clear indication that Parliament did not intend for the Tribunal to adjudicate alleged breaches of these provisions or to compel compliance with them.
    29.3. Consequently, this application does not constitute one that "...*may be made to it in terms of this Act." T*he Tribunal therefore lacks the necessary jurisdiction to hear it.
    29.4. In the final analysis, for the Tribunal to assume jurisdiction over matters pertaining to sections 26 and 31 would be *ultra vires* (beyond its legal power).

30. The Applicant is not without recourse. The Applicant’s recourse for the alleged denial of access to records and financial statements and compelling the Respondents to provide access and copies lies elsewhere. For example, -

30.1. Section 26(4) of the Act provides that a person may exercise his or her rights by direct request to the company, or in accordance with the Promotion of Access to Information Act, Act 2 of 2000 (PAIA). According to the Applicant, it already made a PAIA request.

30.2. Sections 26(9) and 31(4) explicitly frames contravention as offences, which is typically prosecuted by the state in a criminal court

Order

31. The Companies Tribunal therefor makes the following order:

31.1. The application is dismissed for lack of jurisdiction on the part of the Companies Tribunal.

Dated at Johannesburg on this 28th day of August 2025.

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Ms D Terblanche

Member of the Companies Tribunal