



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT02847/ADJ/2026

In the matter between:

**CERES FRUIT PROCESSORS (PTY) LTD
(1992/006982/07)**

APPLICANT

and

**CERES FRUITS CA PROCESSORS (PTY) LTD
(2025/614173/07)**

FIRST RESPONDENT

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

SECOND RESPONDENT

Presiding Member of the Companies Tribunal: DR MINAH TONG-MONGALO

Date of Decision: 17 October 2026

DECISION

A. INTRODUCTION

1. The Applicant seeks a determination under section 160 of the Companies Act 71 of 2008 (the Act) that the name Ceres Fruits CA Processors (Pty) Ltd contravenes section 11(2)(b) and section 11(2)(c)(i). By a notice of motion dated 12 October 2026, it asks that the matter be finalised as unopposed and that the First Respondent's name be replaced with its registration number.
2. The issue which must be decided first is whether the initiating application was adequately served. The evidence establishes attempts to arrange and effect service, but does not establish service of the application on the First Respondent. For the reasons below, the application for a default order is refused. The underlying name objection is not dismissed or determined on its merits.

B. THE PARTIES

3. The Applicant is Ceres Fruit Processors (Pty) Ltd, registration number 1992/006982/07. Its disclosure certificate records incorporation on 1 December 1992 and a registered office in Vos Street, Ceres. Its company secretary, Johnny Kotze, deposes to the affidavits. A letter signed by the managing director, A E Reinecke, on 13 July 2026 authorises him to act and lodge disputes for the Applicant.¹
4. The First Respondent is Ceres Fruits CA Processors (Pty) Ltd, registration number 2025/614173/07. Its Form CoR 14.3 records incorporation on 5 August 2025. The disclosure certificate records its registered office as 59 Vos Street, Harletway, Ceres, Western Cape, 6835. The director's address in the same document uses the spelling "Hamletway".²
5. The Second Respondent is the Companies and Intellectual Property Commission (CIPC), established under section 185 of the Act. It is cited in both affidavits. Although paragraph 1.4 states that no relief is sought against it, paragraph 5.3 requests an order directing it to substitute the First Respondent's name. That substantive prayer cannot be disregarded when considering service on CIPC.

C. THE APPLICATION AND SUPPORTING RECORD

6. The electronic Form CTR 142 bears the date 13 July 2026. The record also contains signed versions dated 15 July 2026 and copies stamped as received by the Tribunal that day. They concern the same parties, name objection and relief. The founding affidavit was commissioned on 13 July 2026. The difference between the electronic and stamped dates is not decisive: neither version is proved to have been served.
7. The Applicant alleges that it has traded extensively under its name since 1992 and acquired substantial goodwill. Kotze states that he became aware of the First Respondent on 7 July 2026 when a representative of the Royal Fruit Company contacted him to establish whether an offer to sell fruit, against advance payment, emanated from the Applicant. He alleges

¹ Annexure A, disclosure certificate dated 8 May 2026, pp 1–2; authority to act dated 13 July 2026; founding affidavit of Johnny Kotze, paras 1.1–1.2.

² Annexure B, Form CoR 14.3, p 2, and disclosure certificate, p 9.

that the similarity between the names creates confusion and a misleading association. These remain allegations for consideration when the merits are properly before the Tribunal.³

8. Paragraph 3.2 of each affidavit gives the First Respondent's registration date as 5 August 2026. That date conflicts with the registration certificate and disclosure certificate in Annexure B, both of which record 5 August 2025. It also postdates the alleged discovery of the name and the institution of the proceedings. I record the date shown in the corporate records, without treating the apparent error as a ground for deciding the name objection.
9. The original relief comprises a declaration of non-compliance with section 11, an order allowing the First Respondent 60 days to change its name, and substitution by CIPC if it fails to comply. The affidavit commissioned on 12 October 2026 substantially repeats the founding affidavit and adds, in paragraph 6, that neither the Applicant nor the Tribunal has received notice of opposition. It supplies no account of subsequent service. The accompanying Form CTR 145 seeks finalisation as unopposed.⁴

D. THE EVIDENCE CONCERNING SERVICE

10. The material evidence is the service affidavit of Melanie du Plessis, a litigation secretary employed by Kellerman Joubert Heyns Incorporated, signed on 17 July 2026. Her account identifies two steps taken on 15 July 2026: an email enquiry and an attempted delivery by the sheriff.
11. At 11:05, Du Plessis emailed ceresexporters@gmail.com. Annexure MdP1 reproduces the email. It identifies the parties and asks for the details of a person or office authorised to accept legal documents and the physical address for service. It does not set out the name-change relief, identify an attached Form CTR 142 or founding affidavit, or show an attachment list. Du Plessis does not state that the initiating papers accompanied that email.⁵
12. Annexure MdP2 is an automated Outlook report relating to that enquiry. It records completed delivery but says that the destination server supplied no delivery notification. Du Plessis states that no read receipt or indication of failed delivery was received. Even

³ Founding affidavit, paras 3.1–4.4. The Form CTR 142 also refers to enquiries from credit insurers.

⁴ Founding affidavit, paras 5.1–5.3; further affidavit of Johnny Kotze commissioned on 12 October 2026, paras 5–6; Form CTR 145 dated 12 October 2026.

⁵ Service affidavit, paras 3–6 and annexure MdP1.

accepting successful transmission of the email, the report does not prove transmission of documents which are not shown to have accompanied it.⁶

13. The attorneys also instructed the sheriff to serve Form CTR 142, Kotze's founding affidavit and Annexures A and B at the First Respondent's registered address. The return records an attempt on 15 July 2026 at 12:14 at 59 Vos Street, Harletway, Ceres. It states that Harletway, Ceres does not exist and that 59 Vos Street is occupied by the Ceresvallei Dutch Reformed Church. It does not record delivery to any person or affixing of the papers.⁷
14. Both reproduced versions of the return are marked as draft electronic returns, unverified and subject to editing. Du Plessis explains that the original signed return was still awaited. No signed final return appears in the record. Even if the account of the sheriff's attempt is accepted in full, it establishes non-service. The absence of a signed final return is therefore not the only, or decisive, defect.

E. APPLICABLE LEGAL PRINCIPLES

15. Section 160 provides the Tribunal with jurisdiction to determine whether a company name satisfies the Act. Its exercise must respect the opportunity afforded to interested persons to make representations. A respondent's failure to answer can justify default relief only once the requirements governing service and the time to answer have been met.⁸
16. Regulation 142(2) requires service of the application and supporting affidavit on each named respondent within five business days after filing. Under regulation 143(1), a respondent has 20 business days after service to deliver and file an answer. Filing the application with the Tribunal is not service on a respondent.
17. Regulation 153(1) permits a default application where a person served with an initiating document has not responded within the prescribed period. Regulation 153(2)(b) requires the Tribunal to be satisfied that "the notice or application was adequately served". That requirement is a condition for granting default relief, not a formality which can be inferred from silence.⁹

⁶ Service affidavit, paras 6–8 and annexure Mdp2.

⁷ Service affidavit, paras 9–13 and annexure Mdp3. Paragraph 11 of the affidavit refers to "52 Vos Street"; the return and the corporate disclosure record refer to 59 Vos Street.

⁸ Companies Act 71 of 2008, s 160(1) and (3); Companies Regulations, 2011, regs 142, 143 and 153.

⁹ Companies Regulations, 2011, reg 153(1)–(2), GN R351 in Government Gazette 34239 of 26 April 2011, as amended.

18. Regulation 7 and Table CR 3 permit electronic delivery to a person who has an email address. The table generally deems delivery at the date and time recorded by the sender's computer, subject to contrary proof. It does not impose a universal requirement for a read receipt. These rules presuppose that the relevant document was actually sent to an address attributable to its intended recipient.¹⁰
19. If delivery by the methods provided in the Act and Regulations proves impossible, regulation 7(3)(a) allows an application to the Tribunal or the High Court for substituted service. A failed attempt at a registered address does not itself dispense with service or establish that no other permitted method is available.
20. In *Hyprop Investments Limited v Hypropo Investments P (Pty) Limited*, the sheriff could not effect service at the address supplied. The Tribunal refused the default application because adequate service had not been established, and identified substituted service as a procedure available to the applicant. The same distinction between attempted service and adequate service applies here.¹¹

F. APPLICATION OF THE LAW TO THE EVIDENCE

21. The Applicant has demonstrated efforts to find the First Respondent and arrange service. Those efforts do not establish delivery of the initiating papers. The sheriff's account is expressly one of non-service. There is no evidence of a later successful physical delivery.
22. The email enquiry does not cure that deficiency. A request for a service address is a preliminary step towards service. It is not the application itself, and its reference to a matter involving the parties does not communicate the grounds, evidence and relief which the First Respondent must answer. Even if the First Respondent read the enquiry, that would not establish receipt of the initiating application.
23. The decisive problem is therefore not the missing read receipt. It is the absence of evidence that Form CTR 142, the supporting affidavit and annexures were transmitted. The delivery report relates to the enquiry in MdP1 and cannot enlarge its contents. Nor does the record explain the source of ceresexporters@gmail.com or establish who controls it. Annexure B

¹⁰ Companies Regulations, 2011, reg 7(1), (2) and (4), read with Table CR 3, entry for "Any person".

¹¹ *Hyprop Investments Limited v Hypropo Investments P (Pty) Limited* (CT00442ADJ2020) [2021] COMPTRI 56 (14 September 2021), paras 14–22 and order 23.1. Official decision: <https://www.companiestribunal.org.za/wp-content/uploads/2021/10/CT00442ADJ2020.pdf>.

contains a different email address in its covering letter. That does not prove that the address used is invalid, but it leaves its connection to the First Respondent unexplained.

24. The assertion in the October affidavit that no opposition has been received does not establish when service occurred. Without an established service date, the Tribunal cannot conclude that the 20-business-day period for an answer has expired. The passage of time since filing cannot supply the missing prerequisite. The First Respondent's silence is not treated as an election to abandon its right to answer.
25. There is also no proof of service on CIPC. It is expressly cited in the affidavits and the Applicant seeks an operative direction against it. Describing its citation as administrative does not discharge the obligation to serve it. This is an additional deficiency; the absence of adequate service on the First Respondent is independently sufficient to dispose of the present motion.
26. No application or order authorising substituted service appears in the record. I cannot treat the default motion as having retrospectively authorised a mode of service which was neither sought nor carried out. If the Applicant relies on electronic service when renewing the motion, it must identify the documents sent and establish the recipient address's connection to the First Respondent. If permitted methods prove impossible, it may seek substituted service on properly supported papers.
27. The appropriate result is to refuse the present default application without disposing of the underlying objection. The Applicant may remedy service and return on supplemented papers. Any delay requiring condonation must be explained and addressed under the applicable procedural provisions; this decision grants no blanket condonation.¹²

G. THE MERITS AND THE REQUESTED NAME SUBSTITUTION

28. The resemblance between the company names and the allegations concerning the Royal Fruit Company explain the Applicant's concern. They do not permit the Tribunal to bypass service. I make no finding that the First Respondent's name contravenes section 11, that it acted fraudulently or that the Applicant has proved loss. The merits, including good cause

¹² See regs 142(2), 147(1), 154(3) and 166(2). Regulation 147 concerns late filing and filing periods; regulation 166(2) provides for condonation by the recording officer of late performance on good cause shown. Neither provision supplies proof that service occurred.

under section 160(2)(b), remain open for determination after the procedural requirements have been satisfied.

29. The request for immediate substitution of the First Respondent's name also requires care. The founding papers seek a name-change order allowing 60 days for compliance, followed by substitution if the order is not obeyed. The October notice of motion cannot, merely by describing the case as unopposed, justify bypassing that sequence.
30. Section 160(5), inserted by section 18 of the Companies Amendment Act 16 of 2024 and effective from 27 December 2024, governs non-compliance with a name-change order. It requires the order to stipulate a compliance date. Only after that period expires without compliance may the applicant approach CIPC to replace the respondent's name with its registration number followed by the appropriate corporate suffix.¹³
31. No prior order under section 160(3)(b)(ii) has been shown, and the present record does not justify making one by default. Accordingly, there is no basis at this stage to direct CIPC to replace the First Respondent's name. This conclusion does not preclude appropriate relief in a procedurally competent determination of the underlying application.

H. ORDER

32. For these reasons, the following order is made:

- 32.1 The Applicant's application for a default order, brought by Form CTR 145 dated 12 October 2026, is refused because adequate service of the initiating application has not been established.
- 32.2 The underlying application under section 160 of the Companies Act 71 of 2008 is not dismissed or determined on its merits. No finding is made on the compliance of the First Respondent's name with section 11.
- 32.3 The Applicant may renew its application for default relief under the same case number on duly supplemented papers establishing adequate service on each respondent, expiry of the applicable period for the First Respondent's answer without such an answer being filed, and compliance with any necessary procedural directions or condonation requirements.

¹³ Companies Act 71 of 2008, s 160(5)(a)–(b); Companies Amendment Act 16 of 2024, s 18, Government Gazette 50991 of 30 July 2024; Proclamation 238, Government Gazette 51837 of 27 December 2024.

- 32.4 Nothing in this order prevents the Applicant from bringing a properly supported application for substituted service under regulation 7(3)(a), if its requirements are met.
- 32.5 No order is made directing CIPC to change or substitute the First Respondent's name.
- 32.6 There is no order as to costs.
- 32.7 The Registrar is directed to notify the parties of this decision in accordance with the applicable delivery provisions.

Dr MINAH TONG-MONGALO

Member of the Companies Tribunal