COMPANIES TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case/File Number: CTR018/02/2013



In the *ex parte* application of:

SETHEKGO PRIVATE PARTY (PTY) LTD **Applicant**

(Registration Number: 2006/029236/07)

in respect of:

AN APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO APPOINT A SOCIAL AND ETHICS COMMITTEE

Presiding Member of the Tribunal : Khashane Manamela

DECISION (Reasons and Order)

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[1] SETHEKGO PRIVATE PARTY (PTY) LTD (Sethekgo) is according to the papers filed with this Tribunal a "Private Party Partnership that was established to undertake and implement the project to finance, design, construct, operate and maintain the head office of the Department [of Basic Education] in Pretoria".

[2] Sethekgo's activities are stated as being limited to the operation and maintenance of the head office of the Department of Basic Education through what is referred to as "an Operations Subcontract Company".

[3] Sethekgo is an applicant herein for an exemption in terms of section 72(5)(b) of the Companies Act 71 of 2008 (the Act) from the requirement to appoint a social and ethics committee. As ground for the application, Sethekgo submits that, there is satisfactory evidence for this Tribunal to find that "it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company."

[4] The application seems to be tentatively based on regulation 43(2)(a) of the Companies Regulations (the Regulations) as it is submitted that, Sethekgo has a Finance and Risk Committee that performs some of the functions of a social and ethics committee, like reduction of corruption and monitoring the company's goals regarding broad-based black economic empowerment.

[5] However, whether it is section 72(5)(b) of the Act or regulation 43(2)(a) of the Regulations on which the application is based, there is a fatal irregularity regarding this application. The submissions by Sethekgo do not comply with regulations 142 of the Regulations which requires that, an application to this Tribunal should be by the way of Form CTR142 and a supporting affidavit "setting

out the facts on which the application is based" **[regulation 142(1)(a) and (b)]**. The document titled "Affidavit" and signed on the second page thereof by EE Zwanepoel on the 28th November 2013, does not constitute a deposition to qualify as an affidavit, as no oath or affirmation was administered **[Regulations Governing The Administering Of An Oath Or Affirmation No. R1258 of 21 July 1972 (as amended by G.N.R. 1648 of 19 August 1977, G.N.R. 1428 of 11 July 1980 and G.N.R 774 of 23 April 1982)]**. Therefore what is contained therein may not necessarily equate to admissible evidence for a determination by this Tribunal. The aforesaid is not an inflexible rule as courts of law [and by extension this Tribunal] have discretion to regard the contents of a declaration that is non-compliant as either worthless or to recognise same as an affidavit [***Cape Sheet Metal Works (Pty) Ltd* v *JJ Calitz Builder (Pty) Ltd* 1981 (1) SA 697 (O)**]. In this matter, Sethekgo was actually alerted to this irregularity through a letter of the registry division of this Tribunal dated 25th January 2013 and an electronic mail of the 20th November 2013 [from Ms. Tebogo Mputle, the Registrar of this Tribunal to Ms. Estelle Zwanepoel], but notably in vain. I therefore find it difficult to condone or overlook this persistent disregard of the rules and the law.

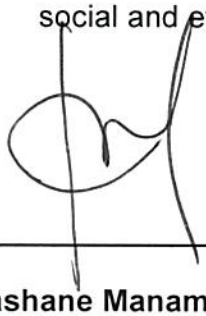
[6] Besides, there is paucity of information in the statement by Zwanepoel regarding the activities of Sethekgo, except for broad statements and attachment of documents whose relevance is not explained in the body of the application, which is normally done in the supporting affidavit. The content of documents

which are attached to the affidavit has to be traversed in the body of the affidavit and do not by mere attachment metamorphose into legal submissions that should carry the motion [***Port Nolloth Municipality*** v ***Xhalisa; Luwalala*** v ***Port Nolloth Municipality*** **1991 (3) SA 98 (C)**].

[7] Based on the aforesaid, I feel that even with this Tribunal's discretion to condone technical irregularities in its proceedings [**regulation 154(3)** of the Regulations], the abovementioned shortcomings in the application are of a very serious nature and cannot be condoned under the circumstances. Therefore, the application should fail and nothing precludes the applicant from approaching this Tribunal through an improved [along the lines suggested above] application.

[8] In the result:

a) the application for an exemption from the requirement to appoint a social and ethics committee is refused.



Khashane Manamela

Member, Companies Tribunal

20th December 2013