THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT005Apr2016

In the matter between:

Obakeng Lebethe (ID 780808 5378 08 0) Applicant

and

Rodrick Thabiso Moropa (ID 860307 5983 08 3) Respondent

Coram: S. Gounden

Decision handed down on 30 September 2016

DECISION

INTRODUCTION

[1] The Applicant applies in terms of the Companies Act 71 of 2008 ("Act" / "Companies Act") and regulations of the Companies Act ("Companies Act regulations" / "regulations") for an order that the applicant be re-instated as the director of the company, Bafathosi Consulting Hub (Proprietary) Limited (Registration number: 2009/018171/07).

BACKGROUND

[2] The Applicant claims that he was the director of the company "Bafathosi Consulting Hub (Proprietary) Limited" and that the respondent removed him as director on 29 July 2014.

[3] The Applicant filed an application to re-instate him as director of Bafathosi Consulting Hub (Proprietary) Limited as prescribed by regulation 142 (1) (a), together with a supporting affidavit as required by regulation 142 (1) (b).

[4] There was no proof that the application was served by the Sheriff / registered post to the Respondent. In terms of regulation 142 (2) it should be done within 5 days of filing it with the Companies Tribunal. The date stamp of the Companies Tribunal on the CTR 142 was the 4 April 2016.

[5] Regulation 142 provides as follows:

"(2) The applicant must serve a copy of the application and affidavit on the respondent named in the application, within 5 business days after filing it."

The copy of the application was e-mailed to the respondent on the same day as the filing.

[6] In terms of regulation 153 (1) read with regulation 143 (1), the first respondent has 20 days to respond, failing which the Applicant is entitled to apply for a default order as provided for in regulation 153 (1).

[7] A response was received from the Respondent for condonation for late response on 27 June 2016.

ISSUES

[8] The application was served on the Respondent by e-mail and not by the Sheriff or by registered post.

[9] However, based on the findings of the Companies Tribunal on the substantive law, it is not necessary to make a finding as to defects, in [8] above, and the possible application of section 6 (9) and (10) of the Companies Act in respect of substantial compliance.

[10] The Applicant requests that the Companies Tribunal grants the relief in the form that the Applicant be re-instated as the director of the company.

[11] The Respondent claims that he was originally appointed as director of the company on 11 January 2013. He further claims that he was unlawfully

removed as director of the company and that the applicant was made a director in his stead. Upon realizing that he was unlawfully removed as director, he re-instated himself as director of the company.

APPLICABLE LAW

[12] The election and removal of directors are stated in sections 66 to section 71 of the Act.

EVALUATION

[13] The question that needs to be answered is whether the Companies Tribunal has jurisdiction to grant an order in terms of the Companies Act to reinstate directors of a company.

FINDINGS

[14] It is clear that the Companies Tribunal do not have jurisdiction to order re-instatement of company directors, as it is not a “court”.

ORDER

[15] The application that the Applicant must be reinstated as the director of Bafathosi Consulting Hub (Proprietary) Limited **cannot** be granted, as the Companies Tribunal does not have jurisdiction on this matter.

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S. Gounden

MEMBER OF THE COMPANIES TRIBUNAL

Pretoria

30 September 2016