

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT002APRIL2014

In the matter between:

**THEMBISIZWE INVESTMENT AND STAFF  
SOLUTIONS (PTY) LTD**

**Applicant**

**And**

**MAXWELL VUMOKWAKHE NGCOBO**

**Respondent**

**Coram: Kganyago M.F**

**Decision handed down on the 30th June 2014**

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**DECISION**

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- [1] The applicant is applying for a default order in terms of regulation 153 of the Companies Act 71 of 2008 ("the Act"). The applicant has initiated an application against the respondent in terms of section 71(3)(b) of the Act, seeking an order that the respondent be removed as a director of the applicant with immediate effect.
- [2] The applicant has initiated the proceedings against the respondent by sending the initiating document to the respondent by registered mail. The applicant has attached a copy of the registered slip as proof of service. Service by registered mail is allowed in terms of the Companies Regulations.
- [3] The respondent did not file or serve any opposing papers. The time period within which the respondent was required to serve and file his opposing papers if he

wishes to oppose the applicant's application has lapsed. The applicant is now applying for a default order.

- [4] In terms of section 71(2) of the Act, there must be a resolution of the shareholders of the company wherein it is resolved that the director concerned is removed. However in terms of the same section of the Act, before the shareholders consider taking that resolution, the director concerned must have been given a notice of the meeting and resolution. The director concerned must also have been given an opportunity to make a representation in person or through a representative to a meeting before the resolution is put to a vote.
- [5] The respondent was sent a notice of the meeting and the purpose of the meeting. In the notice sent to the respondent, he was also requested to make representations why he should not be removed as a director. The notice was sent to him by registered mail. However, the respondent opted not to attend the meeting. At that meeting the applicant took a resolution to remove the respondent as a director. That resolution is attached to the applicant's application.
- [6] Under the circumstances, I am satisfied that the applicant has complied with the requirements of the Act. There is proof that the initiating documents were sent to the respondent and the respondent has not filed any notice to oppose the applicant's application. The *diēs* within which to file such notice has lapsed. I am therefore of the view that a default order should be granted.

## **ORDER**

- [7] The applicant's application for a default order is granted.
- [8] The respondent is removed as a director of Thembisizwe Investments and Staff Solutions (Pty) Ltd (Reg no 2007/019292/07) within 20 days of this order.
- [9] The commissioner of Companies is directed to record that accordingly.

Dated at POLOKWANE on this 30th day of JUNE 2014.

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M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL