



**COMPANIES TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**CASE NO: CT016APR2017**

In the matter between:

**ES PROJECTS CC**

**Applicant**

and

**ES PROJECTS PROPRIETARY LIMITED**

**Respondent**

**Decision handed down on 23 OCTOBER 2017**

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**DECISION**

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**INTRODUCTION**

[1] This is an application in terms of section 160 (3) (b) (ii) and Regulation 153 of the Companies Act No. 71 of 2008 (“the Act”).

[2] The Applicant applies for a default order that the Respondent be ordered to change its name, "ES PROJECTS" because it does not comply with section 11 of the Act.

## **BACKGROUND**

[3] The Applicant is ES Projects CC, a close corporation with limited liability duly incorporated in terms of the Close Corporations Act 69 of 1984, as amended with its registered address at Wapadrand Office Park Block 1, Ground Floor, Kingbolt Crescent 90, Wapadrand, Pretoria, Gauteng.

[4] The First Respondent is ES Projects Proprietary Limited, a private company duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at Bospoort, Bela Bela, Limpopo.

[5] The Applicant filed an objection to the name "ES PROJECTS" in terms of regulation 142 (1) (a) and (1) (b) of the Act.

[6] The applicant seeks the following relief:

*"That the Respondent, in terms of section 160 (3) (b) (ii) be directed to choose and register a new company name in amendment of its current name within a prescribed period to satisfy the requirements of the Companies Act 71 of 2008;*

*That the Respondent, if he opposes this application, be held liable for the Applicant's legal costs in this matter, as provided for in terms of Regulation 156*

*of the Companies Regulations, 2011.”*

## **APPLICABLE LAW**

[7] Before I deal with the objection and/or application filed, I wish to highlight what I believe to be the relevant provisions of the Act.

### **Section 11 (2) (a) (b) and (c) of the Act**

[8] Section 11 (2) (a), (b) and (c) reads as follows:

*The name of a company must –*

(a) *not be the same as -*

(i) *the name of another company, domesticated company, registered external company, close corporation or co-operative;*

(ii) *a name registered for the use of a person, other than the company itself or a person controlling the company, as a defensive name in terms of the section 12 (9), or as a business name in terms of the Business Act, 1960 (Act 27 of 1960), unless the registered user of that defensive name or business name has executed the necessary documents to transfer the registration in favour of the company;*

**[Note my emphasis and underlining]**

- (iii) a registered trade mark belonging to a person other than the company, or mark in respect of which an application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act 194 of 1993), unless the registered owner of that mark has consented in writing to the use of the mark as the name of the company;*
- (iv) a mark, word or expression the use of which is restricted or protected in terms of the Merchandise Marks Act, 1941 (Act 17 of 1941), except to the extent permitted by or in terms of that Act;*
- (b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless –*

  - (i) in the case of name referred to in paragraph (a) (i), each company bearing any such similar name is a member of the same group of companies;*
  - (ii) in the case of a company name similar to defensive name or to business name referred to in paragraph (a) (ii), in the company, or a person who controls the company, is the registered owner of that defensive name or business name;*
  - (iii) in the case of a name similar to a trade mark or mark referred to in paragraph (a) (iii), the company is the registered owner of the business*

*name, trade mark, or mark, or is authorised by the registered owner to use it; or*

*(v) in the case of a name similar to a mark, word or expression referred to in paragraph (a) (iv), the use of that mark, word or expression by the company is permitted by or in terms of the Merchandise Marks Act, 1941;*

*(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company –*

*(i) part of, or associated with, any other person or entity;*

*(ii) is an organ of state or a court, or is operated, sponsored, supported or endorsed by the State or by any organ of state or a court;*

*(iii) is owned, managed or conducted by a person or persons having any particular educational designation or who is a regulated person or entity;*

*(iv) is owned, or operated, sponsored, supported or endorsed by, or enjoys the patronage of, any –*

*(aa) foreign state, head of state, head of government or administration or any department of such a government or*

*administration; or*

*(bb) international organisation; and*

*(cc) not include any word, expression or symbol that, in isolation or in context within the rest of the name, may reasonably be considered to constitute –*

*(i) propaganda of war;*

*(ii) incitement of imminent violence; or*

*(iii) advocacy of hatred based on race, ethnicity, gender or religion, or incitement to cause harm.”*

## **EVALUATION**

[9] The name “ES PROJECTS.” is a registered name of a close corporation ES PROJECT CC.

[10] The above-mentioned close corporation, the Applicant, was registered on 04 March 1996 with registration number 1996/009832/23.

[11] The Respondent was registered on 26 January 2016 with registration number 2016/028288/07.

[12] The first issue is whether the name of the Respondent ES PROJECTS is the same as the registered close corporation and/or the Applicant and whether the name of the Respondent is confusingly similar to the name of the Applicant.

[13] The second issue is whether the name ES PROJECTS would falsely imply or suggest, or be as would reasonably mislead a person to believe incorrectly, that the Respondent is part of, or associated with the Applicant.

## **FINDING**

[14] It is my considered view that the name of the Respondent is the same as the name of the Applicant and is confusingly similar to the name of the Applicant.

[15] Further, the name of the Respondent would reasonable mislead a person to believe incorrectly, that the Respondent is part of, or associated with the Applicant.

[16] Furthermore, the name of the Respondent does not comply with the requirements of section 11 of the Act.

## ORDER

In the result the following order is made in terms of section 160 (3) (b) (ii) of the Act:

- a) The application is granted.
- b) The Respondent is directed to choose a new name, and file a notice of an amendment to its Memorandum of Incorporation, within 3 (three) months from date of this decision.
- c) The Respondent is exempted from compliance with the requirement to pay the prescribed fee for filing the notice of amendment to its Memorandum of Incorporation.

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MMOLEDI MALOKANE

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Date: 23 OCTOBER 2017