

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

“The Tribunal”

Case Number: CT020Jul2017

In the matter between:

Patika Albert Mathole

Applicant

AND

Rosinah Mmamose Mathole

Respondent

DECISION

INTRODUCTION:

- [1]** The Applicant is Patika Albert Mathole, an adult male representative director of Ovorex (Pty) Ltd, with registration number 2013/057451/07.
- [2]** The Respondent is Rosinah Mmamose Mathole, an adult female director of Mmamose Project (Pty) Ltd, with registration number 2013/097297/07, Ngwanarapola (Pty) Ltd with registration number 2013/077637/07, and Moyagabo Group (Pty) Ltd, with registration number 2013/077638/07.

- [3]** The Applicant seeks a default order in terms of Regulation 153 and S.71 (8) (b) of the Companies Act (Act 71 of 2008), for the removal of Respondent as director of the three companies in which she is a director.
- [4]** Applicant duly filed form CTR142 and an affidavit, on 27 July 2017, in compliance with Regulation 142, and further filed CTR145 in terms of Regulation 145 of the Companies Act on 14 September 2017. The Applicant filed for a default order after the Respondent failed to respond within 20 business days of being served with the application, as required by Regulation 143.
- [5]** The Applicant seeks an order for the removal of the Respondent as a director in terms of S71 of the Act, giving the following reasons thereof:
- that during or about January 2017, the Respondent made a fraudulent payment to herself in the amount of R250 000 (two hundred and fifty thousand rand);
 - that shortly after settlement discussions and in contrast of her undertaking to make further payments from the account, made a further fraudulent payment of R22 000 (twenty two thousand rand);
 - that on 28 February 2017, an urgent application was brought on behalf of the other director of Mmamose Project

(Pty) Ltd, and the order was given that Standard Bank was ordered to remove the Respondent as an authorised signatory to the account;

- that subsequent to the order as above, the Respondent made a further fraudulent payment of R472 000 (four hundred and seventy two thousand) to herself;
- that another urgent application was launched and heard on 16 March, wherein the court ordered that the order of 28 February 2017 be effective;
- that on 6 April 2017, the Pretoria High Court made an order that the respondent repays the amount of R472 000;
- that based on the above, the shareholders of the companies deem the Respondent as a delinquent director; and
- that the shareholders resolved that the Respondent be removed as a director of all companies and that the applicant be appointed as a director.

Application of the Law

[6] This is an application in terms of S.71, particularly subsection 8(b) of the Companies Act, which provides that:

“If a company has fewer than three directors in any circumstances contemplated in subsection 3, any director or shareholder of the company may apply to the Companies Tribunal to make a determination contemplated in that subsection”

Subsection 3 as provided above, provides for the grounds of removal and states that:

“If a company has more than two directors, and a shareholder or director has alleged that a director of the company-

(a) has become-

(i) ineligible or disqualified in terms of S.69(8)(a); or

(ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

(b) has neglected, or been derelict in the

performance of the functions of director..”

In the above circumstances where the company has fewer than three directors, a director or shareholder is

empowered to apply to the Companies Tribunal on the grounds stipulated in subsection 3(a) and (b) as stated above. Section 69 as mentioned in subsection 3, provides for the ineligibility and disqualification of persons to be director or prescribed officer. S.69 (8) (a) in particular, provides that:

“A person is disqualified to be a director of a company if a court has prohibited that person to be a director, or declared that person to be delinquent...”

EVALUATION

[7] On examination of the CIPC documentation, in particular COR39 filed by the Applicant for Mmamose Project (Pty) Ltd, it is evident that the Applicant is not listed as a director or shareholder of the company. The Respondent and one Malebati Comfort Ramatapa, are listed as directors/ officers of Mmamose Projects (Pty) Ltd. The share certificates for Ngwanarapola (Pty) Ltd and Moyagabo Group (Pty) also list the Respondent as the director and not the Applicant.

[8] Furthermore, the application filed in the high court shows Malebati Comfort Ramatapa as the Applicant. Nowhere in the documents filed does the Applicant appear as a director or shareholder, save for his submission that he is a representative director of Ovorex (Pty) Ltd.

[9] The minutes of the meeting of Ovorex, held on 01 April 2017 appear to have been signed by one “Mathole AR”, who cannot be the Applicant as his initials are “P.A.”.

[10] In the circumstances and in light of S.71, the Applicant has not proved to either be a director or shareholder of the companies wherein the Respondent is sought to be removed as a director. S.71 clearly permits a director or shareholder of a company to apply for the removal of a director. Even if one accepts that the Applicant is indeed a director of Ovorex (Pty) Ltd, he is not a director in any of the three other companies mentioned above.

[11] Furthermore, the Tribunal can only grant the order for removal of a director if the provisions of S.71 (3) are met; in this case, the grounds for the removal of the director have not been met. The reasons furnished by the Applicant, that is, the Respondent having made payments to herself, is not a ground upon which the Tribunal may issue an order for removal of the Respondent as a director.

FINDINGS

[12] The Applicant has not established legal standing or *locus standi* to pursue this application.

ORDER:

For reasons stated above, the application is dismissed.

B. Zulu
Member: Companies Tribunal
25 September 2017