



COMPANIES TRIBUNAL OF SOUTH AFRICA

**Case Numbers: CT001JUL2019
/CT00093ADJ2019**

In the matter between:

THESIS CLOTHING CC T/A THESIS LIFESTYLE

Applicant

and

THESIS RUN CRU NPC

Respondent

(Registration Number: 2019/243493/08)

in respect of objection to company name

Presiding Member	:	Khashane La M. Manamela (Mr.)
Date of Hearing	:	20 September 2019
Date of Decision	:	31 October 2019

DECISION (Order and Reasons)

Khashane La M. Manamela

*“If you don't have answers to your problems after a four-hour run, you ain't getting them.” - Christopher McDougall - Born To Run*¹

Introduction

[1] A group of social road runners has since 2014 been gathering in Mofolo township and elsewhere around Soweto, including at a retail outlet known as Thesis Concept Store, for morning runs over the weekend and for weekly track-training sessions. The group became known as or called itself “Thesis RunCru” or “Thesis Run Cru”. Fast forward about five years later the group (now incorporated as Thesis Run Cru NPC, the respondent in this matter) and the owner of the Thesis Concept Store (where the runners used to meet), namely Thesis Clothing CC (the applicant in this matter), appear before this Tribunal in a dispute concerning the right to the name “Thesis Run Cru”. The applicant asserts that it has the exclusive rights to the name “Thesis Run Cru”, but the respondent disagrees.

[2] The applicant says that it conceptualised and popularised the name or words “Thesis Run Cru” when it established or organised the group of runners or the participants in its weekly road-running sessions, before the group or participants ultimately incorporated under the respondent’s name, Thesis Run Cru NPC. The applicant complains that the respondent has no right to include the name or words “Thesis Run Cru” in its name, but the respondent disputes the applicant’s right to bar it from using the name. The respondent’s case is simply that the running activities were

¹ Christopher McDougall is the author of the international bestseller, *Born to Run* and previously was a trained foreign correspondent for the Associated Press. See <https://www.chrismcdougall.com/about/> accessed on 25 October 2019.

organised by the members of the applicant as part of the group and not by the applicant itself. Put differently, that the activities of the group were not at the instance of the applicant or associated with the applicant.

[3] The applicant's complaint or case is based on section 11(2)(c)(i)² of the Companies Act 71 of 2008 (the Companies Act), although in the papers reference is made to section 11(2)(b)(i), instead. At the commencement of the hearing in this matter a ruling became necessary to settle the argument by the respondent that the applicant's case is based on the latter statutory provision instead of the former. In the absence of prejudice on the part of the respondent, I granted a minor amendment in favour of the applicant in this regard.³ I was fortified by the fact that even though the applicant inadvertently referred to section 11(2)(b)(i) it accompanied the references with quotation of provisions under section 11(2)(c)(i).⁴ Besides, the error was clearly an obvious one and the respondent also made or repeated the same error - warts and all - in some places in its opposing papers.⁵ Therefore, the applicant's case was presented and opposed on the basis that the respondent's name falsely implies or suggests or is such as would reasonably mislead a person to believe incorrectly that the respondent is part of or associated with the applicant, as envisaged under section 11(2)(c)(i).

[4] This matter came before me on 20 September 2019. Ms S Kabelo appeared for the applicant and Mr K Simango appeared for the respondent. Following the granting of the

² See par 18 below for a reading of the provisions of section 11(2)(c)(i).

³ See transcript or record of the proceedings on pp 23-26.

⁴ See, among others, Form CTR 142; pars 5 and 43 on indexed pp 5, 7 and 16 respectively.

⁵ See pars 47 and 56 of the opposing affidavit on indexed pp 74 and 76, respectively.

minor technical amendment in favour of the applicant, referred to above, there was argument on the respondent's preliminary objections or points in *limine* concerning admissibility of the applicant's confirmatory affidavits or even the founding affidavit and non-joinder by the respondent of an entity called Thesis Lifestyle, which appears to be related to the applicant. I dismissed both objections. I find no reason to add to the material supplied in support of the rulings made during the proceedings.⁶ After listening to submissions on the merits of the application, I reserved this decision.

Brief relevant background

[5] A brief narration of the issues in the background to this matter is necessary to place the issues to be determined in their proper context. I will steer away from those issues not common cause between the parties. This would be a tricky exercise since the parties, with respect, have not really tried to give concessions a chance, even in obvious circumstances. But this part will also include issues which are not seriously contested by the affected party.

[6] Messrs Wandile Zondo (Zondo) and Galebowe Mahlatsi (Mahlatsi) "came up" with the name of the respondent: Thesis Run Cru.⁷ Mahlatsi and Zondo, together with a third person Mr/Ms Nkululeko Khumalo (Khumalo), are members of the applicant. The former two are also directors of the other entity which formed the subject of one of the non-joinder preliminary objections: Thesis Lifestyle (Lifestyle). Lifestyle is a private

⁶ See transcript or record of the proceedings on pp 66-68 and 85-86.

⁷ See par 6 of the founding affidavit on indexed p 7.

company incorporated on 15 April 2019⁸ by Zondo and Mahlatsi of the applicant. On the other hand, the applicant, a close corporation, was registered on 11 August 2005⁹ and the respondent, a non-profit company, was established on 29 May 2019.¹⁰ All three entities have registered office addresses located in Soweto: the applicant's and Lifestyle's in Mofolo and the respondent's in Diepkloof.

[7] The applicant manufactures and sells "street wear" or clothing ostensibly through a retail outlet known as Thesis Concept Store, I referred to above. The respondent is a newly registered non-profit company or incorporated club of road runners formed from the group of runners who used to gather by the applicant's store and also keep or store their belongings in the applicant's store or premises: "Thesis Run Cru". It is indeed common cause that the applicant allowed members of the respondent to use its premises (where the applicant operates a clothing retail business) for their meetings.

Applicant's case

[8] The applicant submits that it does not only sell clothing, but it is a "lifestyle brand" contributing to the cultural and healthy lifestyle of the people of Soweto, particularly Mofolo township. It hosted social events around Soweto relating to running or track training sessions. To this end, the applicant's members created a group or organisation of runners called "Thesis Run Cru". The applicant or its member or members suggested the use of the name "Thesis Run Cru" to the group or the runners.

⁸ See annexure "TRC6" to the opposing affidavit on indexed pp 108-111.

⁹ See annexure "TRC7" to the opposing affidavit on indexed pp 112-121.

¹⁰ See annexure "FA14" to the founding affidavit on indexed pp 45-50; annexure "TRC5" to the opposing affidavit on indexed pp 103-107.

Henceforth, I will for convenience refer to this group of runners as Run Cru Group, in order to distinguish it from the respondent, the incorporated body of runners: Thesis Run Cru NPC.

[9] Mahlatsi (a member of the applicant) at the beginning assumed the role of “team captain” of the Run Cru Group. An email by Mahlatsi to recipients said to be the Run Cru Group dated 22 May 2014 confirms this:

“Please find and forward the following individual forms to everyone involved.

The entry is R120 each. Unless the [sc. there] is an objection, I think we should go with the name **Thesis Run Cru**. Please sign fill in and return by Monday morning as I’d like to go pay on Tuesday. I’ll assume the team captain role in order to get things done.”¹¹

[underlining added for emphasis]

[10] The applicant also attached to its papers an extract from a profile purported to be from Run Cru Group in support of its case that Run Cru Group was established by members of the applicant and associated with the applicant. The extract reads as follows in the material part:

“Official [sic] launched in 2014 during the Soweto Marathon Bridge Gap event, Thesis Run Cru (TRC) was founded with the aim of fostering an urban running culture to help keep fit and promise a healthy lifestyle. As Thesis Run Cru we say:

“Running is not our life, but it is a perfect balance to a good life.”

¹¹ Annexure FA2 to the founding affidavit on indexed p 19.

Located at the Thesis Lifestyle store in Soweto, South Africa, TRC has grown significantly.”¹²

[underlining added for emphasis]

[11] Run Cru Group had no formal membership, but it only comprised volunteers. The logo, social media content and name of Run Cru Group remained the intellectual property of the applicant, it is submitted on behalf of the applicant. The clothing and running shoes secured from sponsors, like Nike, were kept at the applicant’s premises.

[12] Zondo (another member of the applicant) resigned as club captain after mediation proceedings held in November 2017 involving members of the Thesis Run Group. A certain Mr Afrika Lehlohonolo Tau (Tau) took over as club captain. Zondo says that after his resignation from the Run Cru Group he requested Mr Thamsanqa Hlatshwayo (Hlatshwayo) and Tau “that they and those who remained in the [Thesis Run Group] no longer use the name Thesis Run Cru as it was no longer part of the applicant’s brand strategy to continue with the Run Cru”.¹³ The applicant felt that the continued use of the name by the Thesis Run Group would create a false impression amongst members of the public. But the request was not heeded.

[13] As evidence of the false impression created amongst members of the public, the applicant states:

¹² Annexure FA4 to the founding affidavit on indexed p 22.

¹³ See par 26 of indexed pp 12-13.

- “39. As further evidence that the registration and continued use of the name Thesis Run Cru creates the false impression that the respondent is associated with or is part of the applicant, the respondent organized a run to be held on 16 June 2019 and presumably approached certain entities to sponsor the run in its entirety or aspects of it, one of which was Nestle. I contacted [name redacted] who is the Vida Café Group Marketing Executive, which the applicant is currently in negotiations with to inform her that the applicant is not affiliated with the respondent after I had seen a social media post by the respondent depicting a Nescafe Coffee truck at its 16 June 2019 Run. [Name redacted]’s response was that she was going to ask about that because she has seen some posts on social media [which created confusion – [Zondo’s emphasis]]. I attach hereto a screenshot of the social media post by the respondent and a screenshot of my WhatsApp conversation
40. Further to the above, a social media user who calls herself or himself “shazmatazzy”, makes an enquiry to the respondent in the social media post referred to the above and asks if t-shirts will be sold at the run. This clearly shows that there is an impression that the respondent is associated or is part of the applicant who makes and sells, among other things, t-shirts and there is no distinction between the applicant and the respondent in the eyes of the public as long as the status quo is maintained.”¹⁴

[underlining added for emphasis]

[14] On the basis of what is significantly stated above, the applicant submits that the respondent’s name falsely implies or suggests or is such as would reasonably mislead a person to believe incorrectly that the respondent is part of or associated with the applicant. As indicated above the applicant’s case is based on section 11(2)(c)(i) of the Companies Act.

¹⁴ See pars 39-40 on indexed pp 15-16.

Respondent's case

[15] The respondent simply denies that its name contravenes section 11(2)(c)(i) as alleged by the applicant. The essence of the respondent's case is that the applicant is nothing more than a manufacturer and retailer of clothing or a clothing business, and has nothing to do with the respondent's activities.

[16] It is also submitted that Zondo's and Mahlatsi's involvement in the Run Cru Group was in their personal capacity and not on behalf of the applicant. In other words, Zondo and Mahlatsi did not take part or carry out the activities in the Run Cru Group in any capacity involving the applicant or whilst furthering the interests of the applicant.

[17] Therefore, the Run Cru Group was not established by the applicant and simply cannot be "an offshoot" of the applicant or be under its control. The respondent, or in fact the Run Cru Group, existed separately from the applicant. This is why Zondo and Mahlatsi ultimately registered the entity Lifestyle in order to take over the activities of the respondent or the Run Cru Group.

Submissions and legal principles (an analysis)

[18] As already indicated, the applicant's case is that the respondent's name "Thesis Run Cru" does not satisfy the provisions of section 11(2)(c)(i) of the Companies Act.

Section 11(2)(c)(i) reads as follows:

"(2) The name of a company must...
(c) not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company- (i) is part of, or associated with, any other person or entity ..."

[19] Section 11(2)(c)(i) is premised on the common law delict of passing off.¹⁵ Passing-off is, actually, said to be a species of the broader delict of unlawful competition.¹⁶ The learned authors of *Competition in LAWSA*¹⁷ explain passing off as follows:

“Passing off ... [is one of the] examples of unlawful competitive conduct falling within this category. Direct impingements of goodwill take place where a direct attack is made on a rival. Here the actual or potential benefit which the trader obtains is the result of the prejudice which the rival suffers, whereas, in the case of indirect impingements, the prejudice suffered by the rival results from the benefit obtained by the trader concerned. Direct impingements are as a rule in conflict with the competition principle. Hence they are wrongful in principle. The only question is whether there was any ground present justifying the conduct, in which case the direct impingement would not have been wrongful. The three grounds of justification which can arise are, respectively, defence, necessity and public interest.”

[20] On the other hand, the learned author of *Amler’s Precedents of Pleadings* says the following about the cause of action for passing-off:

“A passing-off action protects the goodwill or reputation of a trader’s business, merchandise or services against a false representation by a competitor that the business, merchandise or service of the competitor is that of or associated with the plaintiff. It also provides protection against deception as to trade source or trade connection.

The typical case of passing-off is when the defendant uses, adopts or imitates the trade name or get-up of the plaintiff’s business, goods or services.”¹⁸

[quoted without the accompanying footnotes, but with added underlining]

¹⁵ Harms LTC *Amler’s Precedents of Pleadings* 9th ed (LexisNexis, online version, last updated 2018) at p 291. See further Delpont P *Henochsberg on the Companies Act 71 of 2008* (LexisNexis online version, last updated in September 2019) at p 60.

¹⁶ *Lorimar Productions Inc v Sterling Clothing Manufacturers (Pty) Ltd* 1981 (3) SA 1129 (T) at 1138. See further *Amler’s Precedents of Pleadings* at 291.

¹⁷ Neethling J and Rutherford BR “Competition” in *LAWSA* vol 2(2) (LexisNexis, online version as at 31 August 2003).

¹⁸ *Amler’s Precedents of Pleadings* at p 291.

[21] A further reading of *Amler's Precedents of Pleadings* is illuminating in this regard: a party complaining of passing-off ought to allege and prove misrepresentation by the offending party; allege and prove existence of reputation or goodwill in respect of, for example, trade name, get-up or service mark; establish that the offending party's trade name is calculated to deceive or confuse an ordinary customer, and that the resultant confusion would damage the goodwill of the complainant's business.

[22] On a more direct commentary on section 11(2)(c)(i), the learned author of *Henochsberg on the Companies Act 71 of 2008*,¹⁹ among others, authoritatively says the following. The instances under which a company name would have been found undesirable under the Companies Act 61 of 1973 (i.e. the previous Companies Act) apply *mutatis mutandis* to sections 11(2)(a) to (c) and include when the particular name is "likely to mislead or deceive the public"; "is the same as or similar to that of another and as a result is likely to lead to confusion amongst members of the public".²⁰ However, whilst section 11(2)(b) is in respect of company names, trade mark, word or expression, section 11(2)(c) or the result is in respect of a "person or entity".²¹

[23] To recap: the applicant's submissions are essentially as follows. The applicant was incorporated in August 2005 as a manufacturer and retailer of what is called "street wear" clothes from its store in Soweto. In 2014, the applicant established the Run Cru Group and suggested the use of the name "Thesis Run Cru". Around November 2017

¹⁹ *Henochsberg on the Companies Act* at pp 57-59.

²⁰ *Henochsberg on the Companies Act* at pp 57-58.

²¹ *Henochsberg on the Companies Act* at p 59.

members of the applicant requested the Run Cru Group to cease and desist from using the name “Thesis Run Cru”, but in vain. In 2019 the respondent was incorporated using the name Thesis Run Cru. This amounts to misrepresentation by the respondent to the public that the respondent is associated or part of the applicant, when this is not the case. On the other hand, the respondent admits that the name Thesis Run Cru was suggested to the Run Cru Group, which eventually became the respondent, by members of the applicant. However, the respondent argues that the applicant’s members did not act *qua* their capacity as members of the applicant, but in their personal or individual capacity.

[24] From the above and applicable statutory provisions, the determination required to be made in this matter is statutory-based: does the respondent’s name falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the respondent is part of or associated with the applicant? Put differently, this Tribunal has to determine whether or not the respondent’s name satisfies the requirements of section 11(2)(c)(i). At the risk of sounding simplistic, the determination is somewhat straightforward. But I consider it necessary to decide another issue and, therefore, get it out of the way (so to speak), before the ultimate decision or determination. This other issue was raised by the respondent almost incessantly and put in a question form is whether or not the activities of the Run Cru Group were activities of, or on behalf of, the applicant.

Whether or not the activities of the Run Cru Group were activities of or on behalf of the applicant?

[25] The question in the caption above is necessary to be answered in order to get to the main determination in this matter. The resolution or answer to the question is not dispositive of the matter, but necessary to make it clear whether a finding regarding the respondent's name is on the basis of proprietary grounds that the applicant established and owned the Run Cru Group or simply on the basis of use of the name Thesis Run Cru by the respondent. I am mindful that proprietary connection to a company name, as opposed to a trade mark; well-known trade mark or mark, does not without more avail protection of the relevant provisions of the Companies Act.

[26] I have already mentioned that in May 2014 Mahlatsi of the applicant sent to other participants in the Run Cru Group an electronic mail or email. In the email he suggested to others in the Run Cru Group (albeit that the group was apparently nameless at the time) that unless there is "an objection, [he thinks] we should go with the name **Thesis Run Cru**".²² In my view, this does not suggest that Mahlatsi had a mandate to fulfill on behalf of the applicant. And if he indeed had a mandate it does not appear that he was prepared to execute it. What is evident from the e-mail is that he considered himself getting into a new structure in which he had no vested rights, but to seek and operate on consensus of the remainder of the participants. He simply suggested the use of the name Thesis Run Cru. This proverbial picture does not change even on consideration of extracts from a profile purported to be from Run Cru Group. In fact the extracted material

²² Annexure FA2 to the founding affidavit on indexed p 19.

is unhelpful as it clearly refers to “the Thesis Lifestyle store in Soweto”.²³ This ought to be recent material. I could not find evidence of use of the name or words Thesis Lifestyle by the applicant before the incorporation of the private company Thesis Lifestyle. The applicant’s store appears to have referred to as the Thesis Concept Store and not Thesis Lifestyle store. But not much, if anything, turns on this in the light of what is stated above and below.

[27] The holding of meetings and storage of clothing, including running shoes secured from sponsors at the applicant’s premises appear to have only been for convenience. As a newly formed organisation the Run Cru Group used the applicant’s premises, due to not having its own. It was not due to the fact that the Run Cru Group formed part of the applicant.

[28] Further when Zondo resigned as club captain of the Thesis Run Group he only requested those “who remained” in the Thesis Run Group not to use the name Thesis Run Cru any longer.²⁴ He did not disband or take back control of the Run Cru Group. He merely sought to reverse the suggestion in the e-mail to other participants of 22 May 2014, that they can use the name. This does not accord with the assertion that the applicant established the Run Cru Group.

[29] Therefore, I find that the activities of the Run Cru Group were not at the instance of the applicant. The involvement of members of the applicant in the Run Cru Group was

²³ Annexure FA4 to the founding affidavit on indexed p 22.

²⁴ See par 26 of indexed pp 12-13.

not on behalf of or in furtherance of the interests of the applicant. The applicant's members may have been involved or actually spearheaded the activities, but there is no link between the applicant and the Run Cru Group. A link indeed exists between members of the applicant and the establishment of the Run Cru Group, but this link does not, without much, become one between the applicant and the Run Cru Group. With this issue determined, then what remains is a name dispute between two companies with no historical corporate ties.

Does the respondent's name satisfy the requirements of section 11(2)(c)(i) or not?

[30] As stated above, section 11(2)(c)(i) is premised on the common law delict of passing off.²⁵ An action based on passing-off is aimed at protecting the goodwill or reputation of a trader's business; trader's name; trader's merchandise or trader's services against false representation by a competitor that the latter's business, merchandise or services are those of or associated with the trader.

[31] A litigant (either plaintiff or applicant) in a passing-off action would have, among others, to establish misrepresentation by the offending party; existence of reputation or goodwill in respect of the plaintiff's trade name, merchandise or services, and that the offending party's trade name is calculated to deceive or confuse an ordinary customer, and the aforesaid would result in damage to the goodwill of the plaintiff's business. I deal with these requirements next in relation to the applicant's complaint, but in no particular order.

²⁵ *Amler's Precedents of Pleadings* at p 291 and further *Henochsberg on the Companies Act* at p 60.

Goodwill or Reputation

[32] The goodwill or reputation of the applicant's trade name or business would naturally be in the retail of clothes. But the applicant asserts that apart from selling clothes it is a "lifestyle brand" contributing to the cultural and healthy lifestyle of the people of Soweto, particularly Mofolo township. The assertions of being a "lifestyle brand" and contribution towards Soweto people's cultural and healthy lifestyle appears to have been linked with the activities of the Run Cru Group. This is so unless, as I pointed out above, the applicant's case is that the latter activities are done through the entity Lifestyle, which was registered only in April 2019. But I do not accept that the applicant had running as one of its activities before the Run Cru Group was established. I also find the existence of Lifestyle to be irrelevant to the determination required here. As indicated above, the applicant was successful in opposing the applicant's non-joinder preliminary objection in respect of Lifestyle. Therefore, evidence of goodwill or reputation would be inextricably linked with the applicant's trade name as a retailer of clothes.

[33] Throughout the papers the applicant's case has been that it established the Run Cru Group and the involvement of members of the applicant in the Run Cru Group was in furtherance of the interests of the applicant. With my finding to the contrary on this issue, there is no evidence as to the goodwill or reputation of the applicant's name or business in anything else. The applicant has not provided evidence of goodwill or reputation of its clothes retailing business. Even if such evidence exists, I am unable to find that the respondent obtained or will obtain actual or potential benefit or that the applicant would be prejudiced by the existence or use of the respondent's name. There is simply no

goodwill or reputation of relevance on the part of the applicant's trade name or business to protect which could be damaged by, for example, diverting customers from the applicant's business or products to those of the respondent.²⁶ The respondent is a road runners non-profit company.

Misrepresentation

[34] The alleged misrepresentation here is limited to the respondent's use of the name "Thesis Run Cru". But with my finding above that the applicant has no rights to the name "Thesis Run Cru", the only part of the respondent's name the applicant might legitimately complain about is inclusion of the word "thesis". But to agree with the applicant's assertions on this basis would be tantamount to granting the applicant exclusive use or proprietary rights over the word "thesis", which is, in any way, not the applicant's case. Therefore, under the circumstances the words "Run Cru" sufficiently distinguish the applicant and the respondent or their respective business.

Likelihood of confusion

[35] Although the findings above have effectively disposed of the applicant's case, I nevertheless continue to deal with the aspect of confusion as alleged by the applicant. I am aware that the authorities' guidance is that existence of confusion alone is not enough, but that there ought to be a causal connection between the representation and the

²⁶ *Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son SA (Pty) Ltd* [1993] 1 All SA 27 (A), 1993 (2) SA 307 (A).

confusion.²⁷ Therefore, with an adverse ruling on representation or misrepresentation above, this part is only for completeness.

[36] A party in the position of the applicant ought to allege and prove that the respondent's trade name is calculated or likely to deceive or confuse an ordinary customer.²⁸ The applicant submits that there is evidence of actual confusion created amongst members of the public. Two instances are cited in support of this contention.

[37] The one instance involves the Vida Café or Nestle and a road-running event arranged by the respondent on 16 June 2019. The applicant informed a functionary of Vida Café or Nestle that the applicant is not affiliated with the respondent. I find it odd that the applicant would initiate the contact and thereafter rely on the information it volunteered to the third party or customer for its allegations that there is confusion. With respect, if there was any confusion on the part of Vida Café or Nestle or its functionary, such confusion was deliberately sown by the applicant.

[38] The other instance of alleged confusion involves "shazmatazzy", the social media user, who asked the applicant if t-shirts will be sold at the respondent's run. I do not understand why there will be confusion in this regard. The social media user would have been correctly directed by the applicant that the respondent is not a retailer of t-shirts, but the applicant. Even if he or she would have gone to the event, there would not have been diversion of business as the respondent would not have been able to sell t-shirts to the

²⁷ *Burnkloof Caterers (Pty) Ltd v Horseshoe Caterers (Green Point) (Pty) Ltd* 1976 (2) SA 930 (A).

²⁸ *Reckitt & Colman v SC Johnson*.

social media user. Although proof of a common field of activity between contending parties in this regard is only but a factor in determining the likelihood of confusion between the parties' respective goods or businesses,²⁹ the alleged instance does not reveal any confusion.

Conclusion and costs

[39] On the basis of what is stated above, I find that the applicant has failed to establish that the respondent's name does not satisfy the provisions of section 11(2)(c)(i). The application will consequently be dismissed and costs will follow this outcome. The costs will be on a party and party scale of the High Court of South Africa.

Order

[40] Therefore, the following order is made:

- a) the application is dismissed with costs.
- b) the applicant is liable for payment of costs of the application on a party and party scale or tariff applicable to the High Court of South Africa.

Khashane La M. Manamela
Member, Companies Tribunal
31 October 2019

²⁹ *Amler's Precedents of Pleadings* at p 292 and the authorities cited there.

Appearances:

For the Applicant	:	Ms S Kabelo, KWA Attorneys Norwood, Johannesburg
For the Respondent	:	Mr K Simango, Pule Incorporated Parktown, Johannesburg