



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00411/ADJ/2020

In the *ex parte* application of:

**Woodhill Homeowners' Association NPC
(Registration number: 1998/009813/08)**

Applicant

Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 15 August 2020

DECISION (Reasons and an Order)

1. INTRODUCTION

1.1 Applicant is Woodhill Homeowners' Association NPC, a non-profit company with registration number 1998/009813/08.

1.2 The Chairperson of Applicant's Board of Directors, Louis Bekker, deposed to an affidavit in support of this application, with evidence that he was duly authorised to do so.

1.3 This is an application, supposedly in terms of Section 61 of the Companies Act 71 of 2008 ("the Act"), for an administrative order to extend the date for Applicant to hold its 2020 annual general meeting (AGM) to a date to be determined by the Applicant.

1.4 In terms of Article 3.1 of its Memorandum of Incorporation (MOI), Applicant must hold an AGM within 6 (six) months after the end of its financial year, which was on 29 February 2020. Therefore its AGM should be held not later than 31 August 2020.

1.5 The Applicant's case for extension of time to convene its AGM is primarily because it is prevented by the COVID-19 restrictions to convene an in-person gathering of its multitude of members (approximately 850). Although the AGM could be conducted by way of electronic communication, which is provided for in its MOI, Applicant submits that it would not be logistically and practically possible to do so, due to the fact that some of its members are unable to utilise electronic media to communicate.

2. ISSUES

2.1 At the outset, the jurisdiction of the Tribunal in this application must be ascertained. If the outcome is positive, then the reasons furnished by the Applicant for the extension should be assessed based on "good cause" shown.

2.2 If the determination is that the Tribunal does not have jurisdiction, the application must be dismissed.

3. APPLICABLE LAW

3.1 **Section 1** of the Act defines a "public company" as a profit company that is not a state owned company, a private company or a personal liability company; and

3.2 A "non-profit company" is a company—

"(a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and

(b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1."

3.3 **Section 10** of the Act provides for modified application with respect to non-profit companies:

“(1) Every provision of this Act applies to a non-profit company, subject to the provisions, limitations, alterations or extensions set out in this section, and in Schedule 1.

...

(3) Sections 58 to 65, read with the changes required by the context—

(a) apply to a non-profit company only if the company has voting members;

and [my emphasis]

(b) when applied to a non-profit company, are subject to the provisions of item 4 of Schedule 1.”

3.4 **Section 61(7)** of the Act provides:

*“A **public company** [my emphasis] must convene an annual general meeting of its shareholders –*

(a) initially, no more than 18 months after the company's date of incorporation; and

(b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or with an extended time allowed by the Companies Tribunal, on good cause shown.”

4. EVALUATION

4.1 As indicated, I commence to deal with the issue of whether or not this Tribunal has jurisdiction to deal with this application. It is clear from section 1 of the Act that an NPC is not a “profit company” and cannot be included in the definition of a “public company”. The Schedule 1 provisions describe the nature of the NPC, particularly that it must be operated, directly or indirectly, to advance the “public benefit object”, and that it cannot pay, whether in winding-up or otherwise, any income or transfer any assets to its members.

4.2 Although Section 10(3), provides that sections 58 to 65 of the Act, read with the changes required in the context, apply to non-profit companies, those sections specifically mention various types of companies. However, Section 61(7) itself only

refers to a **public company**.

4.3 If the provisions in respect of a public company were to apply *mutatis mutandis* to a non-profit company, the legislature would have made it expressly applicable, such as in the case of a “state-owned company” as provided for in s 9(1) of the Act.

4.4 Section 61(7) therefore does not apply to a non-profit company; neither as regards a mandatory AGM, nor as regards the jurisdiction of this Tribunal to grant an extension. For further elucidation of this position, it is useful to refer to the substantive and rational decision of my fellow panel member, Mr Manamela in the Gauteng Cricket Board case.¹

4.5 This then begs the question: can the jurisdiction of the Tribunal be extended beyond that provided for in the Act. The Tribunal is a creature of statute and its mandate is strictly to be understood within the paradigms as provided for by section 193 of the Act. In terms of section 195 of the Act, the Tribunal does not have inherent powers.

5. FINDINGS

I find that Section 61(7) of the Act does not apply to a non-profit company. Therefore, Applicant is bound by the provisions of its MOI.²

6. ORDER

The Application is dismissed.

ADV. ISHARA BODASING

¹ Ex parte Gauteng Cricket Board NPC CTR001/11/2012

² See Article 3.7 (Adjournment of Members’ Meeting) and Article 3.8 (Members’ Resolutions)