



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00693ADJ2021

In the matter between:

Safika Holdings (Pty) Ltd	Applicant
and	
Safika Gas Supplies (Pty) Ltd	First respondent
Commissioner of Companies	Second respondent

Presiding Member of the Tribunal : P.A. Delport

Date of Decision : 21 September 2021

DECISION

INTRODUCTION

[1] The applicant applies for a default order because the name of the first respondent does not comply with sections 11(2)(b) and 11(2)(c)(i) of the Companies Act 71 of 2008 ("Companies Act" / "Act").

- [2] Regulations 142 and 153 of the Companies Act (GNR 351 of 26 April 2011) (“Companies Act regulations” / “regulations”) *inter alia* regulate an application to the Companies Tribunal (“Tribunal”) as well as the application for a default order under certain circumstances.
- [3] The jurisdiction of the Tribunal in this matter is as determined in section 160(1) of the Companies Act.

BACKGROUND

- [4] The applicant is Safika Holdings (Pty) Ltd , a company incorporated in terms of the Companies Act.
- [5] The first respondent is Safika Gas Supplies (Pty) Ltd (2020/039317/07), a company incorporated in 2020 in terms of the Companies Act.
- [6] The second respondent is the Commissioner of Companies appointed in terms of section 189 of the Companies Act, of the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act, with the objectives and functions as in section 186
- [7] The initial application on CTR 142 is brought by Goodness Abigail Nokuthula Lumphoko, authorised to do so by a “resolution of directors” dated 7 May 2021 and only signed by herself. There is no indication who the “board” is.
- [8] In the supporting affidavit it is stated that said Goodness Abigail Nokuthula Lumphoko is the “CFO” which would imply, at least, that there are other directors.
- [9] The appellation of “CFO” also does not mean that the deponent is a director, or the sole director, which would have meant that the authority for the institution of proceedings (as opposed to authority to depose the affidavit) would not have been

necessary: see, *inter alia*, *Intongo Property Investment (Pty) Ltd and Another v Groenewald and Others* (15845/2020) [2021] ZAWCHC 174 (2 September 2021) for a recent summary of the principles.

[10] The details of the purported first respondent is attached to said supporting affidavit as Annex S2.

[11] Said Annex S2 however contains details of “Safika Base Corp (Pty) Ltd” (2020/030209/07), with a registered address in Kuruman with TS Disipinyane and TK Disipinyane as directors, clearly not the first respondent. This obviously affects the question as to the validity and integrity of the service to the address of the first respondent.

FINDING AND ORDER

[12] The deficiencies as above are, in my opinion, material and fatal to the application.

[13] The application is postponed *sine die* for the applicant to rectify the above, and other deficiencies, to serve a proper application on the respondents and to file same with the Tribunal.

P.A. DELPORT

COMPANIES TRIBUNAL: MEMBER