



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT00748ADJ2021

Nelly S Mofomme

APPLICANT

CIPC

RESPONDENT

Presiding Member: Dr. M A Chicktay
Date of Decision: 31st August 2021

DECISION

INTRODUCTION

- 1 Applicant Nelly S Mofomme seeks the setting aside of the Respondents decision to refuse to reserve a company name applied for by the applicant.
- 2 The applicant sought to reserve the company name DIKGOSI INCORPORATED but the CIPC refused to reserve the name on the ground that the proposed name is “confusingly similar” to other names already appearing on the CIPC's name register.

APPLICANT'S SUBMISSIONS

- 3 The Applicant submits that DIKGOSI INCORPORATED is not confusingly similar to the other names and the Applicant is in a different line of business.

RESPONDENTS SUBMISSIONS

- 4 The Respondent submits that DIKGOSI INCORPORATED is "confusingly similar" to other names and thus in violation of section 11 of the Companies Act and thus refused to register the name.

APPLICABLE LAW

- 5 Reservation of names is governed by section 12 of the Companies Act. Section 12 reads in the material part as follows:

"(2) The Commission must reserve each name as applied for in the name of the applicant, unless —

- (a) the applicant is prohibited, in terms of section 11(2)(a), from using the name as applied for; or
- (b) the name as applied for is already reserved in terms of this section.

(3) If, upon reserving a name in terms of subsection (2), there are reasonable grounds for considering that the name may be inconsistent with the requirements of-

- (a) section 11(2)(b) or (c)-

- (i) the Commission, by written notice, may require the applicant to serve a copy of the application and name reservation on any particular person, or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for the applicant; and

(ii) any person to whom a notice is required to be given in terms of subparagraph (i) may apply to the Companies Tribunal for a determination and order in terms of section 160."

6 Section 11 (2) of the Companies Act reads in the material part: "(2) The name of a company must(a) not be the same as –

(i) This 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 section 12(9), or as a business name in terms of the Business Names Act, 1960 (Act No. 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 . . .

(b) not be confusingly similar to a name, trade mark, mark, word or expression contemplated in paragraph (a) unless -

(i) in the case of names 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 a defensive name or to a business name referred to in paragraph (a)(ii), the company, or a person who controls the company, is the registered owner of that defensive name or business name ...”

EVALUATION

6 The Respondent would have applied sections of the Act incorrectly when refusing to register the Applicants proposed name.

7 The name that the applicant is requesting is not the same as that stated by the Respondent. Nor has the name proposed been registered. Therefore section 12(2)(a) does not apply and the respondent must reserve the name.

8 Since the Respondent is indicating that the name is “confusingly similar it must apply section 12(3), by written notice, requiring the applicant

whose name was reserved, to serve a copy of the application and name reservation on any particular person, or class of persons, named in the notice, on the grounds that the person or persons may have an interest in the use of the name that has been reserved for by the applicant. Only after the notification process is complete, will section 160 and the powers of the Tribunal apply. No application as referred to above is before the Tribunal in this matter.

- 9 Whether the respondent wants to apply the process in section 12(3) is within its discretion but it cannot circumvent that process by deciding that section 11(2)(b) and/or (c) has not been complied with. That is reserved for the Tribunal in terms of section 160 of the Act.

ORDER

- 10 The respondent is required to register the name applied for by the applicant.
- 11 The registrar of the Tribunal is instructed to bring this ruling to the attention of Companies and Intellectual Property Commission.

Dr. MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL