

IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
“The Tribunal”

Case Number: CT01094ADJ2022

In the matter between:

Shumba Tichatonga Siwisa

First Applicant

SL Debt Recovery SA (Pty) Ltd

Second Applicant

And

Kamal Dhinnath Bhimma

First Respondent

The Companies & Intellectual Property

Commission

Second respondent

In re: SL Debt recovery SA (Pty) Ltd

Registration Number: 2013/07591/07

DECISION

INTRODUCTION:

- [1]** The first applicant is **Shumba Tichatonga Siwisa** (“the first applicant”), an adult male director and sole shareholder of the second applicant, currently employed by the second applicant.
- [2]** The second applicant is **SL Debt Recovery SA** (“the second applicant”), a private company registered in terms of the company laws of the Republic of South Africa, represented herein by the first applicant and with its registered address situated at 26 Ernest Oppenheimer Street, Vasco Da Gam House, First Floor South Wing, Bruma, Johannesburg.

- [3] The first respondent ("the first respondent") is Kamal Dhinnath Bhimma, an adult male businessman currently employed at 10 Gremlin Road, Bryanston, Johannesburg, Gauteng.
- [4] The second respondent the Companies and Intellectual Property Commission, with its head office situated at BlockF, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng. According to the first applicant, the second respondent is only joined to this application as relief is sought for an order directing the second respondent to remove the first respondent as a director of the second applicant.

THE APPLICATION

- [5] This is an application in terms of Section 71(8) of the Companies Act 71 of 2008 ("the Act"), for a default administrative order determining the removal of the first respondent as a director of the second applicant, SL Debt Recovery (Pty) Ltd.
- [6] The application, Form CTR142 and the founding affidavit were issued by the Tribunal's Registrar on the 18 July 2022, and served upon the first respondent's attorneys of record on the same day, as they had been exchanging communications on this issue with the applicant's attorneys, prior to filing this application.
- [7] The first and second applicants have applied to the Tribunal for the removal of the first respondent as a director of the second applicant for the following reason/s:
- The first respondent inserted himself onto the second respondent's (CIPC) records of the second applicant as a director on the 01st April 2022. The first respondent was not authorised to do so, neither was consent given by the first applicant as the sole director at the time. The first applicant believes that the first respondent did this because the first respondent had loaned monies to the

second applicant from 2019 to facilitate the cash flow of the second respondent, which monies were paid back to the first respondent in full. Despite the repayment by the second applicant, the first respondent continued to make various demands from the first applicant. The applicant sought assistance from his lawyers who sent a cease and desist letter to the first respondent. In response, the first respondent inserted himself onto the second respondent's records as the second applicant's director on 01 April 2022. The first applicant further sought the assistance of his attorneys who sent a letter of demand to the first respondent on 14 April 2022, for an undertaking that the first respondent will not hold himself out as a director of the second applicant and will not make contact with the second applicant's clients, to which the first respondent's legal representatives responded on 20 April 2022 providing an undertaking as demanded. On the 3rd May the first applicant's attorneys acknowledged the undertaking by the first respondent's legal representatives and further requesting the first respondent's resignation letter for purposes of removing the first respondent from the records of the second respondent as such appointment to the board of directors was done without the first applicant's knowledge or consent, and was done against the backdrop of the initial cease and desist letter. In a communication from the first respondent's legal representatives dated 09 May 2022, they admitted that the first respondent was appointed by the second respondent in error. No resignation has been forthcoming from the first respondent.

- In light of what the applicant deems overwhelming evidence and admissions by the first respondent, the applicant requests the Tribunal to direct the second respondent to remove the first respondent as a director of the second applicant, off the records of the second applicant.

APPLICABLE LAW

[8] In considering the application and the relief sought by the applicants, one must have consideration to what the Act provides and what powers are conferred by the Act on the Tribunal. Where removal of directors is concerned. While the applicant who is not represented by attorneys herein, has not stated the section of the Act in which he relies for the relief sought, s.71 bears relevant in instances where the applicant seeks removal of a director. Section 71 (8) (b) provides that if a company has fewer than three directors, any director or shareholder of the company may apply to the Companies Tribunal to make a determination regarding such removal. The Act provides that the Tribunal may consider the removal of a director on the following grounds, as contemplated in terms of S.71 (3) of the Act:

- (I) That the director is ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69(8)(a); or
- (II) That the director is 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
- (III) That the director has neglected or been derelict in the performance of the functions of director.

EVALUATION & FINDINGS

[9] The basis of this application for the removal of the first respondent as a director of second applicant is that the first respondent somehow, "inserted" himself or his details into the second respondent's records without the consent or permission of the first applicant, who until this unauthorised update to the second applicant's records, was the sole director of the second applicant. It seems that there may be a possibility that the first respondent fraudulently updated the second applicant's records and may have fraudulently signed some documents without the knowledge of the first applicant. In these circumstances, the first applicant may be advised to open a criminal case with the South African Police Service. Further, the Tribunal does not have jurisdiction to order the removal of the first respondent, in circumstances where the first respondent fraudulently, without authorisation, consent or a resolution of the Board of the second applicant. The jurisdiction of the Tribunal for the removal of a director under circumstances as stipulated in section 71 (8) of the Act. The applicant is advised to bring this matter to the attention of the second respondent for further investigation and to possibly rectify the "error", as alleged by the first respondent, as soon as possible after receipt of this order.

ORDER

The application is refused on the basis that the Tribunal does not have the requisite jurisdiction, as stated above.

B. Zulu**MEMBER: COMPANIES TRIBUNAL****29 August 2022**