



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT01138ADJ2022

In the matter between:

OCTAVIA MATSHIDISO MATLOA

Applicant

and

THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

First Respondent

HOPE PHUNGO

Second Respondent

LUCINDA STEENKAMP

Third Respondent

MULTICHOICE SOUTH AFRICA HOLDINGS (PTY) LTD

Fourth Respondent

MULTICHOICE SOUTH AFRICA (PTY) LTD

Fifth Respondent

STEPHAN JOSEPH ZBIGNIEW PACAK

Sixth Respondent

FRANCIS LEHLOHONOLO NAPO LETELE

Seventh Respondent

SALUKAZI DAKILE HLONGWANE

Eighth Respondent

DONALD GORDON ERIKSSON

Ninth Respondent

KGOMOTSO DITSEBE MOROKA

Tenth Respondent

KHULU BRANSBY SIBIYA

Eleventh Respondent

JOHN JAMES VOLKWYN

Twelfth Respondent

ELIAS MASILELA

Thirteenth Respondent

LOUISA STEPHENS

Fourteenth Respondent

TIMOTHY NEIL JACOBS

Fifteenth Respondent

CALVO PHEDI MAWELA

Sixteenth Respondent

MOHAMED IMTIAZ AHMED PATEL

17th Respondent

Presiding Member: Dr. M A Chicktay

Date of Decision: 3rd February 2024

DECISION

INTRODUCTION

- 1 At the hearing on 1st December 2023 the Fourth and Fifth Respondent raised points in limine, which the Applicant had opposed. What follows is an analysis of the argument and finding.

FOURTH AND FIFTH RESPONDENT'S SUBMISSIONS

2. The essence of her case is delinquency. Delinquency is dealt with in section 162 of the Companies Act. Section 162(2) states who can bring the application. Such an application must be brought to a court. Hence the Tribunal does not have jurisdiction to hear such a matter. The Respondent indicates further that the Applicant was not a director.
3. Section 195 of the Act sets out the general functions of the Tribunal and provides that the Tribunal has the ability to adjudicate disputes which *"may be made to it in terms of the Act"*.
4. Section 170(2)(c) provides that when the Commission decides not to refer to a complaint it must *"issue a notice of non-referral to the complainant, with a statement advising the complainant of any rights they may have under this Act to seek a remedy in court"*. (emphasis added)
5. Section 174 provides that were a notice of non-referral is issued in response to a complaint, the complainant may approach a court to seek leave to refer the complaint directly to court, and if leave is granted then the court may determine whether there has been a contravention of the

Act, and may require the Commission to issue a compliance notice, or make any other order contemplated in the Act that is just and reasonable in the circumstances.

6. In terms of section 170(2)(g), the Commission may issue a compliance notice on the basis of the report under s 171(1)(a). Section 171(1)(a) provides that that a compliance notice may be issued if the Commission, on reasonable grounds, believes that any person has contravened the Act.
7. Under s 172(1) a person issued with a compliance notice by the Commission may approach the Tribunal to review such notice within 15 business days. The Tribunal is empowered to confirm, modify or cancel a compliance notice under s 172(2).
8. Regulation 141 of the Companies Regulations provides that “[a] *complaint proceeding to be adjudicated by the Tribunal may be initiated only by filing a Complaint Referral as contemplated in section 170 (1) (b)*” (i.e. a referral by either Commission or the TRP, not a complainant).
9. This application is brought under Regulation 142 of the Companies Regulations provides for the appeal or review of a decision of the Commission to the Tribunal “in respect of matters other than complaints”. Regulation 142 does not provide a general power to bring matters to the Tribunal, but only for the procedure to refer a “*matter contemplated by the Act, or these regulations,*” as provided in Regulation 142(1) to the Tribunal.

10. The review of a non-referral of a complaint is not contemplated as within the Tribunal's jurisdiction under the Act, and so its decision cannot be referred under Regulation 142(1). It is therefore submitted that the Tribunal has no jurisdiction to consider a review of a decision to dismiss a complaint, and the proper remedy in such a case is to approach the High Court for such relief as a complainant believes they are entitled to. On this basis alone, the application cannot succeed.

APPLICANTS SUBMISSIONS

11. The Applicant's submissions are as follows:

12. It is not denied that the Applicant does not have locus standi to approach a court for an order of delinquency in terms of Section 162(2) of the Act.

13. The Applicant is however free, as per Section 168 of the Act to refer complaints to the CIPC for investigation, as this right is afforded to 'any person',

14. The complaint by the Applicant to the CIPC was inter alia that the 6th to 7th Respondents (the "Directors") conducted themselves in a manner which subjects them to an order of delinquency, in terms of Section 162(c)(iv)(aa) and requesting the CIPC to investigate this conduct. The Applicant has not sought an order to which she is not entitled in a forum which is not empowered to grant such an order. The Applicant has not called for an order for delinquency, but a determination with regard to

whether or not the directors themselves seek an order of delinquency should they find transgressions warranting such an order and elect to do so.

15. An inspection report has since been prepared in relation to this complaint and subsequent to an investigation in terms of Section 169. It is common cause that the CIPC has taken no further steps in terms of Section 170(1).

16. It is submitted that PAJA is not available to the Applicant under these circumstances as Sections 6(3)(a)(i) and (b)(i) read with Section 6(2)(g) of PAJA refers to the administrative body in question having a duty to take a decision, whereas Section 170(1) refers to the steps which the CIPC may take after receiving the inspector's report.

17. As the options are prescribed but not the fact that such an option must be taken up, it is unlikely that one may motivate a specific duty to act under these circumstances.

18. In the absence of a Section 170(1)(c) notice advising of the rights to seek relief in court, to the extent that said notice would prohibit any other remedy, there is no prohibition on the Applicant still seeking to review and set aside an inspection report issued pursuant to a Section 169 investigation.

19. The Applicant thus relies on a Tribunal review herein in that she calls upon the Tribunal to set aside the decision of the inspector and refer the matter back to the CIPC for full investigation and an appropriate determination on all aspects relating to the complaint.

20. It is submitted that this falls within the realm of a review as contemplated in Regulation 142(3)(b)(ii) of the Regulations, which it is further submitted does not have a narrow scope.

21. The Applicant was further guided in this regard by the decision in *S, Mdletshe vs CIPC*¹ as referred to in the Applicant's heads of argument.

22. Albeit that the default review application therein referenced the fact that the CIPC had taken the decision not to investigate the Complainant's complaint (which could then be presumed to be in terms of Section 169(1)(a) of the Act), the decision further references an 'Outcome of investigation report' at paragraph 5.3 which would then fall within the realm of Section 170(1).

23. In this matter, in which the Applicant submitted that he was fraudulently removed as a director, the Tribunal did not reconsider the actual

¹ CT00873ADJ2021

determination of the CIPC but referenced the fact that the report was 'flippant', that there were several steps which the investigator could have taken and did not take, and that a more thorough investigation of the complaint was warranted.

24. Ultimately, the review was upheld, and the inspector's decision was reviewed and set aside requiring the CIPC to conduct a further investigation of the complaint.

25. It is thus submitted that there is precedent for the Tribunal entertaining these types of reviews and that the Applicant should be entitled to persist herewith.

26. Accordingly, the Applicant prays that the Respondents' point(s) in /imine be dismissed.

APPLICABLE LAW

APPLICABLE LAW

1. Section 171 of the Act states: "(1) Subject to subsection (3), the Commission ... may issue a compliance notice in the prescribed form to any person whom the Commission ... as the case may be, on reasonable grounds believes – (a) has contravened this Act; or (b) assented to, was implicated in, or directly or indirectly benefited from, a contravention of this Act, unless the

alleged contravention could otherwise be addressed in terms of this Act by an application to a court or to the Companies Tribunal. (2) A compliance notice may require the person to whom it is addressed to- (a) cease, correct or reverse any action in contravention of this Act; (b) take any action required by this Act; (c) restore assets or their value to a company or any other person; (d) provide a community service, in the case of a notice issued by the Commission; or (e) take any other steps reasonably related to the contravention and designed to rectify its effect. (3) When issuing a notice in terms of subsection (1) to a regulated person or entity, the Commission ... must send a copy of the notice to the regulatory authority that granted a license or similar authority to that regulated person or entity, and in terms of which that person is authorised to conduct business. (4) A compliance notice contemplated in subsection (1) must set out – (a) the person or association to whom the notice applies; (b) the provision of this Act that has been contravened; (c) details of the nature and extent of the non-compliance; (d) any steps that are required to be taken and the period within which those steps must be taken; and (e) any penalty that may be imposed in terms of this Act if those steps are not taken. **(5) A compliance notice issued in terms of this section, or any part of it, remains in force until- (a) it is set aside by- 5 (i) the Companies Tribunal, or a court upon a review of the notice, in the case of a notice issued by the Commission ...; or**

EVALUATION AND FINDINGS

2. Section 71 of the Companies Act enables me to review and set aside compliance notices passed by CIPC. In the case before me the Applicant is not asking me to set aside a CIPC Notice on review but is instead asking me to call on CIPC to conduct a proper investigation and questions the investigation report. Section 71 of the Companies Act is thus not applicable in this case.

ORDER

- a. The Application is dismissed.

**MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL**