

SOUTH AFRICA / JUDGMENT

Cossadianos and Others v Nel and Others (2024-104634) [2025] ZAGPPHC 284 (17 March 2025) [2025] ZAGPPHC 284

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

2024-104634

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO.: 2024-104634

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 17 March 2025

E van der Schyff

In

the matter between:

DEMETRIOS
COSSADIANOS
First Applicant
DEMCO
INVESTMENTS GROUP (PTY) LTD
Second Applicant
AFRIQBRAND
(PTY) LTD
Third Applicant
and
STEPHANUS
JACOBUS NEL
First Respondent
SJ
DRILLING IMPALA COVER (PTY) LTD
Second Respondent
SJ
DRILLING IMPALA DEVELOPMENT (PTY) LTD
Third Respondent
CHEMICK
(PTY) LTD
Fourth Respondent
SHESHA
QUICK LOANS (PTY) LTD
Fifth Respondent
NCM
AFRICA (PTY) LTD
Sixth Respondent
THE
COMPANIES INTELLECTUAL
PROPERTY
COMMISSION
Seventh Respondent
SJ
DRILLING (PTY) LTD
Eighth Respondent
PROSPECT
MINE (PTY) LTD
Ninth Respondent
SHJAELL
NEL
Tenth Respondent
HLABANG
JONAS MOHLALA
Eleventh Respondent
TERRY
JUNKIE PEHTLA
Twelfth Respondent
GLOBAL
MINING SUPPLIES (PTY) LTD
Thirteenth Respondent

ABSA
BANK
LTD
Fourteenth Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] In this application, the applicants seek relief in terms of section 163 of the Companies Act 71 of 2008 (2008 Companies Act), alternatively the common law. The first, eighth, and thirteenth respondents (collectively referred to as the respondents) oppose the application. Although the respondents agree that the relationship between the first applicant, Mr. Cossadianos, and the first respondent, Mr. Nel, has irretrievably broken down and that there is no trust relationship between them, the respondents deny that the applicants have established that the conduct complained of falls within the ambit of section 163 of the 2008 Companies Act.

Relief sought

- [3] A point of contention exists regarding whether the relief sought by the applicants is final or interim relief. If regard is had to the notice of motion filed, the following stands out:
- i. The applicants seek the appointment of an independent director to effectively displace Messrs. Nel and Cossadianos as directors of the second to sixth respondents as far as the payment of expenses, disbursements, and debts of the second to sixth respondents are concerned;
 - ii. The independent director is to constitute the board of the second to sixth respondents together with the existing directors;
 - iii. The independent director must have the sole and exclusive right to administer and make payments from the banking accounts that the second to sixth respondents have with ABSA Bank Ltd, the fourteenth respondent;
 - iv. The thirteenth respondent must implement, execute and give full force to any direction given to it by the independent director;
 - v. The eighth respondent should be interdicted and restrained from utilising, the vendor registration number that the eighth respondent has with Impala Platinum Limited in connection with possible future dealings with customers and clients of the second and third respondents;

vi. The first to sixth respondents and the eighth to thirteen respondents are to be interdicted from preventing the applicants from enjoying the rights, privileges, and arrangements the applicants had with the second to sixth respondents as at 28 July 2024, or to restrict the applicants' access to business premises of any of the respondents and to the books and records of the second to sixth respondents.

[4] The applicants further state in the notice of motion that the relief sought set out above, shall apply as interim relief pending the appointment of a valuer to undertake the valuation of shares and loan accounts held in the second to sixth respondents to eventually facilitate the sale of the shares in the second to sixth respondents in any one of several alternative scenarios.

[5] The use of the phrase 'interim relief pending...'

does not have any magical quality to turn an order that has final effect into an interim order. I agree with the respondents'

counsel that the applicants, in essence, seek a final order. They want to facilitate a clean break between Mr. Nel and Mr. Cossadianos

and the respective entities wherein they have interests. The appointment of the independent director is not sought as interim relief pending further legal proceedings where a dispute will finally be adjudicated. It is sought as a protective measure to safeguard the applicants' interests pending the valuation of the shares and loan accounts and the sale of shares in the second to sixth

respondents.

Shareholding and directorship in the respective companies cited in the application

[6] To understand the factual matrix, it is necessary to have regard to the directorship and shareholding of the companies cited in this application.

[7] Mr. Cossadianos is the sole director of the second applicant

("Demco"). He is also the sole director of the third applicant ("Afriqbrand"). Demco is the sole shareholder

in Afriqbrand.

[8] Mr. Cossadianos and Mr. Nel are the directors of the second respondent ("Impala Cover"). The shareholding in Impala Cover is as follows: The eighth respondent ("SJ Drilling") holds 50% of the shares, Demco holds 24% of the shares, and Afriqbrand holds 26% of the shares.

[9] Mr. Cossadianos and Mr. Nel are the directors of the third respondent ("Impala Development"). The shareholding of Impala Development is as follows: SJ Drilling holds 50%, Demco holds 24% of the shares, and Afriqbrand holds 26% of the shares.

- [10] Mr. Cossadianos and Mr. Nel are the directors of the fourth respondent (“Chemick”). The ninth respondent (“Prospect”) holds 50% of the shares and Afriqbrand holds 50%.
- [11] Mr. Cossadianos and Mr. Nel are the directors of the fifth respondent (“Shesha”). Prospect holds 50% of the shares, and Afriqbrand holds 50%.
- [12] Mr. Cossadianos, Mr. Nel, and the tenth, eleventh, and twelfth respondents are directors of the sixth respondent (“NCM Africa”). The shareholding in NCM Africa is as follows- SJ Drilling holds 42% of the shares, Demco holds 24% of the shares, the tenth respondent holds 4% of the shares, the eleventh respondent holds 15% of the shares and the twelfth respondent holds 15% of the shares.
- [13] Mr. Nel is a director of SJ Drilling, the eighth respondent. Prospect holds 49% of shares in SJ Drilling, and an unrelated company, Boleng Mining (Pty) Ltd, holds the remaining 51%.
- [14] Mr. Cossadianos holds no interest in the thirteenth respondent, Global Mining Supplies (Pty) Ltd (“GMS”). GMS’s interest in this litigation is that its premises were used for the administration of all the relevant corporate entities cited herein as respondents wherein Mr. Cossadianos had an interest, whether directly as a director or through his shareholding in Demco and Afriqbrand.

Factual context

- [15] Mr. Nel confirms in the answering affidavit that Mr. Cossadianos was a director of Impala Cover, Impala Development, Chemick, Shesha and NCM Africa, collectively referred to as the jointly owned companies.[1] jointly owned companies. These are companies in which Mr. Nel and Mr. Cossadianos had interests, albeit through other companies. Mr. Cossadianos became a shareholder of the jointly owned companies through Demco and Afriqbrand.
- [16] Mr. Cossadianos fulfilled the functions of an executive director and Chief Financial Officer in the second to sixth respondents. Mr. Nel explains in his answering affidavit that since the end of 2018, Mr.

Cossadianos was responsible for performing the restructuring of the companies, tax, company secretarial, and financial-related services to all the members of the SJ Group of companies. This included but was not limited to, the design and implementation of financial systems, the keeping of up-to-date compliant financial records, the preparation of monthly budgets, the compilation and audit of financial statements, and the submission of VAT and income tax returns to SARS.

- [17] He obtained financial benefits from his involvement with the second to sixth respondents,[2] had unrestricted access to the bank accounts and internet-banking applications, and freely visited the premises of Global Mining

Supplies, the thirteenth respondent, from where the administration of the other respondents' business was conducted. Global Mining Supplies is described in the answering affidavit as the 'nerve centre' of the entire Group of companies. All the member companies in the Group outsourced their administrative and financial functions to Global Mining Supplies, and the latter would, among others, attend to the member companies' payroll, accounting, tax, PAYE, and supplier payments.

[18] It is common cause that:

- i. Mr. Cossadianos's access to any information regarding the second to sixth respondent entities has been unilaterally terminated by Mr. Nel around August 2024;
- ii. Mr. Cossadianos was refused access to Global Mining Supplies' premises from where the entities are managed on a daily basis;
- iii. On 30 August 2024, Mr. Nel depleted Impala Cover and Impala Development's bank accounts and transferred the money in the respective accounts to an unknown bank account;
- iv. Since 30 August 2024, Mr. Cossadianos's access to the internet banking platforms of Impala Cover and Impala Development was unilaterally terminated, and his access has since been denied;
- v. Mr. Cossadianos's access to unilaterally effect and authorise payments from the bank accounts of the jointly owned companies and the member companies has been stopped;
- vi. Despite Mr. Cossadianos's repeated requests, no directors'

meeting was held for the second to fifth respondents subsequent to Mr. Nel's unilateral actions. One meeting was arranged, but Mr. Nel failed to attend without prior notice.

[19] The common cause facts indicate that Mr. Nel unilaterally excluded Mr. Cossadianos from the companies where he was a director and had interests in through Demco and Afriqbrand. Mr. Cossadianos was refused access to financial information, refused access to the premises from which the entities are managed, and prevented from fulfilling his fiduciary duties as director and Chief Financial Officer, and he did not receive any continued financial benefit from the companies. Mr. Cossadianos was effectively excluded and sidelined from the business without any legal process being followed.

[20] Mr. Nel justifies his conduct. He claims that Mr. Cossadianos, among others –

- i. fraudulently misrepresented material facts to SJ Drilling and himself, which led him to conclude certain oral agreements with Mr. Cossadianos, pursuant to which Mr. Cossadianos obtained the directorship and interests in the respective companies;
- ii. breached his obligations under the oral agreements by falsifying and manipulating accounting records and by defrauding SARS and the member companies of the SJ Drilling Group of companies;

- iii. breached his fiduciary duties as director of the jointly owned companies and prescribed officer of the member companies;
 - iv. misappropriated funds in substantial amounts;
 - v. was the sole cause of the breakdown of the relationship between the respective parties, and caused the problems that have arisen in the jointly owned companies.
- [21] Mr. Nel claims that since Mr. Cossadianos's involvement in the business affairs of the second to sixths respondents, he has appropriated tens of millions of rands, fraudulently transferred millions of rands to his family and friends and brought the companies to the brink of corruption. As a result of this alleged fraud perpetrated by Mr. Cossadianos against Mr. Nel and SJ Drilling, they elected to void and cancel the oral agreements concluded in 2018 in terms whereof the applicants were granted shares. Mr. Nel contends that the applicants are no longer shareholders and denies that they

have the requisite locus standi to any of the relief sought by them. Mr. Nel effectively justifies his unilateral conduct by defining it as an emergency measure in order to stop Mr. Cossadianos from plundering the companies' resources.

- [22] I pause to note that although it is not contained in any of the papers before the court, counsel for the respective parties submitted during oral argument that, to date, Mr. Nel has not instituted any civil action against Mr. Cossadianos, nor were any criminal proceedings to date instituted against him.

Discussion

The locus standi issue

- [23] The record reflects that the notice of motion was served on the respondents on 16 September 2024. In the answering affidavit, Mr. Nel states that he communicated the decision to void the agreement with the applicants in terms of which they obtained interests in the respective affected companies, in a letter dated 17 September 2024.
- [24] The locus standi point was not argued with conviction when the matter was heard, and rightly so. It is trite that the s 163 remedy is aimed at achieving the balancing of the interests of all shareholders and directors,[3] and that s 163 must be construed in a manner that will advance the remedy it provides rather than limit it.[4] It would defeat the purpose for which the legislature crafted the s 163 remedies if an aggrieved director or shareholder's locus standi can be challenged because of the ex post facto[5] termination of its directorship or unilateral cancellation of the agreement in terms of which shareholding in the company was obtained.

[25] Mr. Cossadianos took issue with Mr. Nel and SJ Drilling's decision to cancel or render the agreement under which he acquired shares in the respective companies void. He highlights that shareholders' agreements were concluded, a fact attested to by Mr. Nel claiming that the shareholders' agreements make provision for the existence of a shareholder. He describes this decision as an attempt to try to appropriate his shares without due process.

[26] In these circumstances, Mr. Nel and SJ Drilling could not unilaterally rescind the agreement in terms of which Mr. Cossadianos acquired interests in the respective companies. Mr. Cossadianos was, in any event, not removed as a director of the companies in which he holds a directorship. In these circumstances, I find no merit in the submission that the applicants lack locus standi to claim relief under s 163.

Dispute of facts

[27] In the replying affidavit, Mr. Cossadianos vehemently denied the allegations of fraud. He explained that both directors of the company earned a monthly income. It was, however, not a fixed monthly income,

but determined on a month-to-month basis, depending on the performance of the company. For reasons that will become more apparent below, I don't deem it necessary to deal with Mr. Cossadianos's reply to each of the allegations made by Mr. Nel.

[28] The dispute of fact that does exist relates not to Mr. Nel's unilateral exclusion of Mr. Cossadianos from the companies' business, but to the alleged fraudulent conduct of Mr. Cossadianos. As is apparent from the discussion below, even if it is accepted that a dispute of fact exists in this regard, it is not a dispute that

renders the application incapable of being considered on the papers filed.

[29] Mr. Cossadianos also disputes Mr. Nel and SJ Drilling's right to unilaterally rescind the agreement in terms of which he acquired

interests in the second to sixth respondents. The authors of the well-known work Christie's Law of Contract in South Africa,[6] explained that where the right to rescind an agreement allegedly induced by fraud is challenged, as it is in this matter, the 'innocent

party' should utilise legal process and claim cancellation or rescission of the contract

[30] The dispute that exists regarding Mr. Nel and SJ Drilling's entitlement to rescind or cancel the agreement unilaterally is not an obstacle to determining the application on the papers before the court, although it is taken into account in determining just and equitable relief.

Section 163

- [31] The question that needs to be answered is whether when Mr. Nel exercised his power as a director in the second to sixth respondents and took matters into his own hands by unilaterally excluding Mr. Cossadianos from the respective companies' business in the manner he concedes he did, he exercised the power in a manner that was oppressive or unfairly prejudicial to the applicants and in particular to Mr. Cossadianos, or that unfairly disregarded the applicants, and particularly Mr. Cossadianos's interests.
- [32] It is trite that the question of whether the affairs of a company are being conducted in a manner that is oppressive to part of the members, is a question of fact.[7] The same principle applies in determining whether a director exercised its power in a manner that is oppressive, unfairly prejudicial to, or unfairly disregards the interests of the applicant.
- [33] There is no doubt about the fact that Mr. Nel reverted to self-help when he excluded Mr. Cossadianos from the business affairs of the respective companies in the manner that he concedes he did. He attempts to justify his actions by claiming that Mr. Cossadianos defrauded him and SJ Drilling and misappropriated large amounts from the respective companies.
- [34] One of the founding values of the Republic of South Africa is the supremacy of the constitution and the rule of law.[8] Self-help violates section 1(c) of the Constitution. Mokgoro J explained in *Chief Lesapo v North West Agricultural Bank and Another*[9] that the rule against self-help is necessary for the protection of the individual against arbitrary and subjective decisions and conduct of an adversary.
- [35] Section 34 of the Constitution guarantees the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. The right to have justiciable issues adjudicated by a court of law is foundational to the stability of an orderly society. Resorting to self-help undermines the very foundation of the rule of law.
- [36] In the circumstances of this matter, Mr. Nel and SJ Drilling's actions caused Mr. Cossadianos to suffer financial loss without providing him with an opportunity to answer to allegations leveled at him. It excluded him from the business affairs of companies wherein he had specific functions to fulfill, functions that he fulfilled as director of the said companies before he was excluded. Whether there is any merit in the allegations of fraud raised by Mr. Nel is of no concern; no person is entitled to take the law into their own hands.
- [37] The ex post facto report obtained without Mr. Cossadianos's input or comments is likewise irrelevant. The bottom line is that Mr. Nel, and through him also SJ Drilling, arrogated to themselves the rights reserved for a court of law. Through reverting to self-help Mr. Nel exercised the powers of a director in a manner that is oppressive – in that Mr. Cossadianos, as co-director, had to turn to a court of law for assistance; he exercised the power of a director in a manner that was unfairly prejudicial to Mr Cossadianos

in more than one way, but among other by denying him audi and keeping him in the dark regarding the companies' business affairs. There is no legal basis that justifies Mr. Nel's

conduct as it was not authorised in terms of a court order. The applicants succeeded in bringing this application within the ambit of s 163.

[38] This leaves the issue of appropriate relief. On the papers, it is common cause that there is a deadlock as far as the second to fifth companies are concerned. Mr. Cossadianos has been kept in the dark about the companies' respective dealings since his exclusion. His fear that a situation might have been orchestrated through which

the eighth respondent essentially 'took over' the business previously conducted by the entities in which he has an

interest is not unfounded. The facts that preceded the institution of the application illustrate that Mr. Nel indirectly exercised control over the juristic persons concerned and has the ability to materially influence the policy of the said juristic persons. It is clear that Mr. Nel and Mr. Cossadianos need to part ways, and due to their vested interests and hands-on management of the companies, it is justified to provide for a clean break, even though there is no deadlock as far as the sixth respondent is concerned.

Appropriate remedy

[39] I requested the parties to file supplementary heads dealing with the issue of the relief to be granted, and specifically considering the question as to whether the granting of a winding-up order would be an appropriate remedy under s 163 in the event of a finding that the jurisdictional requirements of s 163 have been met. I have considered the submissions made therein and am convinced that it is not competent relief to be granted in the circumstances.

[40] In the circumstances of this matter the appointment of an independent director is justified. The independent director should, however, act together with the existing directors.

[41] The court can also not merely disregard the averment that Mr. Nel and SJ Drilling seek to rescind the agreement in terms of which Mr. Cossadianos acquired interests in the respective and applicable corporate entities. Any order granted must provide for the

possibility of legal process being instituted in this regard.[10] The companies, however, need to be able to function pending the finalisation of such legal process, and the respective parties' interests must be protected.

ORDER

In the result, the following order is granted:

1. Mr JZH Muller of Tshwane Trust or his nominee, is appointed as an independent director of the Second to Sixth Respondents ("the independent director").

2. The independent director may not be removed as a director, save by an order of this court having jurisdiction.
3. The independent director shall constitute the board of the aforementioned companies, together with such directors as have already been appointed for the aforementioned companies.
4. The board shall have the sole and exclusive right to administer and make payment from the banking facilities and banking accounts which the aforementioned companies have at Absa Bank Ltd (“the Fourteenth Respondent”) and the Fourteenth Respondent is hereby directed and ordered to create or establish the required platform or function, in substitution of the existing platforms and/or functions utilized by the aforementioned companies by means of which the board will be entitled to make exclusive payment on behalf of the aforementioned companies, of the payments required to be made, from that platform or via that function created by Absa Bank Limited.
5. The Thirteenth Respondent, Global Mining Supplies (Pty) Ltd is hereby ordered to implement, execute and otherwise give full force and effect to whatever directions are given to the Thirteenth Respondent by the board in relation to the administration of the financial affairs and finances of the aforementioned companies.
6. The First Respondent is interdicted and restrained from instructing or otherwise orchestrating that the Thirteenth Respondent, Global Mining Supplies (Pty) Ltd, would not attend to the administrative functions and duties which the Thirteenth Respondent had in the past executed on behalf of the aforementioned companies.
7. The Eighth Respondent is interdicted and restrained from utilising, in connection with possible future dealings with existing customers and/or clients of the Second and Third Respondents, the vendor registration number which the Eighth Respondent has with Impala Platinum Limited.
8. It is declared that the Applicants shall have in all respects the rights, functions and authorities with reference to the Second to Sixth Respondents, which the Applicants have had prior to 28 July 2024, subject to the powers ascribed to the independent director.
9. Subject to the powers ascribed to the independent director, the First to Sixth Respondents and the Eighth to Thirteenth Respondents are interdicted and restrained from:
 - 9.1. Preventing and otherwise obstructing the Applicants to enjoy in all respects the rights, privileges and arrangements which the Applicants have had with the Second to Sixth Respondents as at 28 July 2024.

9.2. Without derogating from the generality of the foregoing, the First to Sixth Respondents and the Eighth to Thirteenth Respondents are interdicted and restrained from obstructing and/or preventing the Applicants from gaining access to any business premises of any of the Respondents, and to allow the Applicants full and unrestricted access of and to the books and financial affairs of the Second to Sixth Respondents.

10. The independent director is to receive such reasonable remuneration as determined by the Head of the Legal Department at Price Waterhouse Coopers.

11. The relief in prayers 1 up to and including 10 above, shall apply pending the finalisation and implementation of the remainder of the terms of the order:

11.1. Mr Johan Ferreira, a qualified chartered accountant of J Ferreira Incorporated, alternatively another appropriate valuator ("the valuer") appointed by this court shall undertake a valuation of the shares and/or loan accounts held in or against the Second to Sixth Respondents in accordance with the directions contained in prayers 11.2 to 12.11 below.

11.2. Fair value of the shares and/or loan account shall be determined with regard to the financial condition of the Second to Sixth Respondents as at 28 July 2024.

11.3. The valuer is to make the determination in respect of the fair value of the shares and loan accounts envisaged above within a period of 60 days from date of this order and within 45 days from being appointed, and shall deliver to the parties a written notice indicating the fair value of the shares and loan accounts as determined of the Second and Third Applicants in the Second to Sixth Respondents.

11.4. The costs of the valuer are to be borne by the respective Respondents in respect of their respective valuations.

11.5. In determining the aforesaid value, the valuer shall act as an expert and not an arbitrator.

11.6. The fair value of the shares and loan accounts in respect of the Second to Sixth Respondent shall be determined with regard to the financial position of the respective Respondents as at 28 July 2024, being the day before the date that the SJ Drilling Group of companies excluded the First Applicant from the business of the Second to Sixth Respondents.

11.7. The value of the shares shall be determined pro rata the total issued share capital of the Second to Sixth Respondents, that is without any discount for the shares representing the minority or majority shareholding and without any discount on account of any contractual restrictions that may or might have been agreed upon between the shareholders or provided for in the Memorandum of Incorporation or any shareholders' agreement on the disposal of the shares other than between the existing shareholders.

11.8. Any cost borne by the First Respondent, in respect of this application, shall be excluded from the valuer's determination and the purchase price of the shares in respect of the Second to Sixth Respondents are to be determined as if such costs had not been borne by him.

11.9. Each party to this application shall fully and timeously cooperate with the valuer and furnish all relevant information, appropriately vouched and all documentation required by the valuer to undertake the valuation and determination, failing which the valuer is authorised to make application to this court for directions.

12. The valuer shall have the following further powers:

12.1. The right to conduct all investigations necessary and, in particular, to obtain from the parties or any third party or entity all information and documentation considered by the valuer, reasonably necessary for the valuer's determination; and

12.2. The right to obtain information regarding the financial affairs from any bank, financial institution or other entity where monies have been invested or to which/who monies may be owed by any of the entities relevant to the determination; and

12.3. The right to obtain and call for balance sheets or income statements in respect of any of the entity or business entity or business relevant to the determination; and

12.4. The right to inspect books of account in respect of any company or entity, including but not limited to bank statements, pay checks, deposit books and personal statement of affairs and liabilities, which the valuer considers relevant for the determination; and

12.5. The right to make physical inspection of assets and take inventories; and

12.6. The right to question any person or party and obtain explanations deemed necessary for the purpose of making the determination; and

12.7. To do anything or to take any such steps as may be reasonable be considered by the valuer to be relevant to the valuer's determination, including the appointment of an expert valuer to value assets (including commercial properties or immovable properties or movable properties) of any one of the Respondents; and

12.8. Be entitled to apply to this court for any further direction that the valuer shall or may consider necessary in order to perform his determination; and

12.9. To take into account any matter which the valuer considers relevant to determining what the valuer considers to be fair value as at the date of the issuing of this application; and

12.10. The Applicants and the First Respondent shall be entitled to forward any documents or representations to the valuer and shall be entitled to copies of any documents or representations made available by the other party and in respect of which the other party is entitled to comment to the valuer; and

12.11. The determination of the valuer shall be final and binding on the parties and shall be made available within 45 days from date of being appointed.

13. The valuer shall determine the value of the Applicants' shares

as envisaged above.

14. In the event that the second and/or eighth respondents intend to

commence with legal process regarding the rescission of the agreement in terms of which Mr. Cossadianos acquired interests in the second to sixth respondents, such legal process, to have an impact on the proceedings currently before the court, must commence within 30 days of this order being granted, the steps set out below will be subject to the outcome of such legal process and timelines will be amended accordingly.

15. In the event of no legal process being instituted within the period

stipulated in paragraph 14, supra, then within 14 (fourteen) days after the aforementioned valuation has been made, the First to Sixth and Eighth to Twelfth Respondents are hereby afforded an opportunity to purchase from the Applicants the shares and/or loan accounts held against the aforementioned companies.

16. In the event of legal process being commenced with and if the outcome

of such legal process is in Mr. Cossadianos' favour, within 14 (fourteen) days after the final outcome of such legal process in Mr. Cossadianos's favour, the First to Sixth and Eighth to Twelfth Respondents are hereby afforded an opportunity to purchase from the Applicants the shares and/or loan accounts held against the aforementioned companies.

17. In the event that the aforementioned Respondents, as envisaged in

prayers 15-16 above, do not acquire the aforementioned shares and/or loan accounts as envisaged in prayer 15 - 16 above, within the respective time period in prayer 15-16 above, alternatively if the Applicants and the prospective purchasing Respondents are unable to agree to the contractual terms under which the aforementioned

Respondents would acquire the aforementioned shares, then and in that event and as from a period calculated from 15 days after the valuation of the independent valuer had been furnished to the parties, alternatively the periods specified in paragraphs 15-16 supra, then the independent valuer shall have the right to sell and dispose of all of the shares and/or loan accounts in the Second to Sixth Respondents, to any person or entity interested in purchasing same for the best possible price and on such terms as may be determined in the sole discretion of the valuator. The relief in this paragraph is subject thereto that (i) no legal process

commenced against the applicants or (ii) legal process commenced with were conducted in favour of the applicant.

18. In the event that the aforementioned valuer fails to procure, within

40 (forty) days after he acquired the right to sell as provided for in prayer 15 and 16 respectively, a suitable buyer for a suitable

price, then and in that event the Applicants shall be entitled to amplify the papers and re-enrol the application for the procurement

of an order for the final winding-up of the Second to Sixth Respondents.

19. The First, Eighth and Thirteenth Respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of this application, costs to include the costs consequent upon the employment of two counsel of which one is a senior on scale C and a junior on scale B.

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicants: Adv. M.P. van der Merwe SC With: Adv. J. Eastes Instructed by: Tim du Toit & Co. For the first, eighth and thirteenth respondents: Adv. J. Vorster SC With: Adv. S.N. Davis Instructed by: SEG Attorneys Inc. Date of the hearing: 20 February 2025 Date of judgment: 17 March 2025

- [1] Mr. Nel includes a company Specialised Mining Operations (Pty) Ltd in the group of jointly owned companies, but this company is not cited as a party to these proceedings.
- [2] Mr. Cossadianos claims that in exchange for his services and also because of his directorship and shareholding he received payments of about R1 083 750.00 from the respective entities as a monthly salary. Mr. Nel denies that any form of salary or director's

remuneration was ever agreed to but admits that Mr. Cossadianos received large amounts, although he claims that Mr. Cossadianos

'recently appropriated significant large amounts. Since Mr. Nel has the bank statements at hand, it was possible to prove

whether Mr. Cossadianos received the said amounts on a monthly basis and the attempt to indicate that the amounts were only recently

appropriated is not supported by a factual basis.

- [3] Parry v Dunn-Blatch and Others (394/2022)

[2024] ZASCA 19 (28 February 2024) at para [32].

- [4] Grancy Property Ltd v Manala 2015

- (3) SA 313 (SCA).

- [5] See Briers and Another v Dr J Bruwer and Assoc no 78 Inc. (19726/2023)

[2024] ZAWCHC 76 (30 May 2024).

[6] Christie, R. updated by Bradfield, GB. 200,2 8th ed, 353.

[7] Benjamin v Elysium Investments (Pty) Ltd 1960 (3) SA 467 (E) at 476H.

[8] Section 1(c) of The Constitution of the Republic of South Africa, 1996.

[9]

[1999] ZACC 16; 2000 (1) SA 409 (CC) at para [18].

[10] The term 'legal process' used herein, refers either to litigation or any alternative dispute resolution mechanism that might find application or be agreed to.

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ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2025/284.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/cossadianos-and-others-v-nel-unknown-topic-agpphc-2025--6a3ea51b3b1caa91298117fb>

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