

SOUTH AFRICA / JUDGMENT

Phiri v Koreneka Events Managers CC and Others (M40/2016) [2016] ZANWHC 17 (13 May 2016)

[2016] ZANWHC 17

COURT

North West High Court, Mafikeng

BEFORE

Kgoele

CASE / FILE NUMBER

M40/2016

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IN THE NORTH WEST HIGH COURT

MAHIKENG

CASE NO: M40/2016

DATE: 13 MAY 2016

In the matter between:

JOYCE CATHERINA PHIRI.....APPLICANT

And

KORENEKA EVENTS MANAGERS CC.....1ST RESPONDENT

(Formerly KORENEKA TRADING AND PROJECTS CC)

(Registration Number: 2007/051834/24)

BABADI SYBIL TLATSANA.....2ND RESPONDENT

FIRST NATIONAL BANK LIMITED.....3RD RESPONDENT

THE COMPANIES AND INTELLECTUAL

PROPERTY COMMISSION.....4TH RESPONDENT

CIVIL MATTER

KGOELE J

DATE OF HEARING : 17 MARCH 2016

DATE OF JUDGMENT: 17 MARCH 2016

DATE OF REASONS : 13 MAY 2016

FOR THE APPLICANT : ADV. SCHOLTZ

FOR THE RESPONDENT : ADV. MANAGA

REASONS

FOR JUDGMENT

KGOELE J:

- [1] The application in this matter is Part B of the Notice of Motion dated 1 February 2016 which was brought by the applicant wherein she seeks an order directing the first and second respondent in particular to amend the founding statement of the first respondent to reflect the joint membership of her and the second respondent and the interest of the respective members of the first respondent as it was prior to the amendment thereof on 11 January 2016.
- [2] There are two main prayers that form the crux of the reliefs sought by the applicant. The first one is premised on the fact that the particulars of the applicant as member of the first respondent a Close Corporation, with an interest of 50% per centum has been removed from the founding statement thereof with effect from 11 January 2016. The second respondent has with effect from that date became the only member of the first respondent with an interest of 100% per centum and has been registered by the Commissioner of the fourth respondent in terms of the provisions of section 15(1) of the Close Corporation Act 69 of 1984 (The Close Corporation Act) on 11 January 2016.
- [3] The basis of the second prayer is to the effect that applicant was subsequent to the registration of the amended founding statement of the first respondent, removed as authorised signatory of the current banking account of the first respondent at the Batho Pele Branch of the third respondent with account number [6.....].
- [4] There are other several ancillary reliefs that are related thereto which the applicant also seeks. I am not going to deal with them one by one for the mere reason that they are ancillary to the two mentioned above and furthermore, to avoid prolixity of this judgment in this matter.
- [5] A brief background to the matter is that the first respondent, Koreneka Events Managers was registered as a Close Corporation on the 12 March 2001 by the second respondent. After the business proposal which was submitted by the second respondent to the South African Express Airport Soc Limited and the current Premier of the North West for maintenance of

their facilities was approved, the applicant and one Mr Victor Thabeng were taken by the second respondent as additional members of the first respondent. The founding statement of the first respondent was duly amended as such on the 19th January 2015 to include the two. The founding statement of the first respondent was again amended on the 19th February 2015 when Thabeng resigned as a member of the first respondent and the second respondent together with the applicant remained the only members with an interest of 50% per centrum each. Apparently the first respondent was not yet carrying on any business up until the contract with the South African Express Airport Soc. Limited was signed on the 1st May 2015. It also appears that both the remaining partners participated in the running of the business and project, although

these facts are denied by the second respondent. According to the applicant their relationship has been cordial at all the times and she was highly perturbed to discover that she was removed as a signatory of the banking account of the first respondent on the 18 January 2016. The second respondent on the other hand alleges that when she discussed an apparent conflict of interest by virtue of the fact that applicant is a mother of an executive at the South African Express Airport Soc. Limited and further that she is employed by the Government as a teacher, the applicant decided to resign. When she told her that this conflict of interest can affect the validity of their contract, she did not have a problem of resigning indicating that she was not actually participating in the business. The resignation is the subject of the hotly contested issues before this Court in Part B of this application which deal with the re-instatement of the applicant as a member of the close corporation. Part A was also heard and finalised by this Court but it mainly dealt with the freezing of the first respondent's banking account pending the finalization of this matter.

[6] When looking at the papers and the submissions that were before Court, one can clearly see that the applicant seeks to rely on the provisions of section 49 of the Close Corporation in support of her application. Section 49 of this Close Corporation Act falls under Part V of the Act which deals with internal relations and it provides a statutory remedy to the members of a Close Corporation for unfairly prejudicial conduct by the other members of the Close Corporation which affects their rights as members. It provides as follows:-

“(1) Any member of a corporation who alleges that any particular act or omission of the corporation or of one or more other members is unfairly prejudicial, unjust or inequitable to him or her, or to some members including him or her, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial, unjust or inequitable to him or her, or to some members including him or her, may make an application to a Court for an order under this section.

(2) If on any such application it appears to the Court that the particular act or omission is unfairly prejudicial, unjust or inequitable as contemplated in subsection (1), or that the corporation's affairs are being conducted as so contemplated, and if the Court considers it just and equitable, the Court may with a view to settling the dispute make such order as it thinks fit, whether for regulating the future conduct of the affairs of the corporation or for the purchase of the interest of any member of the corporation by other members thereof or

by the corporation.

- (3) When an order under this section makes any alteration or addition to the relevant founding statement or association agreement, or replaces any association agreement, the alternation or addition or replacement shall have effect as if it were duly made by agreement of the members concerned.
- (4) A copy of an order made under this section which:-
 - (a) alters or adds to a founding statement shall within 28 days of the making thereof be lodged by the corporation with the Registrar for registration; or
 - (b alters or adds to or replaces any association agreement, shall be kept by the corporation at its registered office where any member of the corporation may inspect it”.

- [7] The applicant’s case is that her designation as a member in the founding statement of the first respondent was in an unfairly,

prejudicial, unjust and inequitable manner terminated by the first and the second respondents in that it was done according to her, without her consent as required by section 37(b) of the Close Corporation Act and secondly, without the resolution passed at the meeting of the members of the first respondent duly convened and held and thirdly, without a CK2 form duly signed by her or on her behalf by a person duly authorised by her to do so and lastly, without an order of Court made pursuant to the provisions of section 36 or 49 of the Close Corporation Act.

- [8] It is further applicant’s case that she realised that her membership was terminated when she went to the bank on the 18 January 2016 when she wanted to transact / access the account of the first respondent and the bank told her she could not sign. She thereafter went to the Commissioner’s office of the fourth respondent wherein she managed to get the document that is the CK2 form, which authorised the amendment and which had, according to her, a purported signature that apparently signifies that she signed the CK2 amendment notice.
- [9] The papers before Court reveals that it is common cause between the parties that the applicant was until 11 January 2016 a member of the first respondent with an interest of 50% per centum. Secondly, that the applicant was whilst being a member of the first respondent, an authorised signatory of the current banking account of the first respondent referred to above in the Notice of Motion. It is also common cause between the parties that the applicant was subsequent to the registration of an amended founding statement of the respondent removed as authorised signatory of the aforesaid current banking account of the first respondent.
- [10] It is furthermore not in dispute between the parties that there is no Court order or orders pursuant to the provisions of section 36 or 49 of the Close Corporation Act pertaining to the termination of the applicant’s membership of the first respondent and the transfer of her interest as a member thereof to the second respondent.

[11] The second respondent opposed this application. In her opposition the second respondent alleges that the applicant resigned

as a member. There was a meeting held wherein a resolution was taken by both of them. The minutes of the resolution were signed by the applicant. There was also an authority to appoint one Rangkopomadi to lodge the application to amend the founding statement of the first respondent on their behalf and further that they, together with the applicant, went to the office of the fourth respondent in Pretoria to effect this amendment or to submit the CK2 notices to amend that change of membership of the applicant. The second respondent in support to this attached as per paragraph 12 of her answering affidavit copies of some forms and a letter of resignation purportedly signed by the applicant. They were all marked “BST1” and “BST2”. These are the forms that apparently the applicant signed and the letter of resignation was also attached thereto.

[12] In answer to these allegations applicant denies that she attended a meeting, she signed the documents that the second respondent

submitted including even the CK2 that she found at the office of the fourth respondent.

[13] During the submissions the contention of the applicant in response to the opposition of the second respondent was that although the second respondent alleges that she has documents to the effect that she resigned, and also signed a mandate, she did not mention the date when the meeting took place. She also indicated that despite the fact that she requested from the second respondent that she produce original documents of the forms that the second respondent attached to their answering affidavit, second respondent failed to do so.

[14] From Annexure “BST2” the following can be noted: the forms that have been attached as “BST2” comprise of many pages but there are other pages that are not completed, others are partially completed. There is also attached on Annexure “BST2” a copy of a document issued by the Commissioner of the fourth respondent on Wednesday, 30 December 2015 at 01:13 in respect of the CK2 which is titled, “Member Amendment of the First Respondent”. There is also a copy of an agenda and minutes of a meeting of the members of the first respondent purportedly held on 30 December 2015 in which it was minuted that the applicant resigned as a members of the first respondent with effect from 30 December 2015 and that the second respondent remains a member of the first respondent with an interest of 100% per centum. There is also a copy of the mandate purportedly dated 30 December 2015 wherein the terms thereof indicate that Thabo Sebastian Rangkopomadi was appointed as an agent to lodge the CK2, and there is also a copy of the identity card of the second respondent.

[15] In as far as the signature on the CK2 form is concerned, it is the applicant’s case that she admits that she appended her signature at point 7 on page 2 of the copy of the CK2 which forms part of Annexure “BST2” to the answering affidavit of the first and second respondents, but her explanation is that she had signed the aforesaid CK2 form to effect an amendment of the founding statement of the first respondent but not insofar as the termination of her membership of the first respondent and the transfer of her interest as a

member of the first respondent to the second respondent are concerned as the second respondent wants to give out. In her replying affidavit she says that she had done so to effect the amendment of the founding statement of the first respondent at the time and after the resignation of one Victor Phuma Thabeng who was an additional member of the first respondent, but that when she did that was on 27 July 2015 and that is why her name and signature is only on page 2 of “BST2” and not page 4.

[16] But when you look at this various parts of the Annexure “BST2” another observation that I have made is that on page 4 thereof which is found on paginated page 54 of the record, there are columns and also an indication on the form that a member who cease to be a member of the Close Corporation in question has to insert her name or his name. There is also a place where he/she is supposed to sign next to it. That page, is simply blank on all the places/ columns and there’s no inscription there of a person or a member that cease to be a member there. According to the applicant this is proof that she did not sign the documents as an indication that she is resigning.

[17] In addition the applicant also submitted that the allegation by the second respondent that they went to the fourth respondent’s

office in Pretoria on 30 December 2015 should be rejected by this Court because according to her she and her attorney of record made enquiries at the office of the fourth respondent in Mmabatho and they managed to get a notice which notice has been labelled Notice 60 of 2015 wherein it has been stated that their offices will be closed from 10:00 on Thursday 24 December 2015 until Friday, the 1st day of January 2016 and further that the lodgements of documents will only be accepted on Wednesday, 23 December 2015 up until 15:30 and lastly that, the drop-off box facility would not be available during the mentioned office closure. The applicant also attached a copy of the said computer printout of the notice of the Commissioner of the fourth respondent as Annexure “JCP4” to the replying affidavit. She maintains that this supports her version that they did not go to the office of the fourth respondent as it was closed on the 30th of December 2015.

[18] The second respondent’s main contention during the submissions was that the papers that are before Court are clear to the effect that the applicant has appended her signature and there is no reason to doubt that and further that because the applicant is the one that went to the office of the fourth respondent, she must be the one to produce the originals that she required.

[19] Analysing all the submissions and the papers before Court it is clear that the issues before this Court are firstly, whether the applicant’s membership of the first respondent was lawfully terminated or not and if found to have been done so, does this act constitutes unfairly or prejudicial or unjust or inequitable conduct as contemplated in section 49 of the Close Corporation Act which the applicant relies upon? As indicated above, the applicant’s case basically is that she has made out a proper case to show what her designation as a member in the founding statement of the first respondent was terminated without her consent and on the other hand, the second respondent says she did not make a case in terms

of section 49 of the Close Corporation Act because there is no averments in the founding affidavit to that effect.

[20] For me to answer the second question I need to deal with the first question first. In as far as this first question which is whether the applicant's membership was terminated lawfully or not is concerned, there is a dispute. I will therefore have to analyse the factual averments of both parties to determine whether the dispute cannot be dealt with on the papers before Court.

[21] In determining whether there is a bona fide dispute of facts in as far as this issue is concerned, it is trite law that Plascon-Evans case which the citation thereof is well-known, is applicable. This dispute can be further categorised in the following sub-headings:-

- That she resigned;
- That she signed the CK2 form signifying that she is resigning and her name should be removed from the founding statement of the first respondent;
- That she mandated the agent Ramokopodi to lodge the amended CK2;
- That she went to the fourth respondent's office in Pretoria together with the second respondent to effect the change;
- That she attended a meeting wherein the resolution that she is resigning was taken.

There is therefore a need to deal with these allegations intensively to determine whether there is a real, genuine dispute of facts.

[22] In my view this dispute as to whether the membership of the applicant was lawfully terminated or not is a dispute that is capable of being resolved on papers only. Firstly, the documents that the second respondent heavily relied on which purportedly indicate that the applicant signed and resigned, are copies. These are documents which the respondent supplied this Court with contrary to the submissions made by the second respondent Legal Counsel that they were supplied by the applicant as she received them from the fourth respondent's Office. In paragraph 14 of the affidavit by the second respondent which was filed with the reconsideration application which also served as a basis for their opposition to the main application as the second respondent did not file any further papers in Part B, second respondent states that the applicant did not disclose in her founding affidavit pertinent information which was a letter signifying that she resigned and the documents that has been submitted at the fourth respondent's Office to effect the amendments. She then attached all of these papers she marked as Annexure "BST1" and "BST2" respectively. There is therefore no plausible explanation why originals more especially those that relates to a resolution and/or meeting could not be produced by the second respondent after she was challenged by applicant to do so. But this is not the major issue on the dispute of the applicant's resignation, the crucial issues follow hereunder.

- [23] The affidavit by the second respondent in paragraph 11 is couched as follows in as far as the reason for the applicant to resign is concerned:-

“I relayed all these facts to the applicant and the likely end results. She then indicated that since she is not participating in the business, she would like to resign from the close corporation”

- [24] There is no date given as to when all these facts were relayed to her and she decided to resign. In particular paragraph 47 of the second respondent states:-

“I deny the contents herein more in particular that the applicant learned about her removal on the 18 January 2016. She knew all along that she is no longer part of the Close Corporation because she is the one who volunteered to resign”.

Once again there are no averments as to where and when this “all along” starts from or means. The applicant indicates a date when she learned about her removal, this prompted a reply from the second respondent comprising of a date as well. This was a perfect opportunity to give a date but the second respondent elected not to.

- [25] In addition, in paragraph 42 the second respondent indicated that she had a meeting with the applicant and she indicated that she wants to resign from the Close Corporation. They then approached the office of the fourth respondent and she was accordingly relieved of her duties as a partner. May I pause here to mention that all what the affidavit indicated is that there was a meeting and that they went to the second respondent office with no particulars as to place where the meeting took place, the date it took place and the date they went to the second respondent’s office. As to why the second respondent decided to couch her affidavit in this fashion again with the scarcity of information therein could not be explained. This prompted the Court during the submissions to ask Counsel to give answers to these questions. In an attempt to answer he referred this Court to the date on the form purportedly issued by the fourth respondent’s office which indicates that it was issued on 30 December 2015 at 11h13. This document is labelled “This is not a confirmation form but an application form”. As an answer to the date of the meeting as well, this Court was referred to the date reflected on the document the applicant and the second respondent purportedly signed labelled “Minutes of the Meeting of Koreneka Trading and Projects”. As far as the place where the meeting is concerned, this turned out to be the most difficult question Counsel of the second respondent was ever faced with as he could not provide any answer because no document purported to indicate anything in as far as the place is concerned.

- [26] What is disturbing is that all these information are exclusively at the disposal of the second respondent as she is the one that came up with the information that applicant resigned, that they went to the office of the fourth respondent and labelled applicant as a dishonest person as she according to her, did not disclose these pertinent facts to the Court. I agree that these are pertinent facts which needed to be disclosed, but because they were at the disposal of the second respondent, she is the one that had a duty to disclose them fully. In support of this view, I cannot do better than to quote the case of Minister of Land Affairs and Agriculture & Others v D & F Wevell Trust and Others 2008 (2) SA 184 (SCA) at paragraph 43

wherein it was said:-

“It is not proper for a party in motion proceedings to base an argument on passages in documents which have been annexed to the papers when the conclusions sought to be drawn from such passages have not been canvassed in the affidavits”In motion proceedings, the affidavits constitute both the pleadings and the evidence: Transnet v Rubenstein, and the issue and averments in support of the parties’ cases should appear clearly therefrom. A party cannot be expected to trawl through lengthy annexures to the opponent’s affidavit and speculate on the possible relevance of facts therein contained”.

- [27] Whilst still on this point, I must also refer to an observation I had already made above that the bulk of the papers the second respondent relies heavily upon that they submitted to the fourth respondent’s office to amend the founding affidavit have been partially filled and some totally blank. As indicated above one of these document is a document where a person/ persons who cease to be a member/s has to indicate his/her full names and surname, his/ her identity number and his/her signature alongside this column which is completely blank. The explanation for this is found in paragraph 12 of the second respondent affidavit that since there was no electricity they were just requested to append their signatures on every page of the said forms being blank and the administrator promised to fill the rest of the information as their information was already at their disposal. These averments are in my view untenable and lose sight of the fact that it is trite that where it has been specifically indicated or a space provided for a signature, it is imperative that the signature must appear there. This is so even looking at this section of the papers that more than one member who is resigning or cease to be a member can fill each column and then sign alongside his/her particulars in the appropriate column. A signature, unlike personal information of names etc. cannot be left to another person to fill in. But of more significance is that these averments do not also take into account that according to the second respondent electricity was allegedly restored back whilst they were there. To try and avoid this again we are told that the administrator decided to use the electric form which is similar to that of a manual. As to why a copy of this electronic form was not in the first place, given to the applicant to sign and secondly, attached to these documents is a mistry, as well as the reasons why the second respondent decided to use this manual forms in this application instead of the electronic ones to prove her version.
- [28] Leaving the second respondent’s explanation aside on this point, the lack of applicant’s names and signature on this documents unfortunately lends credence to her averment that she made in sub-paragraph 9.4 of her replying affidavit that she signed same to effect the amending of the founding statement of the first respondent after resignation of Thabeng as additional member of the first respondent on 27 July 2015 in that her particulars has been filled on page 2 thereof as a member of the first respondent and not on page 4 thereof as a person who ceased to be a member of the first respondent.
- [29] The following added further woes to the second respondent’s version:-

- There was no notice of the meeting as required by section 48(1) of the Close Corporation Act wherein the resolution that was purportedly taken took place, and when asked, Counsel could not give a cogent reason for that.
- There was no confirmatory affidavit from Rangkopomadi who was allegedly with them when they were at the fourth respondent's office to support the second respondent's version.
- Copy of the computer print-out of the notice which was served to all the offices of the fourth respondent to the effect that their offices were closed on the 30th December 2015 which was attached by the applicant in her answering affidavit was also accompanied by her legal representation Mr D C Kruger's confirmatory affidavit that they received it from the offices of fourth respondent situated in Mmabatho. This unfortunately lent credence to the applicant's averment that she was not with the second respondent on this day and further, the impossibility that the amendments were captured on that day. Nothing further was said by the second respondent on this no has the contents thereof disputed. Second respondent did not even apply to Court to submit further affidavit to deal with this issue.
- The administrator's name that assisted them on this questionable day is not supplied to us nor did he depose to an affidavit.
- The applicant's explanation that she was home the whole day on the 30th has been confirmed through a confirmatory affidavit.

[30] The following remarks were said in the case of *Galante v Dixon* 1915 (2) SA 460 (A) 465 and also in the case of *Durban City Council v SA Boardmans (Pty) Ltd* 1961 (3) SA 397 (A) at page 405A. These remarks can also be found in the book *Bewysreg* 4th Edition on page 103 written by Smith:

"The ordinary evidential effect in such instance is that where a litigant fails to present evidence regarding facts that falls exclusively in his knowledge, his opponent's prima facie evidence becomes proven otherwise a negative inference can be drawn from the facts against such a party."

[31] See also the Supreme Court of Appeal case of *Whiteman t/a GV Construction v Headforth (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 at page 375(13) and also another case of *South Coast Furnitures v Setprop Investment* 2012 (3) SALR 491, a KwaZulu-Natal case at page (433H) wherein the following was said:

"In any event a real genuine and a bona fide dispute of fact can exist only where the Court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. A bare denial will not be sufficient particularly where the facts are within the disputing party's knowledge and no basis is laid for disputing the veracity or accuracy of the averment and a Court will in such a case have difficulty in finding that the test is satisfied."

[32] The sum total of all the considerations that I made above is that the respondent's version that the applicant resigned and furthermore went to the office to effect termination of her membership of the first respondent is highly unlikely, palpably

implausible and wholly untenable. I therefore do not have any doubt but to agree with the submissions by applicant's Counsel that the version of the second respondent fails to reflect the disputed facts seriously, unambiguously, fully and accurately in the circumstances where these facts are peculiarly within the second respondent's knowledge. It is trite law that a genuine and bona fide dispute of fact can generally only exist where the party raising the dispute, in our matter, the second respondent, has seriously and unambiguously addressed the facts so disputed which is not the case in this matter.

[33] One should not forget that the applicant's case is that her membership was not lawfully terminated as she did not consent

thereto, she did not sign the document form she obtained from the office of the fourth respondent that although she signed an application form to amend the founding statement of the first respondent, that was at the time Thabang resigned, further that she

was not called for a meeting where the resolution was taken nor attended it. The second respondent is the one that disputes

these and say he has documents to proof that she has resigned, attended a meeting and signed documents. It is against this

backdrop that I come to the conclusion that her version that her membership was not lawfully terminated should stand. It is noteworthy to mention that applicant has all along in the founding affidavit mainly used the words terminated, and only in her replying affidavit and after the second respondent had served an opposing affidavit together with the attachments thereof that she (applicant) started dealing with the issue of resignation, attendance of a meeting and going to the second respondent's office in Pretoria. This brings me to deal with the submission that applicant cannot make out her case in the replying affidavit.

[34] Coming to the submission that was made by the second respondent's Legal Counsel that the applicant makes a case in the replying affidavit it is quite obvious that most of the papers that second respondent was relying on including the notice from fourth respondent's office was dealt with by the applicant in her replying affidavit. This case is a case of its own nature, a sui generis one. I am saying this because even if this is so, the applicant could not have had at her disposal the information that she resigned and went to the fourth respondent office at the time when she was deposing to the founding affidavit. These are exceptional circumstances that this Court can accept why the applicant made some part of her case in the replying affidavit. But this does not detract from the fact that she had always even in the founding affidavit maintained that her designation as a member was terminated without her consent.

[35] In addition to this and as I have already indicated, most of these averments and facts were in the second respondent's knowledge and it is only after the second respondent had deposed to his answering affidavit that the applicant could be aware of and had to deal or reply to those allegations and submit documentation in support of her reply or to answer the

averments of the second respondent. Under the circumstances I am of the view and come to the conclusion that applicant made out a case that her resignation as a member in the founding statement of the first respondent was terminated without her consent as required by section 34(b) of the Act and it was also not done with a resolution passed at the meeting.

[36] I also find that she made a case under section 49 of the Close Corporation Act. In her founding affidavit she heavily relied on the provisions of this section and also submitted facts that substantiated this inclusive of her replying affidavit. The second

respondent did not proffer any facts to gainsay this except to say she had resigned. It does not need one to be a rocket scientist to realise that the act or conduct of the second respondent is unfair, unjust and prejudicial to applicant as a member of the first

respondent and further constitute an infringement on her rights as a member especially when regard is had to section 46 and 56(4) of the Close Corporation Act which amongst others provides that every member shall be entitled to participate in the carrying on of the business of the corporation, that subject to the provisions of section 47 members shall have equal rights in regard to the management of the business of the corporation and in regard to the power to represent the corporation in the carrying on of its business.

[37] In the case of *Livanos v Swatzberg and Others* 1962 (4) SA 395 (W) Cillie J said at 399:-

“In any event it is not the motive for the conduct that the Court must look at but the conduct itself and the effect which it has on the other members of the company”.

[38] These are my reasons in coming to the conclusion and the Order / Judgment that I have made on the 17 March 2016.

A M KGOELE

JUDGE OF THE HIGH COURT

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