

SOUTH AFRICA / JUDGMENT

Reenen Ranch CC v Van den Heever and Others (6311/2024) [2025] ZAFSHC 114 (11 April 2025) [2025] ZAFSHC 114

COURT

Free State High Court, Bloemfontein

BEFORE

Ntanga AJ

CASE / FILE NUMBER

6311/2024

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IN THE HIGH COURT OF

SOUTH AFRICA

FREE STATE DIVISION,

BLOEMFONTEIN

Not reportable

Case

no: 6311/2024

In

the matter between

REENEN

RANCH CC

Applicant

and

THEODORUS

IGNATIUS VAN DEN HEEVER

First

Respondent

ANY

OTHER UNLAWFUL OCCUPIERS OF THE FARM

SPAARVELD

195, DISTRICT MARQUARD,

FREE

STATE PROVINCE

Second

Respondent
SETSOTO
LOCAL MUNICIPALITY
Third
Respondent

Coram: NTANGA AJ

Heard: 13 MARCH 2025

Delivered: 11 April 2025

Summary: civil procedure – application for eviction in terms of PIE - close corporation – Applicant’s authority to initiate civil proceedings – resolution of meeting of members of the close corporation necessary to give authority to initiate legal proceedings – no meeting of members of the applicant was convened to pass a resolution for launching the application in the High Court for eviction of the respondent – application has not been authorised by the applicant – application dismissed with costs.
ORDER
1.
The application is dismissed.
2.
Applicant to pay costs on a party-to-party scale, including costs of counsel on scale B.

JUDGMENT

NTANGA AJ

Introduction

- [1] This is an opposed eviction application launched by the applicant in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the PIE). The applicant seeks eviction of the first and second respondents from the property known as the Farm Spaarveld 195, district Marquard, Free State Province (the property).
- [2] The application is opposed by the first respondent who deposed to an answering affidavit, denying that he is in unlawful occupation of the property and raising several points of law in defence of the application. The second and third respondents did not file any papers in opposition of these proceedings.

- [3] It is common cause that the applicant is the owner of the property and that the respondent is the occupier of the property. At issue is whether the respondent is the unlawful occupier. At commencement of the proceedings, both counsels agreed that the Extension of Security of Tenure Act 62 of 1997 is not applicable in this matter. This was further clarified by applicant's counsel, who submitted that no order is sought against labour tenants as the applicant is not aware of labour tenants residing on the property.

Background

- [4] The applicant is a close corporation registered in terms of the Close Corporations Act 69 of 1984. Its members were the founding affidavit deponent's late father, Hendrick Potgieter van Heerden, founding affidavit deponent's late brother, Lourens Wepener van Heerden and the founding affidavit's deponent. Gerrit Elias Paulus van Reenen is the deponent of the applicant's founding affidavit and states that he deposed to the founding affidavit in his capacity as the only member of the applicant and attached a confirmatory affidavit of Wynand Joseph Botha who confirmed his authority to initiate these proceedings.
- [5] Gerrit Elias Paulus van Reenen and his brother were appointed as executors in the estate of their late father. After Gerrit Elias Paulus van Reenen's brother passed on, Wynand Joseph Botha and Gerrit Elias Paulus van Reenen were appointed as executors of his estate.
- [6] The historical background of the property is that it was previously owned by Heever Boedery CC which was placed under liquidation on July 19, 2022. The property was attached and publicly sold on October 20,
2020. Applicant attended the auction and purchased the property on October 20, 2020. The property was registered in the name of the applicant on August 1, 2022.
- [7] The first respondent occupied the property with the consent of Heever Boedery CC and/or Daniel Theodorus van den Heever and Janette van den Heever who are the deceased parents of the first respondent. The applicant submitted in its founding affidavit that respondent no longer has any right to occupy the property as the applicant has become the new owner of the property and the applicant is the only entity which has the right to allow persons to occupy the property.
- [8] The applicant submitted that the respondent was informed that he is in unlawful occupation of the property and that he should vacate the property. It is common cause that applicant telephonically contacted the respondent in December 2023 and requested him to vacate the property. Subsequently, a letter of demand dated December 13, 2023 was personally delivered by the applicant's attorneys to the respondent, demanding that he must vacate the property.

[9] In the answering affidavit, the respondent raises three issues which he believes must be determined in this application. Firstly, he averred that the applicant is not authorised to launch this application. Secondly, he questions whether his occupation of the property is unlawful within the definitional ambit of the PIE. Thirdly, if his occupation is indeed unlawful, what date will be just and equitable to require him and his family to vacate the property.

[10] The respondent provided a historical background of his relationship with the property dating as far back as 1926 when the property was owned by his great-grandfather and submitted that it has remained the

seat of the van den Heever family's life and agricultural operations for over nine decades. His father was born on the property, and he grew up there. He also has lived on the property from birth except for a brief period of 2003 and 2004 when he lived in Richmond. He confirmed that the property was owned by Heever Boerdery CC from 2009 and when the close corporation was liquidated

in 2022, the property was sold to the applicant at a public auction.

[11] In his answering affidavit, the respondent avers that up to and until he received a telephone call from applicant in December 2023 requesting him to vacate the property, he was in peaceful and undisturbed occupation of the property with full knowledge of the applicant. The respondent avers in his affidavit that at no stage did the applicant, during their conversation, communicate any intention to terminate his right of occupation, either expressly or impliedly. He also disputes that the letter of demand purported to terminate his right of occupation.

Authority to launch this application

[12] The respondent challenges the applicant's authority to launch this application on the ground that as a juristic person, it can only take decisions by adopting resolutions in the manner provided for in its governing instruments. He argues that there is no resolution authorising Mr Van Reenen and/or attorneys to institute these proceedings on behalf of the applicant. The respondent relied on the decision of *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk*[1] and *Pretoria City Council v Meerlust Investments (Pty) Ltd*

[2] in support of his argument.

[13] In *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* the court stated that:

'Unlike an individual, an artificial person can only function through its agents, and it can only take decisions by passing resolutions in the manner provided for by its constitution... There is a considerable authority for the proposition that, where a company

commences proceedings by way of petition, it must appear that the person who makes the petition on behalf of the company is duly

authorised to do so ... In such cases evidence should be placed before court to show that the applicant has duly resolved to initiate the proceedings and that the proceedings have been initiated at its instance'.[3]

[14] In its response, the applicant attached a resolution in the replying affidavit and averred that this resolution was passed to confirm that the applicant was authorised to institute the application against the

respondent. This resolution refers to a meeting held on February 6,

2025. The application against the respondent was launched on November 6, 2024. The resolution confirms that it was resolved that the applicant shall institute an application against respondent, but the resolution was not reduced to writing. It also ratifies actions already taken by Gert Elias Paulus Van Reenen.

[15] The applicant argued that the launching of the application was duly authorised by the deponent who deposed to the affidavit as a member of the applicant and in his capacity as executor of his late father's

estate, as well as co-executor in the estate of the late Lourens Wepener van Reenen. He further argued that Wynand Joseph Botha, who deposed to the confirmatory affidavit as co-executor executor in the estate of the late Lourens Wepener van Reenen, a deceased member of the applicant, also authorised the application. The deponent, in his capacity as executor in the estate of the late Hendrik Potgieter van Reenen, also authorised the launching of the application. The respondent argued against this resolution and submitted that it is not permissible in law to pass a resolution to give authority for an action already taken.

[16] The applicant further argued that s 54 of the Close Corporations Act authorises members to act as agents of the close corporation and that the deponent exercised the rights he has as a member in terms of s 54 of the Close Corporations Act. This argument was opposed by the respondent who countered that the provisions of s 54 of the Close Corporations Act are meant to protect third parties dealing with members of a close corporation, a scenario different from the facts of this matter. This was clarified in *Northview Shopping Centre (Pty) Ltd v Revelas Properties Johannesburg CC and Another*[4] where the court stated that:

'Section 54(2) does no more than express the usual rules relating to ostensible authority. And section 54(1) simply confers on a member authority to act for a close corporation, as the common law confers on a partner the power to bind the partnership'.[5]

[17] Section 54 of the Close Corporations Act provides that:

'(1) Subject to the provisions of this section, any member of a corporation shall in relation to a person who is not a member and is dealing with the corporation, be an agent of the corporation.

- (2) Any act of a member shall bind a corporation, whether or not such act is performed for the carrying on of business of the corporation unless the member so acting has in fact no power to act for the corporation in the particular matter and the person with whom he deals has, or ought reasonably to have, knowledge of the fact that the member has no such power'.[6]
- [18] The authority conferred to members of a close corporation in terms of s 54 of the Close Corporations Act does not extend beyond what is stipulated. The Supreme Court of Appeal has provided the meaning of the provisions of s 54 of the Close Corporations Act and in my view, the scope does not include instituting of legal proceedings like in the present case. These provisions are intended for transactional arrangements and are designed to confer authority to members acting as agents of a close corporation in such transactional arrangements. As the Supreme Court of Appeal pointed out, the purpose is to bind the close corporation and protect third parties dealing with members of a close corporation.
- [19] This court is called upon to determine whether the applicant was authorised to initiate the application against the respondent. I have already referred to the decision of Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk which settled the law in relation to authority of artificial persons when initiating court proceedings. It was stated in Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk that each case must be considered on its own merits and that the court must decide whether enough evidence has been placed before it to warrant the conclusion that it is the applicant which is litigating and not some unauthorised person on its behalf.[7]
- [20] The then-Appellate Division in Pretoria City Council v Meerlust Investments (Pty) Ltd followed the Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk decision and stated that:
- 'It is not enough to say that the Council has given practical demonstration of its desire to have the appeal heard by this Court. The question of authority having been raised, the onus is on the petitioner to show that the prosecution of the appeal heard in this Court has been duly authorised by the Council: that is the Council, which is prosecuting the appeal, and not some unauthorised person on its behalf ... In order to discharge the above-mentioned onus, the petitioner ought to have placed before this Court an appropriately worded resolution of the Council'.[8]
- [21] In Boerboonfontein BK v La Grange NO en 'n Ander[9] the full bench also followed the Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk decision when it considered the issue of a member who did not receive a notice of a members' meeting which took a decision to launch an application in the High Court for eviction of the deceased's son from the applicant's farm. The court found that the application had not been authorised by the applicant.[10] In its finding, the court stated that the authority conferred to members in terms of s 54 of the Close Corporations Act does not give authority to institute legal proceedings in instances where a member does not have such authority in terms of the Act or association agreement.

[22] I will now briefly set out the provisions of the Close Corporations Act in relation to the institution of legal proceedings by members of a close corporation. Section 49 of the Close Corporations Act provides that:

‘(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 to some members including him, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial, unjust or inequitable to him, or to some members including him, 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.

...’

[23] Section 50 of the Close Corporations Act deals with proceedings against fellow-members on behalf of the corporation and provides that:

‘(1) Where a member or a former member of a corporation is liable to the corporation-

(a) to make an initial contribution or any additional contribution

contemplated in subsections (1) and (2) (a), respectively, of section 24; or

(b) on account of –

(i) the breach of a duty arising from his fiduciary relationship to the corporation in terms of section 42; or

(ii) negligence in terms of section 43,

any member of the corporation may institute proceedings in respect of any such liability on behalf of the corporation against such member or former member after notifying all other members of the corporation of his intention to do so.

...’

[24] These proceedings could not be initiated in terms of s 50 of the Close Corporations Act as this is an eviction application against a third party and not proceedings contemplated in the provisions of s 50 of the Close Corporations Act which gives authority to a member to institute proceedings against fellow members. This was explained in *Naidoo and Another v Dube Tradeport Corporation and Others*.^[11] Unlike individual shareholders in companies,

members of a close corporation have authority to act in the name of the corporation, but this must be within the framework of authority conferred to them either in terms of legislation or the association agreements. In *De Franca v Exhaust Pro CC (De Franca Intervening)*[12] the court when interpreting the purpose of section 50 of the Close Corporations Act stated that:

‘The statutory authority with which a member is vested where the provisions of s 50 of the Act are applicable is not unlimited authority. It is authority for the specific purpose of instituting the proceedings contemplated by s 50 of the Act’.[13]

[25] Section 2 of the Close Corporations Act confirms that a close corporation incorporated in terms of this legislation assumes the status of a juristic person and that it shall have the capacity and powers of a natural person. The close corporation expresses its will through a decision taken by its members. The members can either execute this will through authority conferred to them in terms of legislation or an association agreement. In the present case, I am not persuaded that the provisions of ss 49 and 50 are applicable, and I am therefore of the view that this application was not instituted in accordance with authority conferred to a member in terms of ss 49 and 50 of the Close Corporations Act. As such, I find that this application was not instituted in accordance with the proceedings contemplated in sections 49 and 50 of the Close Corporations Act.>

[26] It is trite that a member when acting within authority vested in terms of the Close Corporations Act, there may be no need for a resolution be it written or verbal.[14] I have already concluded that this application was not initiated in accordance with the authority vested to members in terms of the Close Corporations Act. What then follows is that a member acting in these proceedings ought to have been authorised by resolution.

[27] Mr van Reenen, who is the deponent of applicant’s founding affidavit, avers that he deposed to the founding affidavit in his capacity as one of the members of the applicant and attached a confirmatory affidavit of Wynand Joseph Botha who confirmed his authority to initiate these proceedings. He also avers that he is the remaining executor of the estate of his father and a co-executor of the estate of his late brother. Both his father and brother are deceased. In the founding affidavit, it seems that the deponent assumed that by virtue of being the sole member of the close corporation, the executor of his late father’s estate and co-executor of his late brother’s estate, including the confirmatory affidavit of the co-executor of his late brother’s estate, he acquired authority to depose to an affidavit on behalf of the applicant. His belief is supported by Wynand Joseph Botha who confirmed his authority to initiate these proceedings. In applying the decision of *Boerboonfontein BK v LA Grange NO en ‘n Ander*, I am not persuaded that this was enough for him to have authority to depose to the affidavit on behalf of the applicant.

[28] In its replying affidavit, the applicant attached a resolution passed in a meeting of applicant's members held on February 6, 2025. Firstly, this resolution confirms that it was resolved that the applicant shall institute this application against the respondent. This resolution states that a resolution was taken but was not

reduced to writing. There is no indication as to when the first resolution was passed, how it was passed and whether a meeting of members was convened to pass a resolution. Also, there is no indication of whether there is a notice that was issued to convene a meeting where the resolution was passed. This resolution, attached in the replying affidavit, states that 'to the extent necessary any and all actions already taken by Gert Elias Paulus Van Reenen in the aforesaid regard are hereby ratified'. It boggles the mind as to the rationale of passing a resolution ratifying Mr Van Reenen's actions if there was a resolution in place when he deposed to the founding affidavit.

[29] Authorities indicate that there is no requirement for the members' resolution to be reduced to writing, however, more detail is necessary to satisfy the court that there was indeed a resolution passed by the members. The applicant has not taken the court to its confidence on how and when was the resolution authorising this application was passed. This court is left with uncertainty on whether the resolution attached in the replying affidavit may be the only resolution in existence. The issue is whether this will be a competent resolution. The respondent argued that this is a belated resolution, and it should not assist the applicant in proving its authority to initiate this application. The respondent referred to the decision of *K2011148986 (South Africa) (Pty) Ltd v State Information Technology Agency SOC Limited and Others*[15] where the court stated that:

'The founding affidavit makes no mention of the company resolution. The deponent sought to amend this defect in the Replying Affidavit by attaching the resolution that simply said: "2. All steps previously taken by Mario Engelbrecht on behalf of the company is hereby rectified as it may be necessary". As in *Interboard*, a later decision will not serve as a ratification of or give retrospective authority for the launching of the application. Rule 6 of the Uniform Rules of Court provides that the applicant's right/authority to apply, that is, the applicant's locus standi, should be established in the Founding Affidavit and not in the Replying Affidavit. The deponent to the affidavit need not be authorised by the party concerned to depose thereto, it is the institution of the proceedings thereof that must be authorized. In my view and taking into consideration the above, the applicant cannot rectify the defect in its application retrospectively. The court cannot therefore find that Mario Engelbrecht had the necessary authority to bring the review application in this matter'.[16]

[30] Other than what I have already referred to in the founding affidavit as the basis for Mr van Reenen to claim authority to depose to the founding affidavit on behalf of the applicant, no mention is made in the founding affidavit regarding existence of a resolution. This is only mentioned in the replying affidavit and as authorities indicate, he cannot after objection to applicant's authority to initiate proceedings, belatedly rely on a resolution that may not have existed when the founding affidavit was deposed to.[17]

[31] In *South African Milling Co (Pty) Ltd v Reddy*[18] the court held that:

‘When a person purporting to have authority to act on behalf of another launches an application without having such authority to act on behalf of another launches an application without having such authority, the respondent acquires a right to move for the dismissal of the application on the ground of lack of locus standi: the applicant cannot then deprive the respondent to his prejudice of the right he has acquired by ratification’.[19]

[32] In *Trinity’s Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Another*[20] the court held that:

‘It has always been the practice of the Courts in South Africa to strike out matter in replying affidavits which should have appeared in petitions or founding affidavits, including facts to establish locus standi or the jurisdiction of the courts’.

My conclusion is that the applicant initiated these proceedings without authority in terms of the provisions of the Close Corporations Act or a resolution by its members. Mr Van Reenen did not derive authority conferred to members of the close corporation by sections 49 and 50 of the Close Corporations Act. The resolution attached in the applicant’s replying affidavit is of no assistance to prove that there was an existing resolution by the members of the applicant approving launching of this application. Whilst members of a close corporation are authorised to act as its agents by specific provisions of the Close Corporations Act, members are not an extension of the close corporation’s status as a juristic person. The close corporation retains its status and where a member does not have authority either through legislation or association agreement, authority can only be assumed through a resolution adopted by the members. The institution of these proceedings needed to be authorised, in my view and after considering the above, I find that the applicant was not authorised to initiate the application against the respondent. Accordingly, the respondent’s point in limine challenging the applicant’s authority to launch this application must succeed and the application be dismissed. Considering the above finding, I see no reason to deal with other issues that arose in this application.

[33] The court has a discretion to make an award for costs, which discretion must be considered judiciously upon consideration of relevant facts. The respondent is an individual who had to incur legal costs to defend this application. Considering the principle of fairness and equity, I am of the view that applicant must be ordered to pay the costs.

Order

[34] In the circumstances, I make the following order:

Appearances For the Applicant: Adv J Els Instructed by: Du Randt & Louw Inc c/o PH Attorneys Inc Bloemfontein
For the Respondent: Adv WA van Aswegen Instructed by: JA Botha Attorneys c/o McIntyre Van Der Post Bloemfontein

[1] *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) 347 (C).

- [2] Pretoria City Council v Meerlust Investments (Pty) Ltd 1962 (1) SA 321 (A).
- [3] Footnote 1 at 351D-H.
- [4] Northview Shopping Centre (Pty) Ltd v Revelas Properties Johannesburg CC and Another [2010] ZASCA 16; 2010 (3) SA 630 (SCA); [2010] 3 All SA 422 (SCA).
- [5] Ibid para 17.
- [6] Close Corporations Act 69 of 1984.
- [7] Footnote 1 352A-B.
- [8] Footnote 2 at 325B-E.
- [9] Boerboonfontein BK v La Grange NO en 'n Ander 2011 (1) SA 58 (WCC).
- [10] See note 6 supra.
- [11] Naidoo and Another v Dube Tradeport Corporation and Others [2022] ZASCA 14; 2022 (3) SA 390 (SCA).
- [12] De Franca v Exhaust Pro CC (De Franca Intervening) 1997 (3) SA 878 (SE).
- [13] Ibid at 890J-891A
- [14] See Packaging and Stapling CC v Fromm Systems Africa (Pty) Ltd and Others [2010] ZAECPEHC 26 (11 June 2010).
- [15] K2011148986 (South Africa) (Pty) Ltd v State Information Technology Agency SOC Limited and Others [2020] ZAFSHC 135; See also Interboard SA (Pty) Ltd v Van Den Berg 1989 (4) SA 166 (OPD); and M & V Tractor & Implement Agencies BK v Olivier Landgoed 2000 (2) SA 571 (NKA).
- [16] Ibid para 21.
- [17] South African Milling Co (Pty) Ltd v Reddy 1980 (3) SA 431 (SE).
- [18] Ibid.
- [19] Ibid 15 supra.
- [20] Trinity's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Another 1974 (4) SA 362 (T) at 368 H. See also Haywood and Others v Foresta Timber and Board [2023] ZAGPJHC 272.

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