



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**(“The Tribunal”)**

**CASE NO: CT004AUG2016**

**Re:** In an Application in terms of Section 160 of the Companies Act 71 of 2008 (“the Act”) for a determination that the company name GROWTHPOINT MINING (PTY) Ltd does not satisfy the requirements of Section 11(2) of the Act.

**In the matter between:**

**GROWTHPOINT PROPERTIES LTD**

**THE APPLICANT**

**(1987/004988/06)**

**AND**

**GROWTHPOINT INVESTMENTS (PTY) LTD**

**THE RESPONDENT**

**(2016/139898/07)**

**Coram K. Tootla**

**Decision delivered on 18 November 2016**

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**DECISION**

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## **INTRODUCTION:**

- [1] The Applicant having its registered office at The Place, 1 Sandton Drive, Sandton, Gauteng, brings an application in terms of Sections 11 (2) (a)(iii) , 11 (2)(b)(iii) and (c)(i) and 160 of the Companies Act 2008 (“the Act”) read with Regulation (Reg.) 13 for an order that the Respondent be ordered to choose a new name (Refer to form CTR 142) as the Respondent’s name is confusingly similar or the same to the Applicant’s trademark as the Applicant has not consented to the use thereof.
- [2] The Respondent is a company incorporated in terms of the Companies Act, and having its registered office at 313 Wonderpark Estates Cnr 1<sup>st</sup> Avenue and Heinrich Avenue, Karenpark, Pretoria, Gauteng.

## **PROCEDURE AND EVALUATION:**

- [3] From the papers it appears that the CTR form 142 and supporting documentation was filed with the Tribunal on 27 July 2016, but the documents were not served as an attempt was made by the Sheriff on 16 August 2016. The Sheriff’s return reads “ However, I ascertained that Growthpoint Investments (Pty) Ltd is unknown at the given address, as informed by MR Lungile Lukhele, occupier since 29 September 2015”

In terms of Regulation 142 (2), the applicant must serve a copy of the application and supporting affidavit on the respondent named in the application within 5 business days after filing it with the Tribunal.

- [4] It is clear then that the application was not served by the Sheriff. Proper service should be in accordance with Table CR 3 of Annexure 3 of the Regulations to the Companies Act or the Uniform Rules of the High Court. This rule is same as the rule which is contained in Annexure 3, Table CR 3 for service on a company or body corporate in the Companies Act.

[5] The Courts have been extremely cautious in observing whether proper service has been effected before examining the merits of a case, and have emphasized the importance of proper service of court processes (See Ritchie vs Andres 1882(2) EDC 25C), it was held that judgment will only be given against those served. If the Court finds that service does not comply with the requirements, the Court should not grant any relief prayed for in default, before a proper return has been obtained. There are other Supreme Court of Appeal Cases to this effect which the Tribunal is obliged to follow.

[7] Thus it is clear that that the Respondent did not receive the application papers as set out in the Application for default judgment under cover of form CTR 145 and ought not to expect the Tribunal to entertain the merits of the matter.

**ORDER:**

The Applicant's application is dismissed.

*k.y. tootla (electronically signed)*

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**KHATIJA TOOTLA**

**Member of the Companies Tribunal**

**18 November 2016**