

**COMPANIES TRIBUNAL**  
**REPUBLIC OF SOUTH AFRICA**

**Case Number CT005APRIL2017**

**In the Ex Parte Application of;**

**MOS WEAR (PTY) LTD**

**Applicant**

**(Registration number 2014/072355/07)**

**in respect of;**

**AN APPLICATION FOR SUBSTITUTED SERVICE OF DOCUMENTS IN RESPECT  
OF A NAME DISPUTE APPLICATION.**

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**DECISION (Reasons and Order)**

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**Presiding Member of the Tribunal: Lucia Glass**

1. The Applicant seeks leave to serve documents (relating to a name dispute application), by way of substituted service in terms of Regulation 7 (3) of the Companies Act No 71 of 2008 (the Act).
2. The deponent to the founding affidavit is Bulelani Nkunzi who is a director of the Applicant and who alleges that an application for a Name dispute could not served on Wale Mandla Designs trading as Mos clothing Pty Ltd, as it had left the registered address used for its business.
3. The deponent further avers that he could not serve documents on Wale Mandla Designs trading as Mos clothing Pty Ltd, (a former friend of the deponent) via any electronic method as he had been blocked from all social

media accounts with Wale Mandla Designs trading as Mos clothing Pty Ltd. Further that multiple attempts to contact Wale Mandla Designs trading as Mos clothing Pty Ltd, have been unfruitful as he has blocked all access via electronic methods.

4. The only information regarding Wale Mandla Designs trading as Mos clothing Pty Ltd's address, which the deponent is aware of, is that which Wale Mandla Designs trading as Mos clothing Pty Ltd, told mutual friends, that he now resides at Acacia Parliament Village in Goodwood, with no actual house number or address rendering an attempt to serve on him impossible.
5. In order to establish whether the tribunal can make an order for substituted service as requested by the applicant, the various sections of the Act need to be examined.

**Section 158 of the Act** reads as follows:-

***Remedies to promote purpose of Act***

**158.** *When determining a matter brought before it in terms of this Act, or making an order contemplated in this Act—*

*(a) a court must develop the common law as necessary to improve the realisation and enjoyment of rights established by this Act; and*

*(b) the Commission, the Panel, **the Companies Tribunal** (emphasis added) or a court—*

*(i) must promote the spirit, purpose and objects of this Act; and*

*(ii) if any provision of this Act, or other document in terms of this Act, read in its context, can be reasonably construed to have more than one meaning, must prefer the meaning that best promotes the spirit and purpose of this Act, and will best improve the realisation and enjoyment of rights.*

**Regulation 7** reads as follows "**Delivery of documents**"

(1) A **notice** or document to be delivered for any purpose contemplated in the Act or these regulations may be delivered in any manner—

(a) contemplated in section 6 (10) or (11); or

(b) set out in Table CR 3."

**Section 6 (10) or (11) of the Act reads as follows;**

"(10) If, in terms of this Act, a **notice** is required or permitted to be given or published to any person, it is sufficient if the **notice** is transmitted electronically directly to that person in a manner and form such that the **notice** can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

(11) If, in terms of this Act, a document, record or statement, **other than a notice** (emphasis added) contemplated in subsection (10), is required—

(a) to be retained, it is sufficient if an electronic original or reproduction of that document is retained as provided for in section 15 of the Electronic Communications and Transactions Act; or

(b) to be published, provided or delivered, it is sufficient if—

(i) an electronic original or reproduction of that document, record or statement is published, provided or delivered by electronic communication in a manner and form such that the document, record or statement can conveniently be printed by the recipient within a reasonable time and at a reasonable cost; or

(ii) a notice of the availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient of the document, record or statement, together with instructions for receiving the complete document...."

**Table CR 3 states the following;**

"Regulations Annexure 3

*Table CR 3— Methods and Times for Delivery of Documents (in terms of Regulation 7)*

*A **notice** (emphasis added) or document to be delivered for any purpose contemplated in the Act or these regulations may be delivered in any manner set out in this Table. Subject to regulation 7 (2)(b), a document delivered by a method listed in the second column of this Table will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of that table. ...."*

*In terms of Table CR 3, the methods of delivery of a notice on a person include the following;*

*by facsimile*

*by electronic email*

*by registered post*

*by physically delivering the notice to the relevant address of the shareholder and handing same to the notice's addressee or an appropriate representative by any other means authorised by the High Court.*

***Regulation 7 (3) states the following;***

*" If, in a particular matter, it proves impossible to deliver a document in any manner provided for in the Act or these regulations—*

*(a) if any person other than the Tribunal is required to deliver the document, the person may apply to **either the Tribunal or the High Court for an order of substituted service;** (emphasis added)"*

**APPLICATION OF THE LAW TO THE FACTS**

6. The Tribunal has jurisdiction over this matter of substituted service in terms of regulation 7 (3) and may decide whether it is reasonably necessary to depart from the various methods of service provided in the Act and the Regulations.

7. Substituted service, though provided for in the Regulations is, however not defined.

8. **Guidance** (emphasis added) for a definition of “substituted service” should therefore be sought in the **High Court Act, Rules and Procedures** (emphasis added). I quote Rule 4 (2) of the High Court Rules; "***Not possible to effect service in any manner aforesaid.*** This sub rule is aimed at substituted service. Substituted service is ordered when the defendant is believed to be in the Republic but one of the normal forms of service set out in the rules cannot be effected. The court then gives directions authorizing some form of 'substituted service' ".

**The Applicant's case for substituted service is as follows;**

9. The applicant contends that service on the business address is impossible as Wale Mandla Designs trading as Mos clothing Pty Ltd, has vacated that address.

10. The Applicant submits that delivery by social media is impossible as Wale Mandla Designs trading as Mos clothing Pty Ltd, has blocked all contact on social media with the applicant. Also the present address can not be established as no fixed number or street address is available.

**Findings**

11. The Tribunal has considered the submissions made by the Applicant and the applicable legislation in its quest to weigh up whether substituted service is justified instead of the prescribed methods of service of notices.

12. After considering Rule 4 (2) of the High Court Rules; it is my view that the applicable guideline which is applicable is '*Substituted service is ordered when the defendant is believed to be in the Republic but one of the normal forms of service set out in the rules cannot be effected. The court then gives directions authorizing some form of 'substituted service'.* It is my view that the normal forms of service cannot be effected and that the Tribunal is to give directions authorising some form of substituted service.

13. The applicant has complied with the Requirements of filing of a Notice of Motion and I can therefore conclude, after considering all the facts, that the Applicant has made a sound case for substituted service.

## **Order**

I grant an order for substituted service by way publication of the applicant's intended name dispute application in a local newspaper in the area in which Wale Mandla Designs trading as Mos clothing Pty Ltd, resides or trades. As well as publication in the Government Gazette.

The Advertisements of the application is to remain in the newspaper and the Gazette for a period of twenty (20) business days from the date it was advertised, before the Applicant can proceed further with its application regarding the name dispute.

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LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 25 April 2017