

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NUMBER: CT023APR2015

In the matter of:

RAND WATER FOUNDATION NPC

FIRST APPLICANT

and

RAND WATER SERVICES (PTY) LTD

SECOND APPLICANT

Application for extension in terms of Section 61(7)(b) of the Companies Act No 71 of 2008 (“the Act”)

PRESIDING MEMBER OF THE TRIBUNAL: P J VELDHUIZEN

DECISION AND REASONS

ORDER

Having read the papers filed on behalf of the First and Second Applicants, it ordered as follows:

- A. The Application is refused.

- B. The First and Second Applicants are permitted to reapply to the Companies Tribunal ("the Tribunal") on the same papers duly supplemented and supported for an Order granting an extension as contemplated in Section 61(7)(b) of the Act.

REASONS FOR DECISION

1. Section 8 of the Act contemplates two types of companies, namely Profit and Non-Profit companies. State-Owned companies, a subcategory of Profit companies and Non-Profit companies, are further regulated in terms of sections 10 and 11, respectively. In short, State-Owned companies are required to comply with the requirements of holding an Annual General Meeting ("AGM") as if they were Public companies and it appears that the First Applicant, on the version of the deponent to the Founding Affidavit, is also required to hold an AGM. I could not find authority for the requirement for the Second Applicant to hold an AGM, but will accept, without deciding the point, that the deponent is correct and that this is indeed, a requirement.
2. The required CTR142 was duly filed with the Tribunal on the 24th of April 2015 but is defective in the following respects:
 - a. The document indicates Makwena Pertunia Mohlabi ("the deponent") as the Applicant when she was simply the deponent to the Founding Affidavit.
 - b. The First Applicant is indicated as the Respondent.
3. The Founding Affidavit filed by the deponent is not satisfactory in the following respects:
 - a. She fails to provide an acceptable explanation as to the disregard of the statutory requirements to hold an AGM and makes nothing more than admissions as to the failures of the

Board of Rand Water to attend to the discharge of its duties since June 2014. (**vides paragraph 5.2 – Founding Affidavit**).

b. The deponent appears to rely on facts and circumstances which she refers to as *"changes within the Board of Rand Water as well as other operational activities, the planning and alignment with other legislative/governance requirements"* and *"the application of different legislation"*, as reasons for failure to comply when they are little more than an indictment of the tardy attention to statutory duties.

c. In amplification of (b) above Section 61(7)(b) of the Act requires:

*(b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, **on good cause shown** (my emphasis).*

d. In my view, **good cause** requires more than what the deponent has provided.

e. In addition, the deponent fails to provide any form of documentary evidence related to either the shareholding of the First and / or Second Applicant in relation to the lapsing and / or appointment of the new Board of Rand Water, save the unsigned Memoranda of Incorporation which don't even bear the filing stamp of the Companies and Intellectual Property Commission.

f. Furthermore, the deponent again confuses on whose behalf the Application is brought by alleging in paragraph 7 of the Founding Affidavit that *"on behalf of Rand Water (a sole shareholder of Rand Water Services and Rand Foundation), **we** (my emphasis) hereby lodge an application for extension of time..."*

g. Although the Application is not dismissed for this reason, it is noted that the Founding Affidavit is commissioned by Legal Manager: Operations: Rand Water - Matshido Moalusi.

i. It is assumed that the Commissioner of Oaths purports to act in terms of **GN 903 of 10 July 1998: Designation of Commissioners of Oaths in terms of section 6 of the Justices of the Peace and Commissioners of Oaths Act, 1963;**

ii. In terms of **Section 4 of GNR.1258 of 21 July 1972: Regulations Governing the Administering of an Oath or Affirmation, the Commissioner of Oaths shall:**

(1) Below the deponent's signature or mark certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.

2 (a) sign the declaration and print his full name and business address below his signature; and

2 (b) state his designation and the area for which he holds his appointment or the office held by him if he holds his appointment *ex officio*.

iii. **Regulation 50** refers to a *General Manager: Corporate Services, Legal Services Manager, Legal Adviser/Assistant (all ranks), General Manager, Departmental Manager, Pumping Station Manager and*

Distribution Manager as persons designated ex officio as Commissioners of Oaths in relation to Rand Water. **The Legal Manager: Operations**, being the Commissioner of Oaths in this matter is not referred to therein and therefore the entire Founding Affidavit is called into question. The Applicants would wise to address this point if filing affidavits in the future.



PETER JOHN CONWAY VELDHUIZEN
MEMBER, COMPANIES TRIBUNAL

10 June 2015