



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

**Case No: CT011SEP2016**

**In the matter between:**

**LERA HOLDINGS (PTY) LTD  
REG NO: 2012/150143/07**

**APPLICANT**

**And**

**LERA HOLDINGS (PTY) LTD  
REG NO: 2013/126031/07**

**RESPONDENT**

**Presiding Member of the Tribunal: Kasturi Moodaliyar**

**Date of Decision: 28 February 2017**

---

### **DECISION (Reasons and Order)**

---

#### **INTRODUCTION**

[1] This application is in terms of section 153 (sic) of the Companies Act 71 of 2008 (the “Act”). The Applicant requests an order directing the Respondent to change its name.

#### **BACKGROUND**

[2] The Applicant is Lera Holdings (Pty) Ltd, Reg no: 2012/150143/07, a company incorporated in accordance with the company laws of South Africa, with its registered address at 36 7<sup>th</sup> Street, Houghton Estate, Gauteng.

[3] The Respondent is Lera Holdings(Pty)Ltd., a company incorporated in terms of the company laws of South Africa, under registration number 2013/126013/07, with registered address at 29 Oscarina Street, Clarina Orchards, Gauteng, 0182.

## **SERVICE**

[4] A copy of the application must be served on the Respondent at its registered address within 5 days of filing it with the Companies Tribunal as required by regulation 142(2).

[5] The application was served via electronic mail by the Applicant's representative, Marike Smith of Finleys Outsourced Business Services on 23 September 2016. The email was addressed to Mr SJ Motaung, the director of the Respondent, and the email was sent to a Mark at MP Boekhouers. We are not furnished with any information as to who or what role MP Boekhoers has in relation to the Respondent. It should be noted that an email was sent directly to Mr SJ Motaung on 27 May 2016. On both occasions, the Respondent did not respond to the Applicant's email.

[6] Considering that no response was received from the Respondent and the Applicant therefore applies on FORM CTR 145 for a default order in terms of regulation 153.

[7] Electronic service is in accordance with the Act and the Respondent has failed to answer the application within the required time period. The Tribunal therefore enjoys jurisdiction to hear the matter.

## ISSUES AND EVALUATION

[8] It does appear that the Applicant and Respondent have exactly the same name, and the only distinguishing feature between the two companies is the registration number.

[9] We are supplied with two affidavits by the Applicant, one from Kgotlello Molehamgoe Sere Rantloane, whose relationship to the Applicant is not stated, and Susannie Franchina Vosloo, a secretarial officer at Finleys Outsourced Business Services (Pty) Ltd.

[10] The Tribunal was not provided with any information as to whether the Applicant is a registered proprietor of a trademark relating to the name of the business, nor are we given provided with any indication as to the type of businesses that the Applicant and Respondent are involved in.

[11] The Applicant filed an objection to the Respondent's name with the Companies Tribunal on 1 November 2016 on CTR 145, together with affidavits mentioned above. It is not clear, as required by regulation 142, whether any of the two deponents to the affidavits were duly authorized to depose the affidavit by the Applicant by Board resolution.

[12] The Applicant is given an opportunity to state what section of the Companies Act is applicable for the Tribunal to consider. The Applicant in this instance stated "Change the name of Lera Holdings (Pty) Ltd, Reg No 2013/126031/07" in terms of "Section 153 of the Companies Act".

[13] Section 153 of the Companies Act speaks to the "Failure to adopt business rescue plan". Clearly this is the incorrect section of the Act cited by the Applicant, and flaws this application.

[14] I could end the matter here but there are other procedural irregularities to consider in this matter.

[15] Further, apart from the affidavits which merely set out the chain of events leading up to the Tribunal filing, and the CIPC documents, once of which is stamped by the CIPC stating that it is “Not for official Use”, I am not provided with any further information to support the Applicant’s case.

[16] In addition, we are told in an affidavit by Kgotlello Molehamgoe Sere Rantloane (Annexure C) that he was aware of the Respondent company with the same name in 2013. We are given no indication nor arguments to show on good cause why the matter was only filed with the Tribunal in 2016.

[17] We generally look to Section 160 of the Companies Act which speaks of “good cause”, although this phrase is not defined in the Act.

[18] The reason for the requirement that there must be good cause shown why the application was launched at a particular date would appear to be that the person doing business under a particular name, that has been registered by the Companies and Intellectual Property Commission, is not prejudiced by a belated challenge which could affect the goodwill built up in using the name.<sup>1</sup>

[19] Considering that the Applicant makes no attempt to address this, the Tribunal cannot accept that it has adhered to this requirement.

[20] Another issue is the discrepancy in dates that the Applicant and Respondent companies were registered with the CIPC. The Applicant

---

<sup>1</sup> See also *Comair Limited vs Kuhlula Training, Projects and Development Centre (Pty) Limited* CT007Sept2014 of 27 February 2015.

says that it was registered on 25 May 2013 and the Respondent was registered on 25 July 2013.

[21] The Applicant was originally named CS Hentiq 1222 and thereafter changed its name to Lera Holdings (Pty) Ltd. According to the CIPC documents this change had officially taken effect on 30 July 2013, five days after the Respondent was registered on 25 July 2013.

[22] It is therefore the Respondent who should have cause for concern regarding the Applicant's name in this matter.

## **ORDER**

[23] This application is accordingly dismissed.

---

**KASTURI MOODALIYAR**  
**COMPANIES TRIBUNAL: MEMBER**