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COMPANIES TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case no CTOO1SEPT2015

In the Ex parte application of

IRENE FARM VILLAGES HOME OWNERS' ASSOCIATION

(NON- PROFIT COMPANY)

Applicant

Presiding Member of the Tribunal: Lucia Glass

DECISION (Reasons and Order)

Introduction

1) Applicant applies to the Companies Tribunal for an extension of the date of its annual general meeting (AGM).

Preliminary Issues

2) The Deponent to the Applicant's papers is Adriaan Pieter van Niekerk, ID [52.....] who avers that he is the Estate Manager of the Applicant, and has been appointed by the Applicant in accordance with the Power of Attorney, attached to his affidavit giving him authority to apply to the Companies Tribunal for relief to extend the date of its AGM.

3) It is my view that the Companies Tribunal can only entertain the merits of this application once it is satisfied that it has the necessary jurisdiction to do so.

4) The Applicant makes no reference to the pertinent Section of the Companies Act, 71 of 2008 (the Act) upon which its Application for an extension of its AGM, is based.

5) Upon perusing the various sections of the Act, it appears to me that this Application is made in terms of Section 61 (7) of the Act, which states;

"A **public company** must convene an annual general meeting of its shareholders—

(a) initially, no more than 18 months after the company's date of incorporation;

(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.**" (emphasis added)

6) The Applicant is a Non-profit company and not a Public Company and in terms of Section 61 (7) only Public Companies can apply to the Companies Tribunal for an extension

on good cause shown, and not Non-profit Companies.

7) Section 8 of the Act, specifically categorizes Companies into Profit companies and Non-profit companies and thus it is clear to me that the use of the word 'public company' in Section 61(7) underscores the fact that it pertains only to public companies and not Non-profit companies.

8) It is my view that the Tribunal can only entertain the merits of this application in terms of section 61 (7) of the Act, once it is satisfied that it has the necessary jurisdiction to do so. In other words whether the Companies tribunal has the necessary jurisdiction, in terms of the Act, to make a decision on whether **a Non-profit company** has shown good cause and allow it an extension of time for its AGM. (Emphasis added)

9) After weighing up the relevant Sections of the Act pertaining to this application, I am convinced that this Tribunal has no jurisdiction to adjudicate on whether the Applicant which is a Non-profit company, has shown good cause for an extension of time for its AGM.

ORDER

The application is dismissed.

LUCIA GLASS Dated this 26 October 2015

MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA