COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT004JUL2016

In the matter between:

YUSUF SULEIMAN KALLA Applicant

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION Respondent

in respect of the appointment and/or removal of director(s) of **D. SWART & POTGIETER (PTY) LTD** and **ASIFY PROPERTIES (PTY) LTD**

Presiding Member	:	Khashane La M. Manamela (Mr.),
Date of Hearing	:	10 November 2016
Date of Filing Heads of Argument	:	12 December 2016
Date of Decision	:	30 December 2016

DECISION (Reasons and Order)

K. La M. Manamela

Introduction

[1] The applicant seeks, in terms of this application, reversal of some administrative steps taken by the respondent regarding the directorship of two companies, in which he holds shareholding interests. The essence of the applicant's complaint before this Tribunal is that, the respondent should not have taken the impugned administrative steps in terms of which the respondent reversed an earlier decision to remove his brother, Mr. A.A. Kalla as director of D. Swart and Potgieter (Pty) Ltd and Asify Properties (Pty) Ltd. It appears that both the applicant and Mr. A.A. Kalla hold shares in these entities. Effectively, the application is in the form of *mandamus* or mandatory interdict.

[2] The hearing of the matter took place on 10 November 2016 and after listening to oral submissions by mainly Advocate M Cajee, on behalf of the applicant and, to a lesser extent, submissions by representatives of other participants, I requested Mr. Cajee for the applicant to file heads of argument by not later than 12 December 2016. This step was taken to allow the applicant to address the crisp issue of whether or not this Tribunal has jurisdiction to order relief sought by the applicant. This issue, being one of law and not fact, was *mero motu* raised by me as the presiding member. And I thought, at the time that, interests of justice demanded that I allow the applicant ample opportunity to address this Tribunal on the issue. I am grateful to the applicant to have received the heads of argument.

[3] There were other activities at the hearing, including Mr. A.A. Kalla's attempt to be joined, as a party, to the proceedings. His application wasn't fully consummated as it

was eventually withdrawn, before a ruling was made. I will nevertheless - simply for completeness - deal briefly with this aspect later below. On the other hand, the respondent filed a notice to abide the outcome of these proceedings a few days before the hearing.

[4] Although, the matter may turn only on the issue of jurisdiction, I consider it important, to briefly discuss a few facts by way of background to the matter. This ought not to result in long detention, as there is no intention to rehearse all the material in the matter and considering that the matter has become unopposed.

Brief background

[5] As already indicated above, the applicant and his brother, a certain Mr A.A. Kalla were at some period or are still now directors and shareholders of private companies called Swart and Potgieter, and Asify Properties. Not much light is shed on the nature of the businesses of these two companies, but nothing turns on this. However, it appears that already in September 2007 the relationship between the two brothers had been strained and that the respondent's intervention was sought from then.[1]

[6] I henceforth conveniently refer to Professor/Mr. A.A. Kalla as AA Kalla and the two companies mentioned above, simply as the Companies. The applicant and respondent retain their designated nomenclature.

[1] See par 4 of the applicant's founding affidavit on indexed p 3.

[7] On 10 November 2014 the applicant stated that he received a document from the Independent Regulatory Board of Auditors (the IRBA) in terms of which he was advised that the auditor who was instrumental in the appointment of his brother, AA Kalla, as director of the Companies had been found guilty of unprofessional conduct and made to pay a fine by the IRBA.

[8] Armed with the letter from the IRBA, the applicant approached the respondent to have his brother removed as director of the Companies. He was assisted by various officials or functionaries of the respondent in the process and appeared to have submitted final documents in this regard on 9 June 2015.[2]

[9] However, on 22 April 2016 the applicant received a letter from AA Kalla's attorneys advising him that his brother was now the sole director of the Companies and that he had been removed as director. He later discovered that an earlier administrative action or step of the respondent removing AA Kalla as director of the Companies had been reversed at the instance of a certain Ms. Kefilwe Khumalo of the respondent. I will conveniently refer to Ms. Kefilwe Khumalo, simply as Khumalo.

[10] Correspondences largely by way of electronic mail were exchanged between the applicant and the respondent, including a letter dated 14 June 2016 authored by Khumalo on behalf of the respondent. In my view, this letter captures the essential issues in dispute between the contending parties and reads in the material part:

[2] See par 10 of the applicant's founding affidavit on indexed p 4.

"**COMPLAINT AGAINST THE D SWART AND PROPERTIES (PTY) LTD … AND ASIFY PROPERTIES …**

Your e-mail response dated 12 June 2016 refers.

As indicated on my email dated 10 June 2016, we received a complaint from Professor Alli Kalla (Professor) alleging that you have removed him from two companies (D Swart Properties (Pty) Ltd and Asify Properties (Pty) Ltd). You will recall that you submitted the CoR.39 (notice to change the directors) in June 2015 to remove Professor on both Companies and for you to remain the sole director on both Companies.

Investigation to the alleged complaint by Professor was done and the recommendation on both Companies was for the status of directorship to be reversed to where it was before the CoR.39 that you submitted in 2015 was processed and to retain directorship on both Companies as per CM.29 (Contents of Registers of Directors, Auditors and Officers) dated August 2007 where you were both directors of the Companies.

The decision to reverse the directorship of both companies was based on the fact that the supporting document you attached with CoR.39 were incomplete, the amendment was not supposed to have been processed as the supporting document you submitted were not complying with the requirement to change the director of the Company.

- There was no copy of notice of the meeting for both Companies.
- No certified ID copy of Professor Alla Kalla on both Companies.
- The CoR.39 was dated November 2014 and the resolution was only taken in April 2015.
- The contents of the affidavit you submitted on D Swart and Properties (Pty) Ltd you stated that "Mr A.A. Kalla refuses to attend the meeting as called for by the above company and as a result is not possible to get a certified copy of his identity document"
- No copy of the affidavit was attached or submitted on CoR.39 for Asify Properties (Pty) Ltd.

The contents of your affidavit clearly indicated that there was a dispute because you mentioned that he refused to attend the meeting as a result you did not get his copy identity documents, based on the contents of what you stated on your affidavit, it was not supposed to have been processed.

There changes and the error that I referred to on my e-mail dated 10 June 2016, it was for the status of both Companies to be where it was as per contents of registered CM.29 in 2007 as the processed CoR.39 to appoint you as a sole director was defective…

The error I referred to on my email does not mean you were supposed to be the sole director, it was simply to correct the amendment you submitted in 2015 to remove Professor and for you to remain sole director of both Companies which was not supposed to have been processed, when they reversed the transaction in April 2016 they made an error by removing you from the system instead of re-instating Professor.

It should be noted that it has been rectified and the contents of both Companies as it was in 2007 where you are both directors of the Companies…

I do not see the relevance of previous matter you are referring to as I was only rectifying the current situation relating to the complaint that was lodged by Professor and the processed CoR.39 that you submitted and it was not supposed to have been processed due to non-compliance.

Other matter you mention relating to the appointment of Professor in 2007 it seems to be irrelevant as per Section 219 of the Companies Act 71 of 2008, Limited time for initiating a complaints because Professor was appointed in 2007 and your complaint was submitted to 2012.

There is an allegation from both parties as you alleged that you are the sole director and Professor also stating the same, it would be better for you to approach the Companies Tribunal for determination in terms of Section 71(8) of the Companies Act 71 of 2008."[3]

[Sic: the above is written exactly as it stands in the original]

[11] The applicant answered the respondent's letter quoted above and stated, among others, the following:

"I am the majority shareholder in these companies a fact which A.A. Kalla is well aware of. By taking this drastic action of reversing the CoR39 Ms. Khumalo has created dire consequences. This has put CIPC namely Mr. Nkohla and his team and me up for a criminal investigation for not following procedure.

I will respond to the bullet form of reasons given by Ms. Khumalo for the reversal:

1. The correct procedure was to instruct A.A. Kalla to call for a meeting of shareholders to discuss the issue of the notice.
2. As far as the I.D. is concerned I have proof that an affidavit was sent through on D. Swart & Potgieter (Pty) Ltd and it is unfortunate that I was not asked for one by Mr. Nkhola and his team on Asify Properties (Pty) Ltd. This can be remedied. The fact is that the directors and the shareholders in both companies are the same.
3. As far as the time between the date of CoR39 and the resolution is concerned I have written proof that this was a process that took time. At most times I copied you and Ms Van Zyl in all mail.
4. This is a FACT.
5. Dealt with in No. 2.

[3] See annexure "YK23" to the founding affidavit on indexed pp 30-31.

> I have no doubt that the "Professor" will not waste any time in following through on criminal proceedings against me. This is an issue that I have been avoiding for years. I always tried to stay on the right side of the law."[4]
>
> [Sic: the above is written exactly as it stands in the original]

[12] The respondent delivered an affidavit deposed to by Khumalo,[5] before filing its notice to abide the outcome of these proceedings.[6] AA Kalla also filed an affidavit, despite the absence of his formal citation, as a party to these proceedings.[7] The applicant replied to both affidavits by AA Kalla and the respondent.[8]

Other issues

[13] As indicated above, at the commencement of the hearing on 10 November 2016, there was an application by AA Kalla to be admitted as a party to these proceedings. The same application was intertwined with one for the postponement of these proceedings, to enable a formal joinder application to be launched.[9] Advocate S Sethene moved the application on behalf of AA Kalla. However, both applications were abandoned or withdrawn after argument.[10] Therefore, no formal ruling was made in this regard and AA Kalla remained a non-party to these proceedings, although he was afforded an opportunity on some aspects to address this Tribunal through his counsel.

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[4] See annexure "YK24" on indexed p 32.
[5] See indexed pp 47- 53.
[6] See indexed p 66.
[7] See indexed pp 40- 46.
[8] See indexed pp 54- 65.
[9] See pp 11-30 of the transcript of the proceedings of 10 November 2016.
[10] See p 30 of the transcript of the proceedings of 10 November 2016.

Jurisdiction (and applicant's submissions in this regard)

[14] Further from oral submissions made at the hearing,[11] it is submitted in the written heads of argument, filed on behalf of the applicant, that this Tribunal has jurisdiction to adjudicate upon this matter on, among others, the following grounds:

> "**Jurisdiction of the tribunal**
> 14. The tribunal's establishment is at the outset statutorily acquired. In this regard section 193 (1) of the Companies Act 71 of 2008 ("the Act"), to the extent relevant reads as follows:
>
> *"There is hereby established a juristic person to be known as the Companies Tribunal, which*
> *(*
> *a) Has jurisdiction throughout the Republic;...*
>
> *(c) must exercise its functions in accordance with this Act..."*
>
> 15. The types of matters which the tribunal has the power to adjudicate upon are set out in section 195 (1) of the Act. Section 195 (1) to the extent relevant reads as follows:
>
> *"The Companies Tribunal, or a member of the Tribunal acting alone in accordance with this Act, may-*
> *(a) adjudicate in relation to any application that may be made to it in terms of this Act..."*
>
> 16. At its core, this application pertains to the respondent's decision having the effect of re-appointing Asgar to remain as director of the applicant companies despite his non-disputed and manifest ineligibility and/or disqualification to act as director of the applicant companies as a consequence of IRBA'S findings and Sonpra's admission of guilt. In this regard this application seeks a determination from the tribunal which is well within its jurisdiction and capacity to adjudicate upon for reasons below.
>
> 17. If the applicant companies had more than 2 directors, this application would not be necessary as the board, other than Asgar, would determine Asgar's removal by resolution. The board would under those circumstances remove Asgar upon IRBA'S findings and Sonpra's admission of guilt which render Asgar ineligible and/or disqualified to act as director of the applicant companies in terms of section 71(3) of the Act.

[11] See from line 19 onwards on pp 32- 53 of the transcript of the proceedings of 10 November 2016.

18. The applicant companies however, as it currently still stands, each comprise of 2 directors, Asgar and Yusuf Suleiman Kalla respectively. The applicant companies accordingly have fewer than 3 directors.

19. As such the tribunal under these circumstances has the requisite jurisdiction and capacity to make a finding pertaining to the ineligibility and/or disqualification of Asgar to remain as director of the applicant companies (as a consequence of the decision by the respondent) in terms of section 71(8)(b) of the Act which reads as follows:

"If a company has fewer than three directors in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection."

20. The tribunal accordingly has the authority to make a determination based on grounds contained in section 71(3) of the Act.

(If the number of directors of the applicant companies was more than 2, the board of the applicant companies would make a determination by way of resolution on the same grounds contemplated in section 71(3) of the Act. As the number of directors of the applicant companies is fewer than 3 in this instance, the tribunal in terms of section 71(8)(b) of the Act can make a determination based on the same grounds)

21. Section 71(3)(a)(i) to the extent relevant reads as follows:

"If a...shareholder or director has alleged that a director of the company has become ineligible or disqualified in terms of section 69...the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be."

22. As provided for in section 71(8) of the Act, the power given to the board in terms of section 71(3)(a)(i) of the Act (where the number of directors are more than 2), vests in the tribunal where the number of directors are less than 3.

23. As a result of IRBA's findings and Sonpra's admission of guilt, Asgar was ineligible to become a director of the applicant companies from the get go. Notwithstanding the above, as soon as the applicants (through Yusuf Suleiman Kalla) obtained the requisite knowledge of Asgar's ineligibility (i.e. Sonpras admission of guilt by way of the letter received from IRBA dated 10 November 2014), the applicant immediately took proactive steps and acted on the advice of the respondent in submitting CoR39 documents which have been reversed by the respondent and which has resulted in the launching of this application.

24. For all purposes Asgar's ineligibility and disqualification to act as director of the applicant companies was only made evident upon receipt of the letter from IRBA (at a

time when Asgar already held the position of director for the applicant companies, void as it may have been).

25. Section 69 (4) of the Act, which *inter alia* finds applicability herein, to the extent relevant reads as follows:

"A person who becomes ineligible or disqualified while serving as a director of a company ceases to be a director immediately..."

26. This application is accordingly within the ambit of an application (which may be adjudicated upon by the tribunal) in terms of section 71(8) of the Act, read together with both sections 71(3) and the applicable provisions section 69 thereto.

Application in terms of section 142 of the Companies Regulations, 2011 ("the Regulations")

27. This application has been brought in terms of section 142 of the Regulations which reads as follows:

"A person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or these regulations, by completing and filing with the Tribunal's recording officer
(a) an Application in Form CTR 142; and
(b) a supporting affidavit setting out the facts on which the application is based."

The applicants' failure to specify in terms of which sections of the Act and/or Regulations this application is made

28. Although the applicants have complied with the above requirements, and have further in compliance with section 142 (3)(b)(ii) set out the decision of the respondent that the applicants seeks to have rescinded, the applicants have not specifically indicated the section/s of the Act or the Regulations in terms of which this application is made as required in terms of section 142 (3)(a) of the Regulations.

29. As recorded during the applicants submissions at the hearing on 10 November 2016, the applicants placed on record that the applicants (through Yusuf Suleiman Kalla) acted without the assistance of any legal representative until after delivery of the answering affidavits in this matter. The applicants non-compliance (in so far as they fail to specify which sections of the Act/Regulations they rely on) was not *mala fide* and will cause no prejudice whatsoever to the respondent. Moreover the applicants (through Yusuf Suleiman Kalla) at all material times acted on the direct advice of the CIPC as fully elaborated on in the applicants filed affidavits). The element of *'good cause'* essential to considerations of condonation is most certainly met in this instance and the applicants' seek condonation for their failure to so comply.

30. In this regard, the requirement of *'good cause'* for the applicants to meet is a variant of one well known in cases of procedural non-compliance.

31. *'Good cause'* looks at all those factors which bear on the fairness of granting the relief as between the parties and as affecting the proper administration of justice. In any given factual complex it may be that only some of many such possible factors become relevant.

These may include:

31.1 prospects of success in the proposed action;
31.2 the sufficiency of the explanation offered;
31.3 the *bona fides* of the applicant, and
31.4 any contribution by other persons or parties to the delay and the applicant's responsibility therefor.

33. Only to the extent that this tribunal is not inclined to grant condonation for the applicants failure to fully comply section 142 (3)(a) of the Regulations by not specifying which section/s of the Act or the Regulations this application is made, the applicants seek for an opportunity from the tribunal for purposes of applying to amend the notice of motion in terms of the Form CTR 142 as envisaged in section 145 of the Regulations. Section 145 of the Regulations reads as follows:

"(1) The initiating party may apply to the Tribunal by Notice of Motion at any time before the end of the hearing of the matter for an order authorising them to amend their initiating documents as filed;
(2) If the Tribunal allows an amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time period allowed by the Tribunal;
(3) A Notice of Motion to be made before the Tribunal, for any purpose in terms of the Act and these regulations, must be in Form CTR 145."

Conclusion

34. For reasons aforementioned it is submitted that the tribunal has the requisite capacity and jurisdiction to hear this matter as contemplated in terms of section 71(8) of the Act, read together with both sections 71(3) and the applicable provisions section 69 thereto.

35. To the extent that this tribunal is not inclined to condone the applicants not compliance with section 142 (3)(a) of the Regulations by their failure to specify the sections of the Act and/or the Regulations in terms of which this application is made, the applicants further seek for an opportunity from the tribunal for purposes of applying to amend the notice of motion in terms of the Form CTR 142 as envisaged and allowed to them in terms of section 145 of the Regulations. "

[quoted without footnoted and with added underlining for emphasis]

[15] I will deal with the above-mentioned submissions immediately after considering the applicable legal principles for the determination to be made on the issue of jurisdiction.

Applicable legal principles

[16] I consider it already trite that this Tribunal is a juristic person established in terms of section 193[12] of the Companies Act 71 of 2008 (the Companies Act). Therefore, this Tribunal is a creature of the aforementioned statute.

[17] The functions of this Tribunal are set out in section 195 of the Companies Act, which reads as follows, in the material part:

> "(1) The Companies Tribunal, or a member of the Tribunal acting alone in accordance with this Act, may-
> (a) adjudicate in relation to any application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application;
> (b) assist in the resolution of disputes as contemplated in Part C of Chapter 7; and
> (c) perform any other function assigned to it by or in terms of this Act, or any law mentioned in Schedule 4."
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> [underlining added for emphasis]

[18] I do not consider subsections (b) and (c) of section 195(1) applicable to this matter. Therefore, what remains for consideration is whether or not jurisdiction may be

[12] Section 193(1) reads as follows in the material part: "(1) There is hereby established a juristic person to be known as the Companies Tribunal, which- (a) has jurisdiction throughout the Republic; (b) is independent, and subject only to the Constitution and the law; (c) must exercise its functions in accordance with this Act; and (d) must perform its functions impartially and without fear, favour, or prejudice, and in as transparent a manner as is appropriate having regard to the nature of the specific function."

found in terms of section 195(1)(a) (i.e. the underlined part of the quotation in paragraph 17 above).

[19] The Companies Act created agencies like the respondent; this Tribunal; the Takeover Regulation Panel and the Financial Reporting Standards Council. This legislation has also allotted different functions and roleplays to these agencies.

[20] This Tribunal was allocated functions which include review of administrative decisions of the respondent. However, this Tribunal does not generally serve as the reviewing body of the respondent's actions or decisions. In some instances, there is concurrent jurisdiction with the High Court.[13] For example, the respondent may after conducting an investigation in terms of section 169 of the Companies Act issue a compliance notice requiring a person to take or cease to take a particular step. This is contemplated by section 171 of the Companies Act. However, a party unhappy with such notice may approach this Tribunal or the Court to review (in terms of section 172 of the Companies Act) such a compliance notice, which may be confirmed, modified or cancelled in whole or part by the Court or this Tribunal, whatever the case may be.[14] An example of an area where this Tribunal has exclusive jurisdiction is with regard to the

[13] See for example sections 2(3) and 171.

[14] Section 172 reads as follows in the material part: "(1) Any person issued with a compliance notice in terms of this Act may apply to the Companies Tribunal in the case of a notice issued by the Commission, or to the Takeover Special Committee in the case of a notice issued by the Executive Director, or to a court in either case, to review the notice …
(2) After considering any representations by the applicant and any other relevant information, the Companies Tribunal, the Takeover Special Committee, or a court may confirm, modify or cancel all or part of a compliance notice."

requirement to appoint a social and ethics committee in terms of section 72(5)[15] or determination of company names in terms of section 160.

[21] There also instances where this Tribunal does not have jurisdiction or involvement over the decisions or activities of the respondent, but the High Court.[16]

[22] Therefore, what has to be determined is whether the relief sought by the applicant falls within the area indicated by the Companies Act as falling within the jurisdiction of this Tribunal. This is a legal enquiry and is attended to next.

Legal principles and submissions (a discussion)

[23] As indicated above, the applicant was requested to file heads of argument dealing only with the issue of jurisdiction. However, in those written heads of argument, particularly portions thereof quoted above, the applicant appears to be acquiescing the fact that this Tribunal may not have jurisdiction in respect of the relief sought on the filed papers.

[24] The applicant is now seeking the removal of AA Kalla as a director of the Companies. It is submitted in this regard that this Tribunal has jurisdiction on the basis of section 71(8) of the Companies Act. This was not the case that was moved or initiated before this Tribunal. It is an entirely new matter.

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[15] Section 72(5) reads as follows: "(5) A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such an exemption …"

[16] See, for example, sections 173 – 175.

[25] It is correct that this Tribunal has jurisdiction where the removal of a director is sought in a company which has not more than two directors.[17] This much is very clear from the following reading of section 71(8) in the material part:

> "(8) If a company has fewer than three directors-
> (a) subsection (3) does not apply to the company;
> (b) in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection; and
> (c) subsections (4), (5) and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal."

[26] However, as already stated, this was not the case brought by the applicant to this Tribunal. It cannot be initiated in counsel's heads of argument. Part E of the Companies Regulations, 2011[18] is very clear on how this Tribunal's proceedings are initiated. No amount of condonation or amendment can assist the applicant. Besides, even if an amendment or condonation is granted at this very late stage, it is clear that such relief would directly impact on the interests and rights of AA Kalla, as the director that is sought to be removed. The rules of natural justice would apply[19] naturally. The latter said with no intention of pun.

[27] Therefore, the matter would be dealt with in terms of the current papers. I hasten to point out that, I am not persuaded that this Tribunal has jurisdiction to adjudicate upon

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[17] See the unreported decision of this Tribunal dated 11 August 2015 in the matter of *Spineco Medical International (Pty) Ltd and another v JL Webb*, case/file number: CT021NOV2014.
[18] The Companies Regulations were published by the Minister of Trade and Industry in terms of section 223 of the Companies Act 71 of 2008 under GN R351 in Government Gazette 34239 of 26 April 2011.
[19] See *Herbstein and Van Winsen The Civil Practice of the High Courts of South Africa* 5th ed (Juta Cape Town 2009) (*Herbstein and Van Winsen*) at 1362 and the authorities quoted there.

this matter. I hold this view against the backdrop of the filed written heads of argument; oral submissions made at the hearing by counsel for the applicant; other available information and legal principles. In my view this Tribunal does not have jurisdiction to order the respondent to reverse the impugned step or to borrow (albeit liberally so) from the applicant's words, "to order the reversal of fraudulent CM29 to CoR39". The competence to make such an order lies squarely outside the jurisdiction of this Tribunal, as the Companies Act did not ration such competence to this Tribunal. This Tribunal doesn't have inherent powers and therefore in accordance with the constitutional principle of legality, it has to act within the powers conferred upon it by the enabling or founding piece of legislation.[20]

[28] Be that as it may, as already indicated, the applicant (or his legal representatives) are clearly aware of the correct legal position regarding the jurisdiction of this Tribunal in this matter, hence the unsuccessful attempt to build a new case in the heads of argument or the request for an amendment or condonation. Unfortunately, this is not possible for the reasons expressed above.

Conclusion and Order

[29] Against my finding that this Tribunal has no jurisdiction, the matter cannot proceed towards the determination of the merits of the application. The applicant failed to clear the hurdle of jurisdiction and therefore this would be fatal to the application.

[20] See *Senwes v Competition Commission* (118/2010) [2011] ZASCA 99 at par 51 and *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 (1) SA 374 CC* (at 56-59).

[30] I had indicated when adjourning the proceedings that should my ruling be that this Tribunal does not have jurisdiction this written decision will constitute the end of these proceedings. Therefore, this constitutes the end of the matter in terms of the relief crafted and sought in the applicant's papers.

[31] In the premises the following order is made:

a) the application is dismissed.

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Khashane La M. Manamela

Member, Companies Tribunal

30 December 2016

Appearances:

For the Applicant	:	Adv M Cajee
Instructed by	:	Patel Incorporated Attorneys Johannesburg
For the Respondent	:	Mr. L Matsembi
Instructed by	:	Companies and Intellectual Property Commission
For Mr. A.A. Kalla	:	Adv S Sethene
Instructed by	:	Attorney Mashala (i.r.o. the withdrawn joinder application)