

**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case/File Number: CTR026/05/2013

In the *ex parte* application of:

JAMES ABINCHUM ABI

for a company still to be registered called **STUMATH** **Applicant**

in respect of:

**AN APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO
SUBMIT TO OR FURNISH THE COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION WITH A CERTIFIED COPY OF AN IDENTITY
DOCUMENT FOR PURPOSES OF REGISTRATION OF A COMPANY**

Presiding Member of the Tribunal : Khashane Manamela

DECISION (Reasons and Order)

[1] The papers filed in this matter bear dates, as far back as, April 2013. This is almost ten months ago and a very long time for the type of issues to be

determined herein. It may therefore not be unreasonable to speculate that, the material issues in the matter may not have withstood the test of time, and may have been overtaken by other events and consequently become moot. The cause of this may significantly be due to the applicant inadvertently filing his papers with the Companies and Intellectual Property Commission (the Commission) in May 2013. The matter was only allocated to me for adjudication a few weeks ago and it therefore may have taken a while before it migrated from the Commission to this Tribunal. Therefore, somewhere in between the two agencies there was inordinate delay. No matter the cogency of the reasons proffered for the delay, the applicant's best interests were - in my opinion - not reasonably served and I take advantage of the opportunity presented by my podium to apologise for the delay.

[2] Mr. Abinchum Abi James [and I am getting the sequence of his name from a copy of his passport] is a national of the Republic of Cameroon. He appears to have been residing in Westville, Durban, South Africa when he lodged his application. He states that, he had previously wanted to incorporate a company with the name STUMATH. However, he was unsuccessful due to not including a certified copy of his identity document. He omitted to include with his application to this Tribunal, the documents submitted to or received from the Commission. And I must add that, the application is very patchy and frugal in submissions.

[3] He could not submit a certified document as he had lost his passport and other valuables when he was a victim of a robbery. He furnished details of the police report he had made in respect of the robbery. He was going to apply for a new passport.

[4] It is not farfetched to imagine that, the applicant was very frustrated by this turn of events. Firstly, the robbery and loss of his passport, and secondly, the lack of success with his attempt to register a company due to his inability to furnish a certified copy thereof to the Commission. He would have needed assistance urgently.

[5] However, I could not really find a provision in **the Companies Act 71 of 2008 (the Act)** through which the applicant could be assisted for the relief sought. This is so even with a fine-tooth combing of the Act, so to speak.

[6] **Section 6(2) of the Act** contains what at face value appears to be applicable to the relief sought by the applicant and it reads as follows:

“(2) A person may apply to the Companies Tribunal for an administrative order exempting an agreement, transaction, arrangement, resolution or provision of a company’s Memorandum of Incorporation or rules from any prohibition or requirement established by or in terms of an unalterable provision of this Act, other than a provision that falls within the jurisdiction of the Panel.”

[underlining added for emphasis]

[7] From my analysis of the above, I find that the above provision [section 6(2)] is not applicable to this matter. The provision appears to be aimed at exemptions of agreements, transactions, arrangements, resolutions or provisions of companies' memoranda of incorporation or companies' rules from prohibitions or requirements established by unalterable provisions of the Act. It is my view that, furnishing of a certified copy of an ID does not fall in those category of exemptions.

[8] Therefore, the matter is clearly not within the jurisdiction of this Tribunal. As a creature of statute, this Tribunal does not have inherent powers. 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 [***Senwes v Competition Commission* (118/2010) [2011] ZASCA 99** and ***Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 CC** (at 56-59)].

[9] Be that as it may, as I have already mentioned at the beginning hereof, there has been inordinate delay from the moment the application was lodged until now and other events may have therefore overtaken the delivery of this decision, for which I have already expressed regret. The applicant may propitiously have had an opportunity to acquire a new passport. However, with or without the delay, the application was bound to fail as it was launched in the incorrect forum. Therefore, this will be the fate of this matter.

[10] In the result:

a) the application is dismissed.

Khashane Manamela

Member, Companies Tribunal

12th February 2014