

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-003988

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER
JUDGES: YES/NO
(3) REVISED. YES/NO

01/09/2025
DATE


SIGNATURE

In the matter between:

DAVID GLUCKMAN

Applicant

and

4 KNIGHTS INTERNATIONAL EVENTS COMPANY (PTY) LTD

Respondent

COURT ORDER

- A. Judgement is granted against the respondent for payment of R164 893-76.
- B. The respondent shall pay interest at the rate of 15% per annum *a tempore morae* on R164 893-76 until payment in full.

- C. The respondent shall, for a reasonable time after service of this order on the respondent or its attorneys of record, and during business hours make available for inspection and copying by the applicant or his attorneys, the respondent's notices and minutes of the meetings of shareholders and directors for the years 2017 to date as well as the respondent's securities register.
- D. Within 10 days of the service of this order on the respondent or his attorneys of record, the respondent shall furnish the applicant or his attorneys of record with a copy of the respondent's signed annual financial statements for the years ending 2018, 2019, 2020, 2021 and 2022.
- E. The counter-application is dismissed.
- F. The respondent shall pay the costs of this application and the counter-application on the scale as between attorney and client.

JUDGEMENT

INTRODUCTION

- (1) In this application the applicant claims payment of an amount of R64 893-76 in respect of outstanding dividends and interest thereon, as

well as payment of an amount of R100 000-00 in respect of an outstanding loan capital amount.¹

- (2) The applicant, as a shareholder in the respondent, is exercising his rights in terms of the Companies Act 71 of 2008 ("the Companies Act"), with reliance on the respondent's memorandum of incorporation, pertaining to the following documents of the respondent, being the signed annual financial statements for the five financial years ending the last day of February in each of 2018, 2019, 2020, 2021 and 2022. He also seeks copies of notices and minutes of meetings of shareholders and directors from 1 September 2015 to date.
- (3) The applicant also claims interest on the amounts due to him and costs on the scale as between attorney and client.²
- (4) Whilst the application was issued on 19 January 2023, it took more than two years before it was heard, due to various delays that are summarised in a factual chronology submitted in a unilateral practice note which was filed by the applicant on 5 February 2025.³
- (5) There were numerous unexplained delays on the side of the respondent, the last of which was a practice note filed on 20 February 2025⁴ and heads of argument filed on 19 February 2025, three and four days, respectively, before the hearing. The court nevertheless proceeded to

¹ Caselines, Notice of Motion, 01-2 to 3.

² Caselines, Notice of Motion, 01-2 to 3.

³ Caselines, 05-32 to 43.

⁴ Caselines, 05-28 to 32.

hear the matter to give effect to the applicant's right of access to the court. No formal condonation was sought for the late filing of these documents despite the clear procedures laid down in the Practice Manual of this division.

RELEVANT PROCEDURAL ISSUES

- (6) The applicant maintained that the answering affidavit, for the filing of which an extension until 30 March 2023 was granted, was filed late and outside the extension period, on 4 April 2023. No application for condonation was filed, except for an almost tongue-in-the-cheek request in the respondent's practice note which was only filed three days before the hearing.⁵
- (7) Simultaneously with the late filing of the answering affidavit on 4 April 2023, and as an annexure to such affidavit, the respondent filed a notice of counter-application⁶ in which it claimed damages in an amount of R1,2 million together with interest thereon. These damages are claimed from the applicant for damage he allegedly caused to the business of the respondent.
- (8) The respondent also sought alternative relief against the applicant in terms of section 163 of the Companies Act, which section deals with relief that can be applied for by a shareholder or a director of a company to obtain redress from oppressive or prejudicial conduct. Section 163(2)

⁵ Caselines, 05-31, para 7.1.

⁶ Caselines, Annexure "AA11", 01-234 to 236.

sets out the relief that a court may order in its discretion in such circumstances.

- (9) The applicant has correctly referred to this counter-application as an unliquidated claim and relies on the latest authority in the **IRD Global**⁷ matter that awards of damages may not be claimed in motion proceedings.
- (10) The answering affidavit is also replete with scandalous and vexatious allegations against the applicant, in respect of which the applicant objected, but no application to strike out such allegations were brought in terms of Rule 6(15)⁸ although such application was foreshadowed in the replying affidavit. I will nonetheless not take such irrelevant allegations into account, except in relation to the costs order.

APPLICANT'S RELIEF CLAIMED

- (11) The applicant sets out in the founding affidavit how it came about that he concluded a loan agreement with the respondent on 26 August 2015 and made payment of an amount of R100 000-00 to the respondent.⁹ A further R100 000-00 was paid to purchase redeemable cumulative preference shares. Proof of payment of the R200 000-00 is annexed to the founding affidavit.¹⁰

⁷ **IRD Global Ltd v The Global Fund to Fight Aids, Tuberculosis and Malaria 2025 (1) SA 117 (SCA)** at [24]-[26].

⁸ Caselines, Replying Affidavit ("RA"), paras 17-20, 01-245 to 246.

⁹ Caselines, Founding Affidavit ("FA"), 01-10 to 11.

¹⁰ Caselines, Annexure "FA3", 01-43.

- (12) The said shares were taken up by the applicant in terms of a subscription agreement.¹¹
- (13) A share certificate was issued to the applicant, a copy of which is annexed to the founding affidavit.¹²
- (14) On 16 November 2021 the applicant's attorneys requested, in writing, from the respondent repayment of the loan amount of R100 000-00, copies of the audited financial statements of the respondent for the years ending 2018, 2019, 2020 and 2021. Ms Steenkamp, a director of the respondent signed and acknowledge receipt of the attorneys' letter.¹³
- (15) On 1 September 2022 the applicant's attorneys transmitted by email a letter to the respondent seeking payment of R64 893-76 which is due.¹⁴
- (16) On 4 November 2022 the applicant's attorney claimed payment of the loan amount of R100 000-00 and R64 893-76 being dividends and interest outstanding.¹⁵
- (17) In its founding affidavit the applicant also set out why the National Credit Act 34 of 2005 is not applicable to the loan agreement in terms of which

¹¹ Caselines, FA, paras 26-29, 01-14 to 15; Annexure "FA4", 01-44.

¹² Caselines, FA, paras 26-27, 01-14 to 15; Annexure "FA5", 01-45.

¹³ Caselines, FA, paras 30-32; 01-15.

¹⁴ Caselines, FA, paras 36-39, 01-16 to 17, Annexure "FA9", 01-88 to 90.

¹⁵ Caselines, FA, paras 49-51, 01-18; Annexure "FA12", 01-94 to 95.

R100 000-00 is claimed.¹⁶ The value placed on the respondent's assets is based upon an estimate by a director of the respondent.

RESPONDENT'S CASE

- (18) The answering affidavit was deposed to by Mr Hendrik du Toit (Du Toit or the deponent). He states at the outset that he has no personal knowledge of the contents of the founding affidavit regarding the "purported" agreements which the applicant alleges to have concluded with the respondent.¹⁷ He states that he was not a director at the time of the conclusion of the agreements as he was only appointed a director of the respondent on 23 March 2016.¹⁸ He further states that he relies on the documents provided by the applicant to determine the authenticity of the applicant's claims.
- (19) The deponent states that the respondent has two directors (as at 4 April 2022), being himself and Ms Judy-Marie Steenkamp (Ms Steenkamp).¹⁹ He further states that the respondent has four equal ordinary par value shares. No proof of this allegation was given in the answering affidavit.
- (20) In argument, Mr Rosseau, who appeared for the respondent, submitted that there are various serious disputes of fact which either has to be

¹⁶ Caselines, FA, paras 56-57, 01-19.

¹⁷ Caselines, Answering Affidavit (AA), para 8, 01-113.

¹⁸ Caselines, AA, para 9, 01-114.

¹⁹ Caselines, AA, para 12, 01-114.

decided on the respondent's version, or they must be referred to trial, together with the respondent's counter-claim.

- (21) Mr Silver, for the applicant, submitted that none of the applicant's evidence has been denied specifically and that there was no confirmatory affidavit by Ms Steenkamp, who was a director of the respondent at all relevant times.
- (22) Mr Silver has also submitted that Mr du Toit was not candid in his answering affidavit and referred to an email dated 22 August 2015 from Mr du Toit to Mr Andrew Fisher where to the identical loan offer and preference share offer was attached. All three then other directors of the respondent at that time were copied on the mail. The applicant's evidence is that in late August 2015 Mr du Toit personally telephoned him to thank him for the R200 000-00 payment made in respect of the loan agreement and subscription agreement.²⁰
- (23) Mr du Toit also questions the applicant's "alleged" shareholding in the respondent. The applicant disposed of this attempt by referring to a director's resolution of 1 April 2016, when four directors including Du Toit resolved to allot 100 000 Class B Cumulative Redeemable Preference Shares to the applicant.²¹ The applicant's evidence further is that Mr du

²⁰ Caselines, RA, paras 24.1-24.2, 01-247; Annexure "RA2", 01-296.

²¹ Caselines, RA, paras 24.3-24.6, 01-247 to 248; Annexure "RA3", 01-297.

Toit, as a director of the respondent, authorised payments of dividends to him.²²

- (24) The applicant has further provided evidence of correspondence between Mr du Toit and himself to the effect that Mr du Toit is aware of the loan agreement and his shareholding referred to above, and which correspondence also confirms that the applicant was paid, on 4 February 2019, an amount of R15 000-00 as interest on his loan and dividends on his preference shares of R15 000-00.²³ Further correspondence between the applicant and Mr du Toit were annexed to the answering affidavit, marked "AA4", which confirms Mr du Toit's knowledge of dividend payments and financial statements that are required by the applicant.²⁴ Annexed to the answering affidavit as AA5 is an email from Mr du Toit to the applicant dated 30 March 2020 which confirms that the respondent paid a dividend to the applicant.²⁵

- (25) It is clear to the court that there is no genuine and *bona fide* dispute between the parties in respect of the loan agreement and the applicant's shareholding in the respondent²⁶, due to the direct evidence and proof proffered by the applicant.

²² Caselines, RA, paras 140-142, 01-267.

²³ Caselines, para 24.9, 01-249 to 250.

²⁴ Caselines, para 24.10-24.14, 01-250 to 252.

²⁵ Caselines, para 26, 01-252.

²⁶ See: **Wightman t/a JW Construction v Headfour (Pty) Ltd and Another** 2008 (3) SA 371 (SCA) at [23].

- (26) A large part of the answering affidavit was used by Mr du Toit to describe how the respondent had acquired in 2015 the rights to host the South African Junior Chess Championships²⁷ ("SAJCC").
- (27) In subsequent paragraphs of the answering affidavit Mr du Toit accuses the applicant, together with Mr Lewaks, to have orchestrated and lead a clandestine and concerted campaign to cause damage to the respondent and its business.²⁸ Further allegations are made of a "rogue group" who allegedly set their sights on the respondent's agreement regarding the SAJCC rights purchase between Chess South Africa and the respondent.²⁹
- (28) Mr du Toit then also accused the applicant to be one of a group of individuals who purported to have been democratically elected as office bearers of a provincial structure who resented the correct (as at 8 December 2018) Executive for attempting to stop corruption by enforcing the Chess South Africa Constitution and the respondent's directors for stopping the "rogue group" from unlawfully terminating the purchase agreement.³⁰
- (29) In his replying affidavit the applicant described Mr du Toit's allegations as scandalous, vexatious and defamatory. He stated that prior to reading

²⁷ Caselines, AA, para 16, 01-116.

²⁸ Caselines, AA, para 25, 01-118.

²⁹ Caselines, AA, paras 29-31, 01-118 to 119.

³⁰ Caselines, AA, paras 36-38, 01-120.

the answering affidavit, he had never heard of the alleged "rogue group" and he denies being affiliated with or being a part of this group.³¹

- (30) Mr du Toit continued in this vein, accusing the applicant of a tirade of emails in March 2020 and that he has accused the respondent of breaching the agreement regarding SAJCC with Chess South Africa.³²
- (31) The applicant dealt with all the said allegations in the replying affidavit to put them in context and to record the true position as he saw it.³³
- (32) Mr du Toit also referred to a judgement handed down on 19 February 2022 against "individual hijackers who were part of the rogue group."³⁴ The applicant replied that he was not involved in those proceedings.³⁵ He also was not cited as a respondent in that matter.
- (33) Mr du Toit stated that the Western Cape provincial structure decided not to allow the youth to participate in the SAJCC in 2022 and organised and marketed an "unrated tournament". The applicant allegedly voted in favour of this decision.³⁶ In his replying affidavit the applicant dealt with these accusations by Mr du Toit. He states that he attended a special general meeting of Chess Western Province on 30 August 2022 on behalf of the Cape Town Chess Club (CTCC). The CTCC voted for option 2 of 3 voting options being "not support and challenge the

³¹ Caselines, RA, paras 70-72, 01-258.

³² Caselines, Aa, paras 40-43, 01-121; para 47, 01-122.

³³ Caselines, RA, paras 82-95, 01-260 to 261.

³⁴ Caselines, AA, para 53, 01-124.

³⁵ Caselines, RA, paras 105-106, 01-263.

³⁶ Caselines, AA, para 55, 01-124.

resolution taken by the WCCA Council.” He explains that the one vote of CTCC would have made no difference to the outcome as a clear majority of 15 votes supported the WCCA decision although the CTCC voted against the resolution. He states that he had no involvement whatsoever with the so-called “unrated tournament”. He also states that he was informed that the “unrated tournament” did not take place.³⁷

- (34) Mr du Toit further alleges that the applicant and Mr Lewaks caused an article to be published in the Sunday Times on 11 September 2022 entitled “Board Capture at Chess SA”. He states that the article caused enormous damage to him, to Ms Steenkamp and to the respondent.³⁸ The applicant denied that he initiated the article. He was contacted by a reporter of the Sunday Times regarding his ethics committee complaint, but he did not provide the reporter with any material comment or information in that regard.³⁹

- (35) Mr du Toit also states that the applicant and “his cohorts” placed enormous pressure on the youth chess players which resulted in the SAJCC only having approximately 700 participants in that year in contrast to approximately 2200 participants previously. This conduct of the applicant and “his cohorts” has allegedly resulted in the loss of

³⁷ Caselines, RA, paras 110-118, 01-263 to 264.

³⁸ Caselines, RA, paras 56-57, 01-124 to 125.

³⁹ Caselines, RA, paras 119-123, 01-264 to 265.

millions of rands of revenue for the respondent.⁴⁰ The applicant has denied the allegations by Mr du Toit.⁴¹

- (36) The court finds these vague references to the applicant and "his cohorts", without any specific evidence to link them to any of the actions, unsatisfactory and unacceptable as primary evidence.
- (37) Mr du Toit submits that the goal of the applicant in this matter is to cause damage to the respondent and its business.⁴²
- (38) He further submits that it is unreasonable for the applicant to expect the respondent to hand over documentation when the clear intention with the books and records is to cause damage to the respondent. Mr du Toit finally submits that the applicant will utilise the information in the respondent's books and records to try and extricate the respondent's only asset from its possession which will be a financial death blow for the respondent.⁴³
- (39) As can be expected, the applicant has denied all of Mr du Toit's allegations. He submits that the directors of the respondent have a duty to comply with the Companies Act. Their failure to do so may render them delinquent.⁴⁴

⁴⁰ Caselines, AA, para 58-61, 01-125.

⁴¹ Caselines, RA, para 124, 01-265.

⁴² Caselines, AA, para 62, 01-126.

⁴³ Caselines, AA, paras 62-66, 01-126.

⁴⁴ Caselines, RA, paras 125-129, 01-265.

(40) The respondent thereafter sets out the relief sought in the counter-application. It seeks judgement in respect of damages in the amount of R1,2 million, plus interest at a rate of 15% per annum *a tempore morae*. In the alternative to payment of damages, it seeks an order in terms of section 163(1)(a) and/or (b) and/or (c) and 2(l) and/or (h) of the Companies Act that this application be referred to trial to allow the respondent to seek:

(40.1) damages against the applicant for the damage caused to the business of the respondent in the amount of R1,2 million plus interest;

(40.2) an order varying or setting aside the loan agreement between the applicant and the respondent; and/or

(40.3) should it be found that the applicant is a shareholder of the respondent, an order varying or setting aside the purported transaction in terms of which the applicant subscribed for 100 000 15% redeemable cumulative preference shares in the respondent.

(40.4) costs of the application to be determined by the trial court.⁴⁵

(41) In the replying affidavit the applicant pointed out that the counter-application is for unliquidated damages which cannot be claimed in

⁴⁵ Caselines, AA, paras 67.1-67.4, 01-127.

motion proceedings as already dealt with above. The applicant also submitted that the counter-application is not separate from the answering affidavit and the applicant is unable to determine which allegations pertain to the counter-application only.⁴⁶

- (42) Mr Silver submitted that section 163 of the Companies Act does not apply as it provides for relief to a shareholder or a director and not the company itself. The counter-application is therefore incompetent in law and constitutes an abuse. In any event, the respondent only seeks referral to trial in the alternative.
- (43) Mr Rosseau submitted that it is convenient that both matters be referred to trial together. He emphasises that here are disputes of fact that cannot be decided on motion. These include that the applicant relies on an agreement that is not signed. He also submitted that the applicant is part of a syndicate who wants control of the SAJCC, together with Mr Lewaks. These submissions have been dealt with above. On the evidence presented, they are without substance.
- (44) In reply, Mr Silver submitted that the bulk of the respondent's argument is a red herring and not based on facts that were proven. He also reminded the court that Ms Steenkamp did not provide a confirmatory affidavit to confirm facts which Mr du Toit stated he had no personal knowledge of. He emphasised that the respondent had two years to issue summons against the applicant. Further, the respondent did not file a replying

⁴⁶ Caselines, RA, paras 135-138, 01-266.

affidavit to deal with the applicant's answers to the allegations in respect of the counter-application which are set out in the applicant's replying affidavit. In this respect the applicant's version on the multitude of allegations on the damage to the business of the respondent stands uncontested.

DISCUSSION

(45) Where in an action there is a claim and a counter-claim, Rule 22(4) provides that a defendant who, by reason of a claim in reconvention and if judgement is given, the plaintiff's claim will be extinguished either in whole or in part, the defendant may refer to such fact of such claim in reconvention and request that judgement on the claim be postponed until judgement on the claim in reconvention. The subrule does provide for a discretion to the court to make an order as it deems meet. In appropriate cases a court may refuse to do so.⁴⁷ This discretion must be judicially exercised in accordance with the tenets of justice, fairness and reasonableness and with reference to all the relevant facts and circumstances.⁴⁸

(46) In **Truter v Degenaar**⁴⁹ Van Dykhorst J confirmed that a claim and a counter-claim generally should be decided *pari passu* but the court has an unlimited discretion to order otherwise, which discretion must be exercised for good reasons. It was further stated that, while Rule 22(4) is

⁴⁷ **Truter v Degenaar** 1990 (1) SA 206 (T).

⁴⁸ **Consol Ltd t/a Consol Glass v Twee Jongegezollen (Pty) Ltd** 2002 (2) SA 580 (C) at 585 C-D.

⁴⁹ *Supra*, at 210 H-J.

limited to actions, it did not amend the existing law that was applicable to actions and motions. The discretion is not limited to instances where the counter-claim is doubtful or vexatious or is intended to delay judgement.⁵⁰ The court also has a discretion to deviate from the Rule where justice demands it.⁵¹

(47) It has been stated in many judgements that the purpose of Rule 22(4) is to avoid, wherever possible, a multiplicity of actions and their *sequelae* and to dispose of all issues between the same litigants in a single trial. Its purpose is not to allow set-off to operate.⁵²

(48) In this matter the respondent pleaded and argued that the main application and the counter-application be referred to trial due to many disputes of fact and because the *quantum* of the counter-claim exceeds the money claim of the applicant.

(49) The court has decided, among others for the reasons set out below, to exercise its discretion to not refer the main application and the counter-application to trial. These reasons include:

(50.1) The applicant has proven the loan agreement and the subscription to the shares. He was paid interest and dividends in various years. The deponent for the respondent was a director of the respondent when the resolution was adopted by

⁵⁰ *Supra*, 211 D-G.

⁵¹ **NTC Steel Services (Pty) Ltd v Jamor (Pty) Ltd (t/a Steel King)** 1984 (2) SA 629 (T) at 631.

⁵² **Consol Ltd**, *supra*, at paras [19] and [29].

the four directors of the respondent on 1 April 2016 to allot the shares to the applicant. The applicant has a share certificate to confirm his shareholding. The loan agreement was confirmed by Mr du Toit, then not a director, in thanking the applicant for the loan. The loan amount and the subscription amount for the shares were proven to have been paid to the respondent. There can be no dispute of fact in this regard.

(50.2) As a shareholder in the respondent, the applicant is entitled to the documents and records he wants access to in terms of sections 25 and 31 of the Companies Act. It is not a defense for the respondent to state that such documents and information will be used to extricate the respondent's only asset, being the right to organise the SAJCC, from it. The applicant is familiar with this agreement in this regard and a copy thereof is annexed to the answering affidavit. In any event, the contract period was for 10 (ten) years from 2015⁵³ and is due to terminate in 2025. It is not clear on exactly which date it will terminate, but the contract period could by now have run out.

(50.3) The respondent claims unliquidated damages in motion proceedings. It is trite that this cannot be done. The authority in this regard is quoted in paragraph (9) above.

⁵³ Caselines, Clause 71, 01-155.

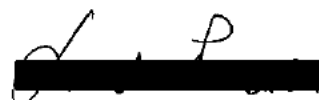
- (50.4) The respondent bases its claim for damages on section 163 of the Companies Act. Mr Silver has correctly submitted that relief in section 163 is only provided for a director or shareholder of a company. There is therefore no basis in law for the damages claim by the respondent based on that section.
- (50.5) Right through the answering affidavit it was alleged that the applicant acted with a "rogue group", that he had "cohorts" and that he acted with Mr Lewaks to create the "unrated tournament". In any event, the applicant's evidence is uncontested that such tournament never took place. These allegations make it clear that the respondent, if it had a valid claim, would have had to join those other persons or parties allegedly involved, to be able to succeed with his counter-claim. As the rule requires that a reference to trial has as its goal to dispose of all issues between the same litigants, such reference to a trial in this matter is legally untenable as none of the other persons are parties to this matter.
- (50.6) The court is not required to consider the merits or demerits of the counter-claim, as stated in **Truter v Degenaar**.⁵⁴
- (50.7) By virtue of the foregoing the court exercises its wide and unfettered discretion to not refer the application and the counter-application to trial. All available facts and findings set

⁵⁴ *Supra*.

out herein have been taken into account and it is in accordance with tenets of justice that relief be granted to the applicant. It is also fair as the respondent could have instituted an action two years ago given the time period when the alleged actions of the applicant took place. The outcome is reasonable.

(51) In respect of costs, it is appropriate that punitive costs be awarded against a respondent which conducts itself in the way described above, in instituting a counter-claim without substance and which files an answering affidavit replete with scandalous and vexatious allegations. No application for condonation was filed in respect of the late delivery of the answering affidavit and the counter-claim, as well as the failure to file heads of argument and a joint practice note timeously.

(50) I therefore make the order set out above.


LM du Plessis
 Acting Judge of the High Court
 Gauteng Division
 Johannesburg

REPRESENTATION

For the applicant

Counsel:

Attorneys:

Adv MD Silver.

Stein Scop Attorneys Inc.

Respondent

Counsel:

Attorneys:

Mr S Rosseau (Attorney)

Rosseau Incorporated

Date of Hearing:

24 February 2025

Date of Judgement:

1 September 2025