**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO: 2024-008520**

**DELETE WHICHEVER IS NOT APPLICABLE**

(1) REPORTABLE: ***NO***

(2) OF INTEREST TO OTHER JUDGES: ***NO***

(3) REVISED: **NO**

Date: ***27 February 2024*** Signature:

In the matter between:

**BLACK ROYALTY MINERALS KOORNFONTEIN (PTY) LTD** Applicant

and

**THE SHERIFF; MIDDELBURG** 1st Respondent

**KWIKSPACE MODULAR BUILDINGS (PTY) LTD** 2nd Respondent

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**JUDGMENT**

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**NYATHI J**

## A. INTRODUCTION

[1] The applicant approached this court urgently, seeking an order:

(i) Interdicting and restraining the Sheriff for the district of Middelburg, Mpumalanga Province from executing the Order of his Lordship Dlamini J of 24 October 2023. And;

(ii) Interdicting and restraining the first respondent from trespassing and forcefully entering premises of the applicant, intimidating and harassing any personnel, employees and/or representatives of the applicant within and around the applicant's premises.

[2] The application is opposed by the second respondent.

## B. APPLICANT'S CASE

[3] At the commencement of the hearing, Mr. Ntshangase appearing for the applicant, offered a perspective of his client's case as follows:

**3.1** The applicant does not challenge the validity or the lawfulness of the court order of 24 October 2023.

**3.2** According to the applicant, the question that needs to be answered is whether the respondents are entitled to execute an order against a party who was not party to the proceedings or cited in the matter. The applicant is Black Royalty Minerals Koornfontein (Pty) Ltd with its principal place of business at Hendrina Road, Middelburg, Mpumalanga. The party cited in the order is Black Royalty Minerals (Pty) Ltd. Both the applicant and Black Royalty Minerals (being the "third party") share the same registered address in Illovo, Johannesburg. There is a director common to both entities. Other than that, there is no other relationship between these entities, there is no holding or subsidiary relationship between them.

**3.3** The applicant is protecting its interests due to it being a separate legal entity.[1]

**3.4** There is no rescission of or appeal against Dlamini J's order.

**3.5** The issue of non-joinder – the respondents have disregarded the provisions of Rule 10 by not joining the applicant.

[4] The annexures "AP 2" and "AP 3" referred to in the second respondent's answering affidavit, which are common cause between the parties, list the common director as one Mr. Maleda.

[1] Salomon v Salomon & Co. Ltd [1896] UKHL 1, [1897] AC 22 (HL); Dadoo Ltd v Krugersdorp Municipal Council 1920 AD 530

[5] Mr. Ntshangase submitted that once a company is incorporated it assumes a separate juristic personality separate from its members. He bolstered his submission by referring to the English case of ***Salomon v. Salomon & Co. Ltd***[2] and that this same principle of a separate legal personality was followed in ***Dadoo Ltd v Krugersdorp Municipal Council.***[3]

[6] The thrust of the applicant's case is that because a company has a separate legal personality, therefore it can sue and be sued in its own name. It has its own rights and obligations. Furthermore, members and directors of a company, especially directors, are just a mere controlling mind of a company, they are not the company themselves. They owe a fiduciary duty to the company where they are appointed as directors.

[7] Reference was then made to instances where the courts and the law disregarded the separate juristic personality, such as instances of fraud. The so-called lifting of the corporate veil. Mr. Ntshangase submitted that this case was not such an instance and was not the second respondent's pleaded case.

**C. THE SECOND RESPONDENT'S CASE**

[8] Mr. Mulligan appeared for the second respondent. He submitted that the application was by no means urgent. He recounted the progeny of this matter from its inception. I will not dwell thereon for purposes of this brief judgment.

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2 Ibid

3 Ibid *supra.*

[9] The nub of the second respondent's case is that the applicant has no *locus standi* to launch the application it did. This is so, seeing that the respondent is pursuing a vindicatory remedy to recover assets it had delivered to the respondent in the main application which resulted in Dlamini J's order of 24 October 2023. According to second respondent, it had no reason to have joined the applicant therein.

[10] Secondly, the second respondent raises the point that what the applicant seeks by way of this application, is final relief. It submits that should the applicant succeed, and the interdict is granted, it means that in perpetuity the Sheriff will be barred from carrying out her duties in respect of the modular units that are in Koornfontein Mine in Middelburg, Mpumalanga.

[11] An undenied fact of this matter is that the application for the order vindicating the modular units referred to in the Court Order was served on Black Royalty Minerals (Pty) Ltd on 17 July 2023 at their registered address at 1 Ford Street, Illovo, Sandton. A copy of the Return of Service is annexed to this application as Annexure "AP1". A copy of a search of the registered address of the company Black Royalty Minerals (Pty) Ltd, showing their registered address, is likewise annexed thereto as Annexure "AP2".

[12] In addition, the order of Dlamini J dated 24 October 2023, was served by the Sheriff on the registered address of the company Black Royalty Minerals (Pty)

Ltd on 25 November 2023, at the registered address referred to supra. A copy of that Return of Service is annexed hereto as Annexure "AP4".

[13] The applicant does not deny that the modular units at the centre of this dispute are on the premises at Koornfontein Mine. The applicant evades the issue of the units by not dealing with it at all.[4]

[14] The applicant alleges that the respondents are unlawfully intimidating and harassing the applicant and its agents, personnel and employees, the applicant provides absolutely no detail of any nature, illustrations or examples thereof, and does not take this Honourable Court into its confidence. The allegations made are of a generic nature and one would have expected some sort of detail in this regard.[5]

[15] As regards to the applicant alleging that the respondents are unlawfully executing the order, the respondents are obliged to execute the order to return the possession of the modular units referred to in the order to the second respondent. This is on a valid order which is extant and has not been challenged in any way.

[16] The sheriff and Labuschagne had attended at the premises in Koornfontein on at least two occasions where the existence of the modular units was all but confirmed. On the second occasion however, some employees of the applicant

4 Second respondent's answering affidavit para 9.6.

5 Ibid para 9.7

and/or the third party proved to be obstructive, and the units could not be accessed.

## D. ANALYSIS

[17] It is admitted that the applicant and the third party in whose name the order at issue was granted are similarly named and directed entities. The difference in their monikers is the name “KOORNFONTEIN” as seen above already.

[18] The applicant relies on established company law principles of corporate identity in its attempts seek to stymie the respondents from carrying out the court order dated 24 October 2023 granted by Dlamini J.

[19] It has been established that the two similarly named companies are not formally declared as subsidiaries and have no relationship save the sharing of directorship and registered address. It is not denied by the applicant that the modular units that are at issue were delivered and are at the Koornfontein Mine where one or both companies carry on business.

[20] The applicant’s emphasis of a distinct legal persona between the two companies and the director is obviously contrived as a stratagem to evade obligations arising from the court order.

[21] Whilst the applicant submitted that there is no subsidiary relationship between the two entities under discussion, it is undeniable that there is a very proximate

corporate consanguinity between them. When two companies share premises and where board members serve on both entities, the potential for a conflict of interest becomes unavoidable; in this particular case, even deliberate.

[22] The court order itself or its validity is not challenged by the applicant. Nothing is said about the subject matter of the court order, namely, the modular units and their whereabouts by the applicant. As the court order remains valid, it should be carried out by the respondents without any hindrance by the applicant or the so-called third party.

[23] This court shall not allow itself to be utilized for the advancement of technical and peculiar defences which are by apparent design or effect aimed at defeating the ends of justice. As in *Trans-African Insurance Co Ltd v Maluleka*[6] Schreiner JA held that;

> 'technical objections to less than perfect procedural steps should not be permitted, in the absence of prejudice, to interfere with the expeditious and, if possible, inexpensive decision of cases on their real merits'.

[24] As regards costs, this application was brought to court based on extreme urgency and affording the second respondent only two days within which to file its answering affidavit.[7]

[25] Accordingly, the following order is made:

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6 Trans-African Insurance Company Ltd v Maluleka [1956] ZASCA 8 / 1956 (2) SA 273 (A)

7 Second respondent's answering affidavit para 3 and 4.

The application is dismissed for want of urgency.

The applicant is ordered to pay second respondent's costs on the attorney and client scale.

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J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 22 February 2024

Date of Judgment: 27 February 2024

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**Delivery**: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 27 February 2024.