REPUBLIC OF SOUTH AFRICA

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 38204/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 27 May 2024 E van der Schyff

In the matter between:

Edward Eduman Milne 1st Applicant

Paul Heslop 2nd Applicant

Adriaan Combrinck 3rd Applicant

Christopher Riley 4th Applicant

And

Jose Luis Rodrigues Babtista N.O. 1st Respondeny

Jaco van Rooyen N.O. 2nd Respondent

Jorge Mendoca Velosa N.O.

(Of the Best Trust Company (JHB) (Pty) Ltd) 3rd Respondent

*In re:*

Jose Luis Rodrigues Babtista N.O. 1st Applicant

Jaco van Rooyen N.O. 2nd Applicant

Jorge Mendoca Velosa N.O.

(Of the Best Trust Company (JHB) (Pty) Ltd) 3rd Applicant

and

Quickstep 684 (Pty) Ltd 1st Respondent

Edward Eduman Milne 2nd Respondent

Paul Heslop 3rd Respondent

Adriaan Combrinck 4th Respondent

Christopher Riley 5th Respondent

Gillian Claire Milne 6th Respondent

Sarah Heslop 7th Respondent

Wellness Property Company (Pty) Ltd 8th Respondent

Recem Trust 9th Respondent

J Calitz 10th Respondent

Peter Errol Bouwer 11th Respondent

J Ginder 12th Respondent

Martie Kuhn N.O. 13th Respondent

Proplan Holding 14th Respondent

Martin Van Achterbergh 15th Respondent

Eric Truebody 16th Respondent

Norman Nicholson 17th Respondent

Renee Hawkridge 18th Respondent

Environmental Management CC 19th Respondent

Misty Lake Trade and Investment 69 20th Respondent

40/50 Investments CC 21st Respondent

Charmaine Phillip 22nd Respondent

Lynn Hardy 23rd Respondent

Dion Barnard Holding 24th Respondent

Jacobus Phillipus de Villiers 25th Respondent

Argontoula Pleaner Holding 26th Respondent

Willem Christoffel Van Wijk N.O. and 27th Respondent

Petronella Jacoba van Wijk N.O.

Robjohn CC 28th Respondent

Rainer Schuerger 29th Respondent

Jimoto Bushvel Investments 30th Respondent

Willem du Preez 31st  Respondent

Jackie Howard 32ndRespondent

Hillary Oats 33rd Respondent

Nich Rosenberg 34th Respondent

Margaret Ann Callen and E Callen 35th Respondent

Pamela Ann Bouwer 36th Respondent

Bruno de Castro 37th Respondent

Toney Vey Family Trust 38th  Respondent

Istermar Game Farm CC 39th Respondent

Ian Lawrence Peach N.O. 40th Respondent

Ivan James Roodt N.O. 41stRespondent

Jonathan Peach 42nd Respondent

Anna-Mare Peacj N.O. 43th Respondent

JVH Krȕger N.O. 44th Respondent

Ivan James Emmett N.O. 45th Respondent

Combrinck Incorporated 46th Respondent

JUDGMENT

Van der Schyff J

**Introduction**

[1] This is an application for leave to appeal against the whole judgment and order dated 2 May 2024 in the abovementioned matter. The second to fifth respondents in the main application are the applicants in this application for leave to appeal. Three main grounds of appeal are raised:

i. The first ground of appeal is that I erred in finding that short notice of the shareholders' meeting was fatal to the validity of the shareholders’ meeting and that the principle laid down in *Van Zyl* *v Nuco Chrome Bophuthatswana (Pty) Ltd and Others[[1]](#footnote-1)* and not the principle laid down in *Millar v Natmed Defence (Pty) Ltd[[2]](#footnote-2)* applies and that *Millar v Natmed* is wrong insofar as it allows for the condonation of short notice of shareholders’ meetings outside the parameters of section 62(2A) of the Companies Act 71 of 2008 (the 2008 Companies Act);

ii. The second ground of appeal is that I erred in finding that the papers were effectively served on all interested and affected parties;

iii. The third ground of appeal is that I erred in finding that neither Recem Trust nor Portion 7 Alsef (Pty) Ltd qualified as shareholders as defined in the Companies Act. The applicants in this application for leave to appeal contend that I should have found that if regard is had to the extended meaning of section 57(1) of the 2008 Companies Act, Recem Trust or Portion 7 Alsef (Pty) Ltd qualified as a shareholder.

[2] A written judgment was handed down containing the reasons for the order granted on 2 May 2024. There is no need to revisit these reasons. Having considered the grounds of appeal raised, I am not of the view that the appeal would have a reasonable prospect of success. As a general proposition, I agree with the applicants in this application that it is important and necessary that the extended meaning of the term shareholder, as provided for in section 57(1) of the 2008 Companies Act, be interpreted and traversed by the Supreme Court of Appeal. In this case, however, the undisputed factual finding that Mr. Riley signed the impugned notice as the representative of Istemar Game Farm CC and not in his capacity as trustee of Recem Trust renders the extended definition of the term shareholder as contained in section 57(1) an interesting academic issue only.

[3] A court is not concerned with what a party ‘would have’ or ‘could have’ done, but with what the court finds, on a proper evaluation of the facts placed before the court, a party did, in fact, do.

[4] *In casu*, it is important to have regard to the fact that natural persons and juristic persons represent two distinct categories of legal subjects. The differentiation between natural and juristic persons is not a mere legal technicality. It is vital to protect the distinction between the two categories of legal subjects. Company Law is complicated, and natural persons who venture into the legal labyrinth comprising the legal principles governing Company Law in order to draw the benefits it brings, must be aware of the risks it poses. On the facts, Mr. Riley could, in theory, probably have represented Recem Trust when he signed the notice calling for the shareholders’ meeting, the question is whether he did, in fact, represent Recem Trust. He states in the answering affidavit:[[3]](#footnote-3)

‘Accordingly, the notice convening the shareholders meeting of 24 May 2022, [w]as signed by me in my representative capacity of Istemar, the only shareholders I represented, alternatively, accepting the applicants (*sic*) contention that Recem share sale agreement with Alsef is void, then the shares vested with Recem and as such I appended my signature to reflect that I was also acting on behalf of Recem.’

[5] Mr. Riley did not provide the court with any proof that he was, in fact, representing Recem Trust. He did not attach a resolution from Recem Trust authorising him to call the meeting on the Trust’s behalf. It cannot be found that he acted on behalf of TRecem trust when he signed the impugned notice.

[6] Portion 7 Alsef (Pty) Ltd does not meet the requirements for being regarded as a shareholder in terms of the Act.

*Costs*

[7] The respondents in this application sought a costs order that includes the costs of senior counsel. The Rules Board for Courts of Law recently issued amendments to the Uniform Rules of Court which took effect on 12 April 2024. One of the material amendments relates to Rule 67A. The rule, among others, provides that a bill of costs submitted for taxation shall be for advocates in accordance with the tariff in rule 69. I sought supplementary heads of argument from the parties dealing with the costs issue. I considered the supplementary heads filed, the complexity and significance of the matter.

**ORDER**

**In the result, the following order is granted:**

**1. The application is dismissed with costs, counsel’s fees to be recovered in accordance with the maximum tariff provided for in as provided for in Scale B to Rule 69.**

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E van der Schyff

Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicants in the application

For leave to appeal: Adv. L. Morris SC

Instructed by: Frese Gurovich Attorneys

For the respondents in the application

for leave to appeal: Adv. ARG Mundell SC

Instructed by: AC Schmidt Inc.

Date of the hearing: 20 May 2024

Date of judgment: 27 May 2024

1. (43825/2012) [2013] ZAGPJHC 40 (13 March 2013). [↑](#footnote-ref-1)
2. 2022 (2) SA 554 (GJ). [↑](#footnote-ref-2)
3. Paragraph 15.9. [↑](#footnote-ref-3)