

## From the Editor's desk

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As we continue to raise awareness about the services of the Companies Tribunal (the Tribunal), we are delighted to present this first quarterly Bulletin.

During this quarter, we held stakeholder engagements in the following district municipalities: Bethlehem, Thabo Mofutsanyana (FS), Mbombela, Ehlanzeni, (MP), City of Tshwane, (GP), and Capricorn, (LP).

Stakeholder engagements were held with law firms and government entities in the economic development eco-system to introduce the Tribunal's services including the benefits of utilising Tribunal services which are free of charge.

This first quarter Bulletin feature the following articles:

- Case highlights
- Stakeholder Engagement
- Youth Day Commemoration

Stakeholders are encouraged to make suggestions and contributions; such inputs must be sent to Messrs. Simukele Khoza and Dumisani Mthlale at the following email addresses:

SKhoza@companiestribunal.org.za and DMthlale@companiestribunal.org.za

I hope the articles featured will take your knowledge of the Tribunal to the next level.

**Mr S. Khoza**  
**Manager: Communications and Marketing**



# Case Highlights

- By Simukele Khoza

## Annual General Meeting

### Sasria Soc Limited (Applicant)

The Applicant filed an application for an extension of time to hold 2022 Annual General Meeting (AGM) in terms of section 61(7) read together with section 9 of the Companies Act No. 71 of 2008 (Act) and Paragraph 6.8.2 of the Memorandum of Incorporation of SASRIA. The Applicant is a state-owned company duly formed and incorporated as such in terms of the applicable laws of the Republic of South Africa. The Applicant held its last Annual General Meeting on the 27th day of January 2021. The application was filed on the 28th day of April 2022.



The Company Secretary of the Applicant, Mziwoxolo Success Mavuso brought the application on behalf of the Applicant. Mr Mavuso was authorized by a resolution of the Board of Directors dated 26 April 2022. In filing the application, the Applicant sighted the following reasons:

1. Following the extensive claims resulting from the July 2021 event, SASRIA needed recapitalisation to ensure that it is able to pay all claims lodged with it and to achieve solvency levels that are acceptable to its Regulators as a non-life insurance company.
2. It is alleged that there were delays in the:
  - 2.1 Finalisation of the External Audit Process; and
  - 2.2 Finalisation of the audited financial statements (AFS) and Integrated Report (IR) for the financial year ended 31 March 2021.
3. The delays arose mainly from the need to confirm the going concern status of SASRIA by its external auditors. The Applicant received a capital injection of R22 billion from National Treasury and thereafter the issues relating to going concern were addressed and the external auditors were comfortable with the going concern assessment of the Applicant.
4. The AFS were signed off by the external auditors and they were approved by the Audit Committee and the Board of the Applicant. The AFS were submitted to the Shareholder for final approval at the Annual General Meeting and for tabling in Parliament in line with the requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
5. The Shareholder did not indicate any concerns regarding the IR and the AFS for the financial year ended 31 March 2021. The Applicant had already scheduled the AGM for the 26th April 2022. Therefore, the AGM was scheduled to take place a day before the expiry of the 15 months deadline. However, the Shareholder indicated a need to discuss some of the AGM reports with the Board of Directors of the Applicant before holding the AGM.

As a result of the Shareholder's request, the Applicant was not able to proceed with the holding of the AGM on 26th April 2022. Therefore, the AGM had to be rescheduled and proposed it to take place on 31st May 2022. Section 61(7)(b) of the Act requires a public company to convene an AGM of its shareholders once in every calendar year, but no more than 15 (fifteen) months after the date of the previous AGM. The Companies Tribunal is empowered to grant extension of time allowed by the Act for a public company to hold an AGM of its shareholders on good cause shown.

In his Supporting Affidavit, the Company Secretary, Mavuso provided detailed reasons which caused the delay for the Applicant to hold its 2022 AGM. The Tribunal was satisfied that good cause was shown in this application, for the Companies Tribunal to grant the requested extension, in compliance with the provisions of the Act. The Tribunal's view was that the Applicant could hold its 2022 AGM within a period of three (3) months from the date of this order.

**Order:** Granted

## Name Dispute

### The Independent Institute of Education (Pty) Ltd (Applicant) v IIE Varsity College (Pty) Ltd (First Respondent) and the Companies and Intellectual Property Commission (Second Respondent)

The Applicant applied for a default order on the basis that the name of the First Respondent does not comply with section 11(2)(a)(iii) and/or (b) and/or (c)(1) of the Act. Regulations 142 and 153 of the Companies Act (GNR 351 of 26 April 2011) regulates an application to the Tribunal as well as the application for a default order under certain circumstances.

The Applicant is a company as defined in section 1 of the Companies Act. The First Respondent is a company incorporated in 2019 in terms of the Act while the Second Respondent is the CIPC, established in terms of section 185 of the Companies Act, with the objectives and duties as in sections 186 and 187. The initial application (CTR 142) was brought by Darren Stevens, a senior legal advisor of ADvTECH, of which the Applicant is a wholly owned subsidiary, who has the authority to act for and on behalf of the Applicant in terms of section 66 of the Act under authority from the board of the Applicant by way of a section 74 resolution dated 20 October 2021.

The application for the default order (CTR 145) was brought by Shane Peter Moore of Moore Attorney Inc, who is also duly authorised in terms of the resolution of the board referred to above to act for and on behalf of the Applicant to institute proceedings and also to make the affidavit on behalf of the Applicant. The Applicant is the registered owner of the trade mark “Varsity College”; it is also the registered owner of the combination of letters “IIE” (ostensibly derived from “Independent Institute of Education”).

The Applicant (or its attorneys) became aware of the name of the First Respondent in May 2021. The Applicant contacted the First Respondent through various means and the latter, agreed to change its name from “IIE Varsity College”. This did not happen by 7 July 2021 and the Applicant applied to the Companies Tribunal for relief on 25 January 2022 as indicated on the CTR 142. The application was served by the sheriff of the High Court on 28 January 2022 “by affixing to the principal door” at the address of the First Respondent as indicated in the CIPC records, which is within the 5 business days as prescribed by regulation 142(3) and in a manner allowed in terms of Table CR 3 of Schedule 3 of the regulations. The Applicant's application was also sent to the Second Respondent via email to *corporatelegalservices@cipc.co.za* on 31 January 2022.

The First Respondent failed to respond within the 20 business days as prescribed in respect of service in regulation 143 and hence the application for a default order in terms of regulation 153 on CTR 145. The Applicant sought the following relief:

1. “directing the Respondent to change its name to one which does not incorporate the trade-marks IIE or VARSITY COLLEGE, or any other trade mark/word that is confusingly or deceptively similar thereto;
2. in the event that the Respondent fails to comply with the order set out in paragraph 1 above within 3 months from date of the order, directing the Companies Register, in terms of Section 160(3)(b)(ii) read with Section 142 of the Act, to change the name of the Respondent to an alternative name not incorporating or confusingly similar to the Applicant's IIE or VARSITY COLLEGE trade-marks; and
3. granting the Applicant further and/or alternative relief.”

The First Respondent commenced business on 24 October 2019 and the application by the Applicant was on 25 January 2022. The Applicant became aware of the name of the First Respondent in May 2021 and an application was brought some seven months after that date. The Tribunal was satisfied that the First Respondent was adequately served in line with (regulation 153(2)(b)). In granting a default order, it is critical to take the rights of the first respondent into account and to ensure that justice is done to all the parties.

The Tribunal found that name of the First Respondent does not, as averred by the Applicant, comply with section 11(2)(b) and (2)(c)(1) of the Companies Act.

#### Order:

- The First Respondent is to file a notice of an amendment of its Memorandum of Incorporation within 60 days of the date of

this order to change its name to exclude the words/letters “IIE” and/or “Varsity College”.

- If the First Respondent does not comply with the order as in para 42 above, the Second Respondent is directed, in terms of section 160(3)(b)(ii) read with sections 11(3)(a) and 14(2) of the Companies Act, to record the First Respondent's registration number followed by “(Pty) Ltd (South Africa)”, as the First Respondent's interim company name on the companies register. Due to the fact that such an action will have the effect that the First Respondent will, for all intents and purposes, be unable to continue to operate due to statutory prescripts, such an action by the second respondent *should be preceded by adequate notice*.
- There is no order as to costs.

## Directorship Dispute

### Martin Phello Letsoho (Applicant) v Agile Black Services (Pty) Ltd (Respondent)

The Applicant applies for re-instatement as director of the Respondent in terms of, inter alia, section 71(8) of the Act. The directors of the Respondent are or were, apparently, the Applicant and one Linda Mdala as per the CoR 14.3 dated 24 October 2018. The Applicant applied for relief on CTR 142 and supporting affidavit submitted to the Tribunal on 18 March 2021. He also submitted CTR 145 on 16 March 2021 requesting relief. The Tribunal has no record of formal lodgment with the Tribunal or service on the Respondent. The relief applied for in the CTR 142 and the CTR 145 is against the Respondent's company. There is no proof that the CTR 142 and/or the CTR 145 applications were served on the Respondent.

According to the Applicant, he was removed as director of the Respondent by Mdala, while the Applicant did not resign as director. The removal of the Applicant it therefore claimed to be unlawful. On 8 March 2021 the Applicant also lodged a complaint with the CIPC. The CIPC produced a report dated 13 May 2021 (“CIPC Report”). The Tribunal found the report replete with factual and legal inaccuracies and recommended alternate dispute resolution by the Tribunal. The CIPC Report was not admissible as evidence.

The facts alleged by the applicant could be “hi-jacking” as discussed in *Entrepreneurial Business School (Pty) Ltd and Others v Africa Creek Investment (Pty) Ltd and Others* (3232/2016) [2016] ZAWCHC 53 (12 May 2016) para 19 *et seq*.

Section 71(8) of the Act empowers the Tribunal to dismiss a director, under circumstances as e.g. in section 71(3) and does not clothe the Tribunal with authority to order re-instatement of a director. The relief claimed by the Applicant is therefore beyond the jurisdiction of the Tribunal.

**Order:** Refused

## Stakeholder engagement

- By **Dumisani Mthlane**

In this quarter, the Tribunal held engagements with various stakeholders in Free State, Limpopo, Gauteng, and Mpumalanga provinces. It is of vital importance for a lesser-known institution like the Tribunal to constantly inform the public about its services which are free of charge. The Tribunal's jurisdiction covers the whole of South Africa. Engagements were conducted by Communications and Marketing and Registry divisions. Annually, the Tribunal identifies various districts where it plans to engage stakeholders. However, stakeholders are also welcomed to invite us for a presentation, especially virtual ones because they are cost effective and easy to organise.

### Engagement with SEDA and NYDA

Virtual meetings were held with the Small Enterprise Development Agency (SEDA) from Bethlehem (Thabo Mofutsanayana District) in the Free State and the National Youth Development Agency (NYDA) from Polokwane (Capricorn District) in Limpopo and Tshwane, in Gauteng. Engagement with the NYDA was inspired by the spirit of commemorating June 16. Both institutions are key towards advancing the mandate of the Tribunal because their focus is on enterprise development through amongst others Business Talk programmes, training courses on practical steps to plan, prepare, start, and manage a

business as well as economic development through youth entrepreneurship.

Company disputes are inevitable, it is important for entrepreneurs to know other effective avenues of resolving company disputes besides a court system, i.e., utilising the services of the Tribunal. Our mission is to see companies doing business to create the much-needed jobs as opposed to being side tracked by disputes which may lead to loss of resources through litigating in court. Both stakeholders appreciated the engagement and agreed to cascade Tribunal's information to their constituencies. The NYDA in Polokwane requested more engagements in other districts within the Limpopo province, especially rural ones. It should be noted that the Tribunal receives very few applications from Free State and Limpopo provinces.

## Black Business Council Annual Summit and Gala Dinner

The Tribunal participated at the Black Business Council (BBC) Annual Summit and Gala Dinner which took place on 19 and 20 May 2022 at the Gallagher Convention Centre in Johannesburg. The theme of the summit was “Creating Jobs and Growing the Economy Through Supporting Localisation, Industrialisation, SMMEs, Black-Owned, Women-Owned and Youth-Owned Businesses”.



The BBC is the over-arching confederation that represents back professionals, business associations and chambers. The primary purpose of the BBC is to lobby government on policy related matters and to play an advocacy role where policies are in place to accelerate the participation of black business in the mainstream economy. The Summit brought together government, civil society, and business leaders to deliberate on socio-economic opportunities and challenges.

The Tribunal's participation was in a form of an exhibition stand where delegates were informed about the Tribunal's services and afforded an opportunity to receive information brochures and ask questions as well as brand awareness through sponsorship. Participating in the BBC Annual Summit presented a great opportunity for the Tribunal to reach out to new stakeholders, showcase and create awareness of its services. It also contributed towards broadening the understanding of Tribunal's services, generated interest from relevant stakeholders since most of them run companies or sit in various board of companies.

## Engagement with Matsane Inc.

Matsane Inc. is a law firm based in Mbombela (Ehlanzeni District), Mpumalanga Province, and specialises in amongst others commercial law. It was important for the Tribunal to engage stakeholders based in Mbombela because it does not receive application from there, even though Mbombela is the capital city and one of the economic hubs of Mpumalanga Province. This means that there's a lot of companies that do business in Mbombela, as companies do business, there's bound to be disputes.

Law firms are key at ensuring access to Tribunal's services and speedy resolution of company disputes for their clients. A handful of applications the Tribunal receives come from law firms which mainly based in Gauteng. Therefore, the Tribunal must ensure that firms from various districts across the country know about its services. The Tribunal's presentation covered social and ethics committee exemptions (SEC) in terms of section 72; name disputes under sections 11 and 160; alternative dispute resolution (ADR) under section 166; directorship disputes under section 71, benefits of Tribunal's services and the case management system (CMS). ADR remains the most effective mechanism of resolving company disputes since it preserves business relations and builds mutual beneficial relationships amongst parties. ADR is the resolution of company disputes through mediation, conciliation, or arbitration, similar to how CCMA resolves labour disputes.

During the engagement, Matsane Inc. enquired about powers of the Tribunal in terms of compelling parties to

appear before it, and whether the Tribunal has jurisdiction on director dispute resulting in splitting of company assets and recourse mechanism available for parties if they are not satisfied with the Tribunal's decision.

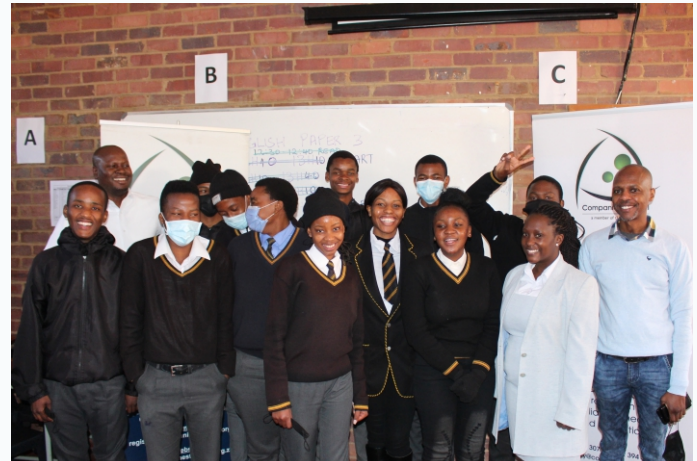
Matsane Inc. expressed appreciation about the engagement and promised to share the presentation and brochures with the Mbombela Attorneys Association.

## Youth Day Commemoration

- By Dumisani Mthlane



Ms Sinqobile Molepo talking to learners



Grade 12 learners with class teacher and Tribunal staff

This year marked the 46th anniversary of the 16 June 1976 student uprising in Soweto when young people protested against imposition of Afrikaans by the apartheid regime as a medium of instruction. In celebrating Youth Day, the Tribunal visited Mamelodi High School to engage grade 12 learners about Tribunal's services and opportunities/careers available in the law space.

Nothing more difficult for young people than choosing a field of study post matric. This is due to lack of exposure for them about various careers that available out there. That is why the Companies Tribunal decided to commemorate Youth Day in Mamelodi High School through informing matric students about opportunities that are available especially in mercantile law and company law. Most of them were not aware about other careers in law except criminal law. The mandate of the Tribunal was also discussed.

Mr Simukele Khoza, the Communication and Marketing Manager, motivated students about what it means to distinguish yourself from the rest because we are living in a world where there is so much competition. One should strive to be an expert in their field of study through education and hard work. Ms Sinqobile Molepo, the Tribunal's Legal Intern, gave learners tips on how to cope with the academic pressure at tertiary level. She was followed by Mr Mandla Zibi, the Tribunal's Senior Admin Officer. Mr Zibi grew up in Mamelodi township, he shared stories on the

difficulties of growing up in Mamelodi township where there are few role models to look up to. A lot of black professionals leave the township and move to affluent areas the moment they attain success in life. He encouraged learners to focus on their studies, resist peer pressure and stay away from criminal activities. He encouraged learners that they can become anything they desire in life even if they come from humble beginnings like himself.

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design and layout: Dumisani Mthlane