

Corporate & Commercial

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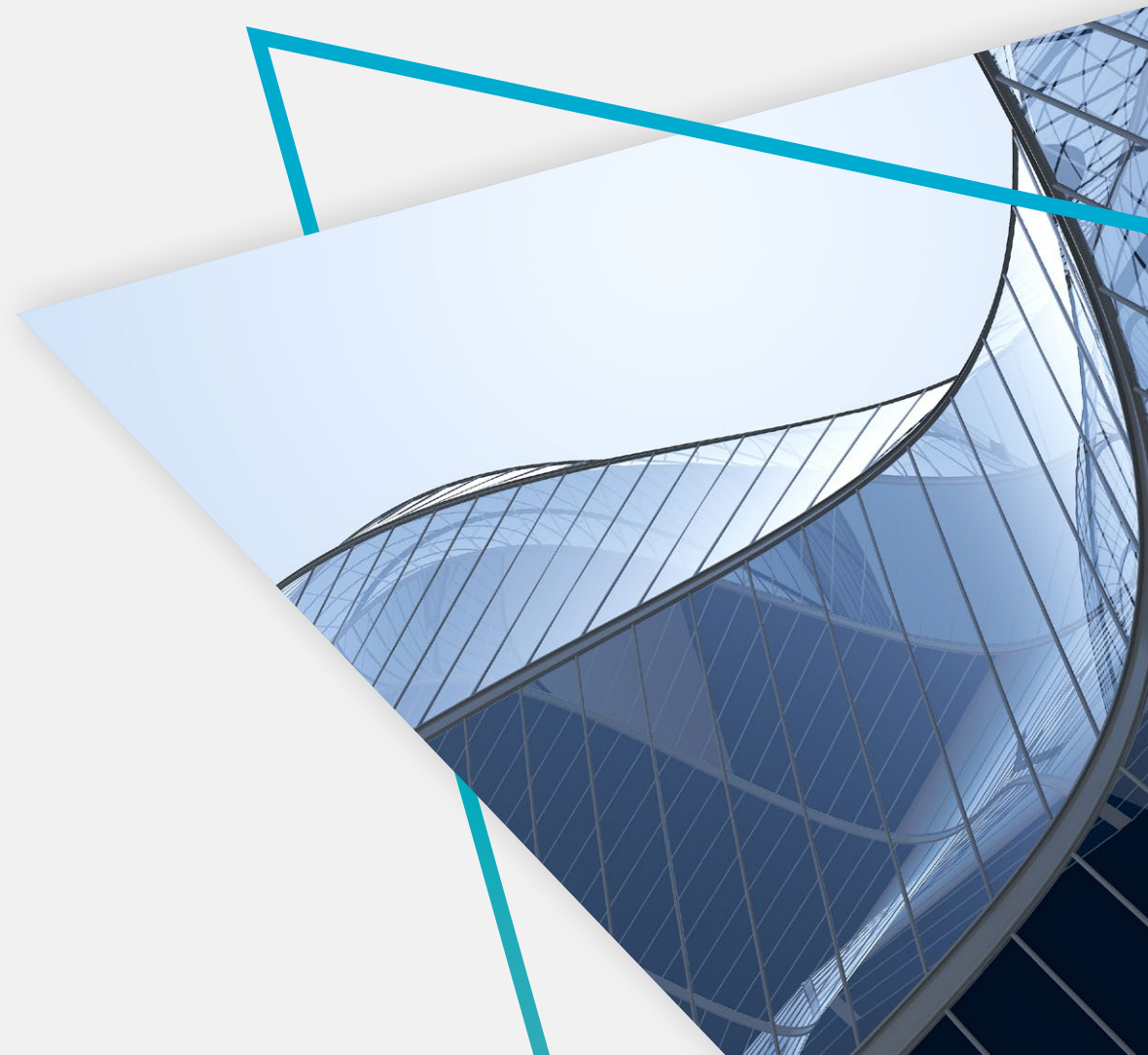
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SOUTH AFRICA

Judicial perspectives on corporate disputes:
A look at the High Court's ruling in *Langeni and Another v South African Women In Mining Association and Others*



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Judicial perspectives on corporate disputes: A look at the High Court's ruling in *Langeni and Another v South African Women In Mining Association and Others*

In the case of *Langeni and Another v South African Women In Mining Association and Others* (27669/2022), the Gauteng High Court delved into the intricacies of section 71(3) of the Companies Act 71 of 2008 (Companies Act), which pertains to the removal of directors by the board. The applicants sought judicial intervention to overturn their dismissal from the board of the South African Women in Mining Association NPC (SAMIWA) and to be reinstated as directors, among other reliefs.

The conflict began in 2022 when the Eastern Cape branch of SAMIWA demanded accountability from the board, sparking internal tensions. On 3 November 2023, despite a court order permitting their attendance, the Eastern Cape branch was barred from the annual general meeting (AGM). The first applicant's attendance at the AGM triggered efforts to remove them as directors.

The applicants argued that their removal was substantively and procedurally flawed for several reasons:

- The allegations against them were unrelated to their fiduciary duties as directors.
- The notices of removal did not comply with section 71(4)(b) of the Companies Act.
- The removal decision was made in bad faith, as they supported the Eastern Cape provincial structure's concerns about SAMIWA's accountability.

Conversely, SAMIWA's board refuted the applicants' claims, presenting their own sequence of events:

- The Eastern Cape Provincial Executive was informed that their representative was removed as a director and could elect a new chairperson.
- The first applicant, as chairperson of the board, unilaterally approved and attended the AGM of the Eastern Cape branch against advice to the contrary.
- The board discussed the first applicant's alleged misconduct, leading to her resignation as chairperson.
- A special board meeting was held where the applicants were notified of their disobedience to the board's resolution and neglect of duties.
- Notices for their removal were served on 22 November 2022, and the applicants' failure to attend the board meeting on 2 December 2022 led to their removal.

The court was tasked with addressing several crucial issues:

- Whether the board's decision to remove the applicants was driven by malice.
- Whether the applicants complied with the board's instructions.
- Whether the alleged instructions fell within the grounds stated in section 71 of the Companies Act or the applicants' fiduciary duties.
- Whether the respondents provided the applicants with sufficient notice, as required by the Companies Act.

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- Whether the applicants applied to the court within 20 days to review the board's determination.
- Whether the court could review the board's decision given the applicants' absence from the meeting and their failure to respond to the section 71(4) notice.

Findings

The court scrutinised the legal framework under sections 71(1) and 71(2) of the Companies Act, which govern the removal of directors, highlighting the fiduciary duties of directors to act in good faith and in the company's best interests, avoiding conflicts of interest and personal gain at the company's expense.

The court found that the respondents failed to prove that the applicants breached their fiduciary duties or were derelict in their duties as directors. Holding a meeting as a national chairperson with the Eastern Cape branch was not deemed an infraction warranting removal. Furthermore, the grounds for removal did not fall under the protections of section 71(3) of the Companies Act, as the alleged conduct did not amount to neglect or dereliction of duty.

Despite the respondents' argument about the 20-day period for applying to the court, the court deemed the substantive issues sufficient to justify intervention. Consequently, the court granted the applicants' application, setting aside their removal and ordering their reinstatement as directors of SAMIWA. Additional relief sought by the applicants was also awarded.

This case underscores the stringent requirements for removing directors under the Companies Act by other directors. The court emphasised the necessity of due process and good faith in board decisions, asserting that removal must be based on substantive grounds related to fiduciary duties, not on unfounded allegations or reasons unrelated to fiduciary responsibilities. The judgment reinforces the principle that board decisions must be objective, fair, and in the company's best interests, rather than being influenced by internal tensions among board members.

Phetha Mchunu and Jaco Meyer



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