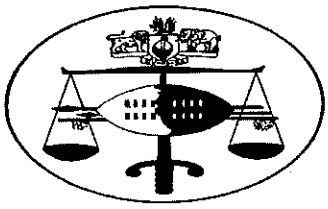

IN THE HIGH COURT OF ESWATINI

CASE NO. 115/2022

In the matter between:

PHAKAMA MAFUCULA (PTY) LTD	**APPLICANT**
And	
	1ST RESPONDENT
NHLANHLA MAGONGO	
ELLIOT MAZIYA	**2ND RESPONDENT**
MANGALISO SIFUNDZA	**3RD RESPONDENT**
PHILILE PATO	**4TH RESPONDENT**
ROBERT MAHLALELA	**5TH RESPONDENT**
MBONGI KUNENE	**6TH RESPONDENT**
SICELO VILANE	**7TH RESPONDENT**
NEUTRAL CITATION:	***PHAKAMA MAFUCULA (PTY) LTD V NHLANHLA MAGONGO (115/2022) SZHC (54) 31/03/2022***
CORAM	**B.W MAGAGULA**
HEARD:	**04/02/2020 And 16/02/2022**
DELIVERED:	**31/03/2022**

Summary: Company law-civil law-points of law of urgency and failure to comply with the requirements of an interdict. Election of non-members of a company into a sub-committee invalid – no proxy forms completed- Held: point of law dismissed. Rule Nisi confirmed with costs.

JUDGMENT

Introduction:

[1] The application before Court has been instituted by Phakama Mafucula Investments (pty) ltd. The Applicant is a company duly registered and incorporated in terms of the laws of Eswatini. It has its principal place of business at Mafucula, in the Lubombo region.

[2] Ironically, some of the Respondents are also members of the Applicant, in that they are directors of Applicant.

[3] It is worthy of mention that applications of this nature are not uncommon in our Courts. The Applicant's members comprise of members of the community of Mafucula, who pooled their fields for purposes of establishing a sugar cane farming project. It is common cause that the members of the Applicant are illiterate and some are advanced in age.

[4] The Applicant seeks to interdict the Respondents for numerous alleged transgressions, which include the calling and/or convening of meetings of the members of the Applicants. There is also a prayer to interdict the Respondent from entering the Applicant's premises without a written permission. The Respondents are alleged to be interfering with the operations and administration of the Applicant. The interdict is also sought against the attendance of any meetings of the Applicant and the collection of monies from the members of the Applicant. The Application is strenuously opposed by the Respondents. Certain points of law have been raised. The matter was argued by the parties on the 4th February 2021 after which the Court dismissed some of the points and granted the rule nisi. I will traverse on all the points of law raised in this judgment to inform my reasons for dismissing same.

POINTS IN LIMINE

Lack of urgency

[5] The Respondent's argue that the urgency that has been alleged by the Applicant is self-created and constitute an abuse of Court process. Reliance thereon is made on the chronology of events as per the document which is annexed in the answering affidavit marked "PM1". The document is unsigned, and contains the following heading;

"Sequence of events at Phakama Mafucula Investments (Pty) ltd starting from the 28 December 2021 till 29th January 2022 between company shareholders and company board of directors".

[6] The Respondents go on to state that the Applicant has failed to show that this matter is urgent, so as to abridge the requirements of the rules of this Honorable Court. They also argue that the Applicants application ought to fail.

[7] To enable the Court to gauge the substance of this point of urgency, it is necessary that a survey of the founding affidavit be made. To ascertain if indeed the urgency is self-created so as to constitute an abuse of Court process. The Applicant through the affidavit of the chairperson Mr. Innocent Dlamini, deals with the issue of urgency in paragraph 15.1 of the founding affidavit. The following are the averments contained therein;

"***15.1 The matter is urgent by reason of the fact that the 1st to 7th Respondents are regularly calling meetings of the Applicants. They also disturb the operations of the Applicant by going to the business premises. They are also mobilizing members of the Applicant to turn against the legitimate board of directors. There is now confusion within the Applicants members brought about by the 1st Respondent as to who is in authority.***

15.2 If the matter is heard in due course, by the time it is finalized, the harm that is sought to be prevented is likely to have occurred. Particularly because the 1st to 7th Respondent are continuing with their conduct. I have information that they intend calling another meeting. I have also gathered that they intend going back to the Applicant's offices to demand for records and books of accounts for Applicant even though I have not been able to ascertain the exact date on that, I do however believe that it will be anytime soon.

[8] The reasons for urgency have in my view been adequately canvassed by the Applicant. Whether the Respondent agrees with the validity of the reasons thereof is another question. However, it cannot be argued that when a litigant approaches Court for an interdict perhaps due to an alleged invasion of its premises that can be construed to be self- created. What other recourse can be availed to an owner of premises?

[9] In any event, this point was dealt with before the Court granted the ***rule nisi*** that is operative. In my view, it makes the whole question of urgency at this stage to have lost its steam. The parties have gone ahead to file a full set of papers and argued the matter. Having said so, it does not derogate from the Court's observation, that the Applicant in any event has set out averments which are in line with Rule 6 25 (a) & (b). I will accordingly dismiss this legal point.

FAILURE TO SATISFY THE REQUIREMENTS OF THE GRANTING AN INTERDICT

[10] The Respondents also argue that one of the prayers sought by the Applicant is for an interdict. The answering affidavit through which this point has been raised is deposed to by Eliot Maziya. He says he is entitled to enter the business premises of the Applicant. He also sets out that the other Respondents are also equally entitled and have a right to enter the business premises of the Applicant and attend meetings because they were lawfully appointed into a committee to investigate the affairs of the Applicant.

[11] The manner in which this legal point has been raised it is not clear or apparent. On what basis does the Respondent allege that the Applicant has failed to

satisfy the requirements for the granting of the interdict? Especially as it is common cause that the requirements for the granting of an interdict are many. It is not one requirement. Which of those requirements has the Applicant failed to plead in its averments. It is the rights of the Applicant to the property. Even then, the Court should not be gleaning and making those assumptions. It does not appear explicitly from paragraph 6.2 where this legal point is raised.

[12] In response to this legal point and in relation to the other Respondents who are not shareholders, the Respondents argues that the Applicants appear to be relying on the allegation that they were elected and/or appointed in a meeting of the 7th January 2022. They argue that they were proxies of the substantive members. Applicant argues that the meeting where the alleged elections were held, was conducted outside the provisions of article 13 of the constitution of the Applicant

[13] ***Article 13 reads as follows;***

"a)The board of directors shall be elected into office at the annual general meeting (AGM) or in any other meeting whose agenda is the election of the board of directors. In each of the positions three company shareholders shall be nominated and whoever is nominated shall stand for elections, such elections shall be by secret ballot and whoever has the among the most votes shall be deem successful and shall thereafter assume the office in question b) The Company shall employ the service of an outsider to conduct the election process and such outsider shall also be responsible for assisting illiterate members"

[14] The Applicant therefore argues any reference to an election that happened outside the above provisions is null void and does not enjoy legitimacy. The requirements of an interdict have been stated now and again, in a plethora of decisions of this jurisdiction and outside. The *locus classicus* is the case of **Setlogelo v Setlogelo**[1] which has also been referred to in the heads of arguments of the Respondents. The import of this decision, is that a litigant to succeed in an interdict must prove that he has a clear right to the subject matter sought to be protected. He must also show that the infringement of the right is reasonably apprehended and he must also show that there is no alternative remedy at his disposal.

[15] It appears there is no dispute as to what the requirements for the granting of an interdict are as they have been now and again been stated in many decisions of this Court. As was stated in the case of **Setlogelo v Setlogelo** cited above. The question though, in the matter at hand, is the applicability of these requirements. This leads to the issue of specific averments lacking in the legal point raised. To highlight which one of the three requirements is alleged to have been omitted by the Applicants in their case for an interdict. To enable the Court to deduce whether all the requirements have been pleaded in the Applicant's application, it is again apposite that the Court must consider the affidavit of the Applicant to ascertain if all the requirements have been made. This appears in paragraph 14.1 to 14.4 of the founding affidavit.

[16] In a nutshell, what the Applicant has averred is that, he humbly submits that

[1] 1914 AD 221

the Applicant has a right to protect its property and it's interest in refusing people who have no legal interest in it, to impose themselves and disturb its operations.

[17] In so far as the right to approach this Court, the deponent says he derives the right to act on behalf of the Applicant from the board of directors which he is chairperson. The right to run the operations of the Applicant lies on the board of directors.

[18] In so far as the requirement of a clear right to the subject matter sought to be protected, the deponent deals with it in paragraph 14.3 where he says the first to the seventh Respondents are causing harm to the operations and existence of the property of the Applicant. Apparently they masquerade themselves as the ultimate authority of the Applicant. The board chairperson continues to state that, the act of calling meetings and invading the Applicant's offices is harmful. Moreso because they have no business to do with the Applicant. He also makes reference to the fact that the Respondents are not members of the Applicant nor they are a board or committee members of the Applicant.

[19] The issue of no alternative remedy is traversed in paragraph 14.4 where board chairman states the following;

"There is no other remedy available at the disposal of the Applicant Since engagements with the first to seventh Respondents have failed

[20] He also deals with the balance of convenience in the same paragraph, where he says the balance of convenience favors the grant of the relief sought, as it

seeks to protect the Applicant from invaders with the whole purpose of prejudicing the Applicant.

[21] It is my considered view that it appears there is no merit in the point of law raised by the Respondents, to the effect that Applicant has failed to satisfy the requirements for the grant of the interdict. The averments in satisfaction of the requirements, have clearly been made in this matter as demonstrated above. I therefore hold that this point must also fail.

AD DISPUTES OF FACT

[22] The Respondent have also raised another legal point to the effect that the founding affidavit of the Applicant contains information that is contrary to what has been outlined on the document relating the sequence of events. The Respondents argue further that Applicant is aware of the appointment of the Respondents. There is therefore a dispute regarding the validity of the appointment of the investigating committee.

[23] In buttressing their argument for the existence of disputes of fact the Respondents have cited the authors Hebstein & Van Winsen, state the position as follows;

"***It is clearly undesirable in cases where facts relied upon are disputed to endeavor to settle the disputes of fact on an affidavit, for the ascertainment of the true facts is affected by the trial judge on the consideration not only of probability, which ought to arise in motion proceedings but also of credibility of witnesses giving evidence viva voce. In that event, it is more satisfactory that evidence should be led and that the Court should have the opportunity of seeing and coming to conclusion".***

[24] The Respondents have also cited decision of this Court which include **Dinabantu Khumalo v Attorney General**[1].

[25] The basis of the argument regarding the dispute of facts, emanates from the premise that there are different versions with regard to what transpired when the Respondents were elected and appointed into the investigation committee. The Respondents argue that the Applicant is not entitled to interdict them as they were legitimately appointed into office, whilst on the other hand, the Applicant argue that it is entitled to interdict the Respondents because their very existence as a committee, is outside the constitution of the Applicant. As such, the meeting through which they were elected was also held unlawfully, consequently all resolutions emanating from such a meeting are null and void.

[26] In trying to decipher and unpack this quagmire, sight should not be lost of the relief that is sought by the Applicant before Court. It is not in dispute that the Applicant is indeed the owner of the premises. The governing structure of the Applicant, which is the board, is also not challenged. What the Respondents are contesting is that there is a need for an investigation committee to investigate certain allegations that have been made against the management of the Applicant. The issue that is at the core of the dispute, is more or less on the legitimacy of the election of the committee comprising of the Respondents and what their mandate is. Also, whether their mandate is in line with policies and constitution of the Applicant.

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[1] Civil appeal case No.31/2010

[27] Civil matters can be instituted in one of two ways; either by way of action or by way of application. The decision relating to the correct procedure, will depend on whether the adjudication of the matter is practicable considering the written evidence given under oath (affidavit) or whether oral evidence and witness examination should be led. Application proceedings are more appropriate when there are common cause facts. Unless special circumstances exists, they cannot be used to resolve factual disputes because they are not designed to determine probabilities without oral evidence. That said, our Courts have developed a principle known as the Plascon-Evans Rule, which allows Courts in certain circumstances to make a determination of disputes of fact, in application proceedings, without having to hear oral evidence.

[28] The general rule was initially formulated in Stelenboch farmers' Winery Group Limited, Stellenbosch Farmers' winary ltd v Martell CIE SA,[3] where the Court held that;

"Where there is a dispute as to the facts a final interdict should be granted in motion proceedings only if the facts as stated by the Respondent read together with the admitted facts in the Applicant's affidavit, justify such an order. Where it is clear that the facts although not formally admitted, cannot be denied, must be regarded as admitted".

[29] In the much celebrated case of **Plascon –Evans Paints Ltd v Van Riebeck Paints (Pty) ltd**[4] , the Court found that the rule formulated in Stelen Bosch farmers winery required clarification and qualification where final relief was

[3] 1957/ (4SA)237 [c] © [4] 1984 (3) SA 623 (A)

Sought in motion proceedings. The clarification that the Court made is as follows:

"*The general rule is still that in proceedings where disputes of facts have arisen on affidavits, a final order whether an interdict or some other form of relief may be granted if the facts averred in the Applicant's affidavits which have been admitted by the Respondent read together with the facts alleged by the Respondent justify such an order. The power of the Court to give such final relief on the papers before it, is however not confined to such a situation. Certain cases denied by a Respondent of a fact, alleged by an Applicant may not raise a real, genuine or bona fide dispute of facts. If the Respondent in such a case has failed to apply for a deponent concerned to be called for cross examination and if the Court is satisfied as to the inherent credibility of the Applicant's averments , the Court may decide a disputed fact in the Applicant's favour without hearing oral evidence.*"

[30] The import of the above principle, is that when factual dispute arises in motion proceedings, relief should be granted only if the facts stated by the Respondent together with the admitted facts in the Applicant's affidavit justify the order.

[31] In another decision of **Wightman T/A JW Construction v Head four (Pty) ltd & another**[2] (17) was held as follows;

A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognize or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents inadequate as they may be and will only in exceptional circumstances be permitted to disavow them. There is this a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain

[2] 2008 (3) SA 371

[32] The real issue that the Court must grapple with in applying the Plasco Evans Rule test, is that when reading the authorities especially where they state that in certain instances, the denial by the Respondent of a fact alleged by the Applicant may not be such as to raise real, genuine or bona fide dispute of fact. The focal point with regard to the divergence of the versions by the parties pertains to the contents of the minutes as produced by the two different parties. In my view that cannot be the only determining factor in the adjudication of the matter. The dispute must actually pertain to the core issue for determination, not necessarily the different versions as to what transpired when the Respondents were elected. The relief that is sought is against the interdict of certain acts of unlawfulness emanating from the Respondents. In light of the fact that it is common cause that the Applicant owns the premises and the Applicant's governing committee is the one that is in charge. The real issue whether the Respondents entitled to invade the Applicant's offices and hold meetings without the permission of the Applicant's management. That is the real issue. In my view, the Court can adequately determine the matter on the processes informing the governance of the Applicant. There is consequently no real issue that that is in dispute to entitle this point of law to stand. It will accordingly be dismissed. The Court is satisfied as to the inherent credibility of the Applicant's factual averment and is capable of proceeding to determine whether the Applicant is entitled to the relief it seeks, I will now continue to determine the matter on the merits.

MERITS

[33] The issues that are common cause in the matter before Court are that the Applicant is the owner of the premises which the Respondents seek to access and carry out certain investigations, emanating from an alleged mandate that they got in a meeting held on the 7th January 2022. It appears from the reading of the papers that the Respondents are aggrieved subsequent to certain irregularities alleged in the management of the Applicant. As such, they were elected to investigate those irregularities. It is also common cause that in the meeting that was held on the 7th January 2022, which had been lawfully called by the chairman of the Applicant, Mr. Innocent Dlamini. Some of the attendees were not the registered members of the Applicant. It is also not being denied that amongst Respondents that are before Court, it is only the 2nd and the 5th Respondents who are actually registered members of the Applicant of the Applicant.

ISSUES FOR DETERMINATION

[34] In light of the fact that the Court has already issued a rule nisi and has also dismissed to legal point, the issues for determination is whether on the merits, the Applicant has set out a case to justify the order sought, which is the interdict.

APPLICANT'S ARGUMENTS

[35] The Applicant's arguments is that the Respondent's conduct of invading a lawful meeting on the 7th January 2022 constituted an interference. The election of non-members of Applicant into a committee to investigate the affairs of the

Applicant is unlawful. The Applicant further argues that, as the owner of the premises, it has a clear right against an invasion and interference of its premises. It is therefore entitled to an interdict.

[36] The Respondents in answer to the Applicant's application filed two sets of answering affidavits. A preliminary answering affidavit was filed on the 4th of February and another affidavit which I assume is now a substantive answering affidavit was filed on the 8th February 2022.

[37] The preliminary answering affidavit is deposed to by Mr. Eliot Maziya who states that he is the 2nd Respondent in the matter. It is common cause as it has been mentioned earlier that Mr. Eliot Maziya is a member of the Applicant. Mr. Maziya starts by setting out the nature of the Applicant, it is averred that the Applicant is a registered company that deals with large scale farming of sugar cane. It has directors and shareholders who are said to be 246 in number. It is also confirmed that the company farms on land donated by Mafucula residents who pulled their ploughing fields and gave them to the company for purposes of the large scale of farming of sugar cane. Copy of the membership of the Applicant has also been annexed and it is marked "PM3" the membership is dated as it has id numbers of the members and the gender and also the employments status.

[38] Mr. Maziya continues to narrate that on the 3rd December 2021, there was an annual general meeting of the Applicant where they were informed by the chairman that the company had made a surplus of 2million and that shares would be given out and each members was to receive E13, 500.00. I assume that reference to shares is made to the declaration of dividends. It is unusual that shares can be given out to members, it is assumed that by virtue of being members, it is meant that they are

shareholders. I will therefore read this in context and assume that the Deponent was actually referring to dividends being paid out. The answering affidavit also states that in that meeting, the chairman introduced two ladies who were said to be auditors. The meeting was informed that Applicant was not owing anyone, not even the Eswatini Revenue Authority. According to Maziya, a few days down the line, the chairman changed tune and advised that the company was now owing Eswatini Revenue Authority and Tabankulu Estates. When the membership demanded to see supporting documents, none was produced. It is this change of tune that appears to have led the membership to be suspicious of the management of the company. The board of directors were suspected to lack transparency. The Respondent avers that the act of refusing and/or withholding information and documents by the board from the shareholders is what informed the notion that a committee be established to investigate the affairs of the Applicant. Mr Maziya alleges that all the Respondents were appointed to be part of the investigative committee.

REPLYING AFFIDAVIT

[39] The Applicant has filed replying affidavit. In essence, the chairman of the Applicant confirms that a meeting was indeed held on the 3rd December 2021. However, the chairman denies that he announced that the Applicant has no debts and further that a surplus of E2million had been made by the Applicant. He also clarifies that the issue of the debt owing to Eswatini Revenue Authority was indeed discussed at the meeting. However, they only reported that an arrangement had been made to settle the debt. The chairman further refutes that the general membership of the Applicant have no confidence on the board of directors. He insists that they enjoy utmost support from the general membership of the Applicant. According to the chairman, the issue

that sparked the angst of the Respondents, is the delay in the payment of their dividends. He further confirms that the money was eventually paid to the members sometime in January 2022.

ADJUDICATION

[40] I will now discern to apply the law on the facts that are before Court. In doing so, recourse will be made to the nature of the prayers sought in the notice of motion I will also consider whether on the merits the Applicant has set out a case for the confirmation of the rule nisi that is already operative.

TWO SETS OF MINUTES CAPTURING THE EVENTS OF THE 7TH JANUARY 202

[41] It is common cause that there are two sets of minutes that purport to capture what transpired in the Applicant's meeting held on the 7th January 2022. The relevance of what transpired in that meeting stems from the fact that the Respondents argue the Applicant is actually not entitled to the interdict as the Respondent's conduct of accessing the Applicant's premises is legitimate. They were mandated to investigate the affairs of the Applicant by virtue of being elected into a committee during that meeting. It is the Respondent's arguments that the Applicant cannot then come to Court to interdict them, when they are in fact entitled access to the offices of the Applicant to obtain documents and to interview employees in the process of carrying out their task.

[42] It is in that regard that I deemed it necessary to drill deeper into the implications of the minutes, as it touches on the Respondent's defence in this matter. The document which the Respondents aver are minutes is marked "PM1". The heading is as follows; **sequence of events at Phakama Mafucula Investments (Pty) Ltd starting from 28 December 2021 till 29 January 2022 between**

company shareholders and company board of directors. This document does not stipulate who was in attendance at this meeting. Who took the minutes? The document is unsigned. But what this documents reflect, purports to be an account of what took place on certain dates being the 23rd December 2021, 30th December 2021, 7th January 2022 and the request for a meeting by Sigejane which apparently took place on the 8th January 2022 .When reading the answering affidavit of the Respondents, particularly paragraph 5.5, it appears that this document is actually not referred to as minutes by the Respondents themselves. The Respondents other than annexing the document, they have also annexed what they call as minutes. The minutes are marked "PM2". In their responding affidavit the Respondents argue that the investigating committee is known to the Applicant and is was lawfully appointed because there are proxies of the permanent members of the Applicant.

[43] Reliance is made to the minutes of the 7th January 2022, which reflect that there were seven members that were present. Who are; Sifiso Dlamini, Zanele Dlamini, William Sifundza, Abraham Shongwe, John Nyoni, Maphevu Maziya , Khanyisile Maseko.

[44] What can be noted here is that the members that are said to have been present, are actually not the current Respondents. It is then confusing how they could have been elected as reflected by the minutes, if they are not reflected as having been in attendance in that meeting. "PM2" is also written in the Siswati Language. No interpretation was made despite that during the arguments for the rule nisi, Applicant's counsel objected to the admission of this document on that basis. It is going to be difficult for this Court to actually analyze and give input to this document as there is no interpretation of the document.

[45] The Applicants argue strenuously against the admission and consideration of annexure "PM1" as evidence before Court. The Applicants argue that it is not known who authored annexure "PM1". As such, it is difficult to comment on it. With regard to annexure "PM2", Applicants deny that this document are minutes. The Applicant argue that minutes of meetings of the Applicant are approved and adopted in a subsequent meeting. What is captured as minutes as reflected in annexure "PM2" can therefore not be considered. The Applicant have annexed its own version of the minutes which were taken on the 7th January 2022 and it is marked "RA".

[46] During the arguments the minutes "RA" were equally challenged by Mr. Nzima who argued that they are not different from the Respondent's own minutes, as they have not been signed as well. They also do not reflect who was in attendance. He therefore argued that this document stands in the same footing as Respondents own minutes. It is on that basis that he motivated that to enable the Court to have a true picture of what transpired, oral evidence should be led.

[47] In my view the different versions of what transpired during the meeting of the December 2020 is not central to the determination of the prayers sought by the Applicant. What is common cause though, which is not in dispute which is central to the determination of the issue, is that the committee comprises of people that are not members of the Applicant. So, whether it is correct that the minutes as reflected in "PM2" state that they were elected into office and they were mandated by whoever was present in that meeting to be part of the committee is irrelevant. The real issue is a legal one. Can non-directors/shareholders that do not form part of the Applicant be legally mandated to investigate the Applicant outside the constitution of the

Applicant? The answer to that legal question will pin point to whether the Applicant has made out a case for the interdict or not.

[48] The Respondents have not annexed evidence that demonstrate that all the Respondents are either shareholders or proxies of shareholders who are eligible to attend the meeting of Applicant. If that is the case, it means that their attendance in the meeting as members of the Applicant representing their parents who are the real members was not lawful [3]. It then follows that a person who attends a meeting unlawfully can therefore not qualify to be elected into a committee of the Applicant. His very attendance at the meeting is unlawful. I agree with the Applicant's argument that the document marked "PM3" cannot seek to appoint 1st, 3rd and 6th Respondents as proxies. That being the case, it then follows that the committee consisting 1st 3rd and 6th who are not members of the Applicant was elected irregularly. Therefore they cannot enjoy any legitimacy even though their election emanates from the meeting as reflected in "PM2". On what basis can then this committee enjoy the right to enter the premises of the Respondent, let alone to conduct any lawful investigations into the affairs of the Applicant? It is my considered view that the Applicant is entitled to the protection of the law against an invasion from a committee that was elected unlawfully. I am persuaded that the Applicant has made out a case for an interdict.

ORDER

[49] The rule nisi issued on the 4th February 2022 is accordingly confirmed and the Costs to follow the event.

[50] The court grants prayers 1, 2, 3, 3.1, 3.2, 3.3, 3.4, 3.5 and 4 of the notice of motion.

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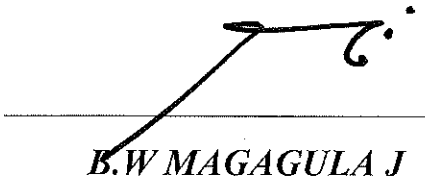
[3] In the Replying affidavit it is actually contended by the Applicant that the substantive members were actually in attendance at the meeting.



B.W MAGAGULA J

THE HIGH COURT OF ESWATINI

FOR Applicant: Mr .Dlamini (M.S Dlamini Legal)

FOR Respondents: Mr. Nzima (Nzima and Associates)