

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3116

3 March 2023

SUBMISSION



TO:	THE COMMISSIONER
FROM :	KEDIBONE MELLO
CONTACT NUMBER:	0872601626
SUBJECT	REQUEST FOR APPROVAL TO ISSUE ONE (1) CERTIFICATE OF AMENDMENT REVOKING CO-OPERATIVE NAME THAT HAVE THE NAME LIBERTY AND ASSIGNING NEW CO-OPERATIVE NAME.

1. PURPOSE

To request approval from the Commissioner as the Registrar of Co-operatives to issue one (1) certificate of amendment revoking the following name:

Liberty Funerals Multi-purposes Co-operative Limited (2015/002842/24)
and assigning new name in line with section 11 of the Co-operatives Act 14 of 2005 ("the Act") as amended.

2. BACKGROUND

Section 10(1) (b) of the Co-operatives Act, as amended, provides that the proposed name of a co-operative must not be a name that is undesirable, **prohibited (own emphasis)** or calculated to deceive, or otherwise, mislead. We have received one (1) name objection through Adams & Adams Attorneys Inc. acting on behalf of the trademark owner ("LIBERTY"), objecting to the use of the word "LIBERTY" in the name of the above-mentioned co-operative.

The trademark ("LIBERTY") is registered in terms of Trade Marks Act 194 of 1993 that is valid and in force. The complainant has noted with concern that (1) primary co-operative have been incorporated with the objector's entire "LIBERTY" trademark included in the names and the inclusion of the trademark renders the names confusingly similar to the complainant's trademark. Therefore, the use of "LIBERTY" name by co-operative amounts to trademark infringement in terms of section 34(1) of the Trade Marks Act of 1993. Trademark registrations affords the owner the right to prevent others from using the name in the course of trade, identical or confusingly similar marks in conflict with its rights.

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3. MOTIVATION

With the infringement of “LIBERTY” trademark as detailed in the background above, the Co-operatives Act as amended makes provisions on how the Registrar must address the impasse.

In an effort to amicably resolve the matter, the one (1) co-operative through (it's) directors was notified of the complaint and was requested to change its name to any other name within 60 business days. Our correspondence and follow-ups did not yield any positive results hence the decision to invoke Section 11, which confers the powers to the Registrar to issue amended certificate.

Section 11 of the Co-operatives Act, 2005 as amended reads as follows:

“11 Directive from registrar to change name

(1) The registrar may direct a co-operative to change its name if such name contravenes section 10.

(2) If a co-operative does not comply with a directive issued in terms of subsection (1) within sixty days of receipt thereof-

(a) the registrar may issue a certificate of amendment revoking the name of the co-operative and assigning a new name; and

(b) from the date of the certificate of amendment, the constitution of a co-operative is deemed to be amended to reflect the name assigned to it in the certificate

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(3) On issuing a certificate of amendment in terms of subsection (2), the registrar must publish the change of name in a publication generally available to the public in the area where the majority of the members of the co-operative reside.”

We have done an exercise of name search and came up with the following name to issue to the one (1) co-operative:

Mvaro Funerals Multipurpose Co-operative Limited to replace Liberty Funerals Multipurpose Co-operative Limited (2015/002842/24).

Directors of co-operatives can change to any other name of their choice and same will be communicated to the co-operative.

4. FINANCIAL IMPLICATIONS

There are no financial implications as a certificate of change of name is issued upon directive of registrar of co-operatives. There are no fees attached to this service however, for the name to be available, a fee of R50 is payable of which a debit/credit note will be requested from the Finance Division. Co-operatives unit at CIPC at the end of the process as prima facie proof shall issue form Co-op 13 that a new name has been assigned.

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5. RECOMMENDATION

It is recommended that the Commissioner as the Registrar grants approval as follows:

- Remove one (1) objected co-operative name from CIPC registers.
- Assign one (1) new name to co-operatives with debit/credit notes.
- Issue one (1) Certificate of amendment revoking the current name and assign new name as detailed in the above motivation.
- Publish the changes in Government Gazette and on CIPC website
- Inform all relevant parties of the outcome of the co-operative name objection process.

Designation	Details	Comments
Requestor <i>K Mello</i> Signature	Name: Kedibone Mello Position: Team Leader Co-operative Amendments Contact no: X43364 Date: 20/02/2023	Recommended
Senior Manager Signature	Name: Mr Lindley Peters Position: Acting Senior Manager Co-operatives Contact no: 0877437112 Date: ____/02/2023	Recommended/ Not Recommended
Senior Manager Signature	Name: Mr Themba Lusenga Position: Accounting Contact no: 0877437091 Date: ____/02/2023	Recommended/ Not Recommended
Commissioner Signature	Name: Adv Rory Voller Position: Commissioner Contact no: 0877437110 Date: ____/02/2023	Approved/ Not Approved