

BHEKIMPILO SIBANDA

Versus

SIKHUMBUZILE SIBANDA

And

REGISTRAR OF COMPANIES, BULAWAYO

And

DUBE AND PARTNERS

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 24 AND 29 MARCH & 21 APRIL 2005

S Mazibisa for the applicant
V Majoko for 1st respondent
No appearance for 2nd respondent

Urgent Chamber Application

NDOU J: The applicant seeks an order in the following terms:

“Terms of the final order sought

That the provisional order granted by this honourable court be confirmed in the following manner:

1. That the applicant be and is hereby granted leave to alter the CR14 forms for Jodi Investments (Pvt) Ltd and exclude the 1st respondent from directorship of the said company at the 2nd respondent’s offices.
2. That the applicant be and is hereby granted leave to alter the allotment of shares document for Jodi Investments (Pvt) Ltd at the 2nd respondent’s offices and exclude the 1st respondent from being a shareholder of the said company.
3. That 1st respondent’s alteration of the CR14 forms and allotment of shares documents be and is hereby declared to have been unlawful.
4. That 1st respondent should pay costs on an attorney-client scale.

Interim relief granted

Pending the finalisation of the matter, the applicant be granted the following relief:

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1. That the 1st respondent's appointment as a shareholder holding 80 shares and as a director of Jodi Investments (Pvt) Ltd be and is hereby declared to be null and void for lack of compliance with the memorandum and articles of association of the said company.
2. The 1st respondent be and is hereby interdicted from interfering with the business operations of Jodi Investments (Pvt) Ltd in relation to the disposal of any assets or movement of finances as the case may be."

This application arises from the following facts. The applicant is a director and shareholder of Jodi Investments (Pvt) Ltd, hereinafter referred to as Jodi. He holds twenty(20) of the issued shares while his brother, Abinely Sibanda, holds 80 of the issued shares. Abinely Sibanda is married to the 1st respondent and the marriage still subsists although she instituted divorce proceedings on 18 February 2005. It is beyond dispute that there was never a meeting between the applicant and Abinely Sibanda to give directorship or shareholding to the 1st respondent. However, Abinely went with the 1st respondent to the office of the 3rd respondent in order to "formalise" giving some of his shares to the 1st respondent in response to the domestic problems they were having. In his affidavit supporting the applicant, Abinely stated that he gave specific instructions to the 3rd respondent not to file the amended CR 14 and the allotment of shares forms before he gave them the green-light to do so. The 1st respondent took those papers to the 2nd respondent's offices without his consent and against his specific instructions to both 1st and 3rd respondents. Abinely has no qualms with the order sought by the applicant. At the commencement of the hearing the 1st respondent conceded that her resignation of the applicant was done in error and urged that the applicant be reinstated. The leaves the issue of appointment of 1st respondent as director and shareholder (i.e. allotment of shares). The 1st respondent raised a preliminary point that the matter is not urgent. Paragraphs 1nad 2 of

certificate of urgency merely articulate the general prejudice that the applicant suffered or is likely to suffer because of the acts of the 1st respondent whether the matter is heard on urgent basis or not will not make the difference contemplated by the rules on urgency. The only question of urgency is raised in paragraph 3. Briefly it is alleged that the 1st respondent threatened to apply for an anti-dissipating interdict should the company not confirm or give assurances that it will not move or secret funds or dispose of assets. Bearing in mind that the applicant is entitled to oppose such application for an interdict I do see what makes the application urgent. The applicant says,

“As threatened in annexure “F” I have filed this urgent chamber application to protect my interests as a shareholder and director ... I have nothing to do with the matrimonial disputes between Abinely Sibanda and his wife... I pray for an order in terms of the draft on an urgent basis as the [1st] sic respondent even threatened to seek a court order to disrupt the normal business operations as set out in annexure “F” ...”

The relevant part of the annexure “F” reads:

“We also seek your assurance that Mr Sibanda will not dispose of assets of the business except in the normal and ordinary course of business. In particular, we seek your undertaking that he will not move, with a view to secret money and investments of the company with financial institutions. If by close of business on Wednesday the 2nd March 2005, we do not have the assurance then we will approach the High Court for an appropriate order, costs of which application will be for Mr Sibanda.”

This is what prompted the applicant to spring into action and rush to file the urgent application in *casu*. But does this justify the dispensation with the forms and service provided for in the rules? I do not think so. The applicant has not set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course – *Salt & Anor v Smith* 1991(2) SA 186 (Nm) and *WRB Enterprises (Pty) Ltd v*

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Plosbox Industrial Appliances (Pty) Ltd & Anor (2) 1975(1) SA 803 (T). As pointed out by GILLESPIE J in *Dilwin Investments (Pvt) Ltd t/a Formscaff v Jopa Eng Co (Pvt) Ltd* 116-98:

“A party who brings proceedings urgently gains a considerable advantage over persons whose dispute are being dealt with in the normal course of events. This preferential treatment is only extended where good cause can be shown for treating one litigant differently from most litigants. For instance where, if it is not afforded, the extenuated relief will be hallow because of the delay in obtaining it.”

There is no good cause shown in *casu*, for treating this matter on urgent basis – see also *Kuvarega v Registrar-General & Anor* 1998(1) ZLR 188 (H); *General Transport Engineering P/L & Ors v ZIMBANK Corp P/L* 1998(2) ZLR 301 (H); *Mushonga & Ors v Min of Local Government & Ors* HH-129-04; *Gulmit Investment (Pvt) Ltd v Ranchville Enterprises (Pvt) Ltd & Ors* HH-94-04 and *Laval Investments (Pvt) Ltd v B A Ncube Holdings t/a/ Airport Road Filling Station* HB-158-04.

This matter is not urgent. Accordingly, save for an order re-instating the applicant as director and shareholder of Jodi Investments (Pvt) Ltd, the application is otherwise dismissed with each party bearing own costs.

Cheda & Partners, applicant’s legal practitioners
Majoko & Majoko, 1st respondent’s legal practitioners