

IN THE HIGH COURT OF LESOTHO

CIV/APN/253/2010

In the matter between:

ZHAI FENG FU

Applicant

And

LU BEN HUI

1st Respondent

WANG BIN

2nd Respondent

ZHUANG XIAOHUOA

3rd Respondent

LONG YAN WANG

4th Respondent

LONG YAN XIN

5th Respondent

GONG XIN GUAN

6th Respondent

FAN JIAN MING

7th Respondent

LESOTHO STONE ENTERPRISES (PTY) LTD

8th Respondent

JUDGMENT

Delivered by the Honourable Mr Justice T. Nomngongo
On the 8th September, 2010

In this application, applicant seeks relief in the following terms:-

Urgent relief

1. Directing that the rules regulating form, the service of process and time limits within which such process should be served be dispensed with and directing that this application be heard as an urgent application; and
2. Interdicting and restraining the 1st , 2nd and 3rd Respondents from conducting the business of the 8th Respondent in any way whatsoever pending the outcome of the application for the liquidation of the 8th Respondent in any way whatsoever pending the outcome of the application for the liquidation of the 8th Respondent presently pending before Court under CIV/APN/83/2010; and
3. Interdicting and restraining the 1st , 2nd and 3rd Respondents to conduct the business of the Respondent in exclusion of the Applicant; and
4. Directing the 1st , 2nd and 3rd Respondents to allow the Applicant and any of his duly appointed agents undisturbed and free access into the business management and financial affairs of the 8th respondent including free and undisturbed access into all financial records, bank accounts, computer records and data of the 8th Respondent; and
5. Granting leave to the Applicant to have free and undisturbed access into the financial records and books of account of the 8th Respondent and to make copies thereof especially in regard to the trading activities of the 1st , 2nd and 3rd Respondents while in possession and control of the business of the 8th Respondent; and
6. Directing the 1st , 2nd and 3rd Respondents to allow the Applicant and any of his duly authorized agents free and undisturbed access to the offices,

manufacturing factories and quarry of the 8th Respondent, pending the outcome of this application; and

7. Interdicting and restraining the 1st, 2nd and 3rd Respondent to withdraw any funds from the bank accounts or from the business of the 8th Respondent, except in the normal course of business and without the consent of the Applicant including an interdict restraining the 1st, 2nd and 3rd respondents from transferring any funds from the Kingdom of Lesotho whatsoever unless authorized by the Applicant and/or by order of this Honourable Court; and
8. Directing that a rule nisi be issued calling upon the Respondents to show cause on a daily basis to show cause on a date to be determined by this Honourable Court why this should not be made a final order of Court pending the final outcome of the liquidation application against the 8th Respondent; and
9. Directing that prayers 2 – 7 operate as interim interdicts pending the outcome hereof and of the application in respect of ordinary relief and liquidation referred to herein.

Ordinary relief

10. Declaring the sale of shares by the 4th, 5th, 6th and 7th Respondents to the 1st, 2nd and 3rd Respondents or any other parties as unlawful and null and void.
11. Setting aside any management agreement in regard to the business of the 8th Respondent awarded to the 1st, 2nd and 3rd Respondent or any other entity under their control or authority and setting aside such agreement as unlawful and null and void.
12. Setting aside any appointments of directors of the 8th Respondent made by the 4th, 5th, 6th and 7th Respondents and canceling the appointment of the

1st , 2nd and 3rd Respondents as directors of the Company in so far as they may claim to be directors of the 8th Respondent.

13. Directing that the Respondents pay the costs of this application in the event of any one of them unsuccessfully opposing this application, jointly and severally the one to pay the others to be absolved.

14. Granting such further and/or alternative relief as this Honourable Court may deem necessary in the circumstances.

This application was brought on a certificate of urgency. Her Ladyship must have considered that there was no urgency and she ordered that the respondents must be served with the papers so that the application was treated as an ordinary one. The question of urgency therefore does not arise.

This application was opposed and then respondents took three points *in limine* viz. there was no urgency in the matter, that the applicant failed to comply with the rules in that he did not comply with certain formalities regarding time limits for filing affidavits and the appointment of an address for service. The third point is in the alternative that the applicant had an alternative remedies because he was asking for a winding up order.

The first point as I have said was resolved by Mahase J. from the on set. The second point is really pedantic. The respondents know these things and they will suffer no prejudice at all for these minor omissions. Lastly do not see this application as being one of winding up and it certainly does not purport to be one, so it is wrong to claim as deponent Lu Ben Hui does that "... applicant is asking for a winding up order.

This brings me to what the applicant is really seeking. The applicants start with the somewhat strange prayer in par-2 of his founding affidavit that 1st, 2nd and 3rd respondents be interdicted from conducting the business of 8th respondent pending the outcome of the liquidation proceeding pending before this court. He then proceeds in the rest of his prayers to ask that he be allowed free and undisturbed access in the business of 8th respondent and that he should not be excluded in its activities. I must say at once that it is illogical that I should shut the business and then other that applicant should have access in its running. I cannot grant this prayer. The rest of the prayers are basically prayers for access to the records and financial affairs of the 8th respondent company. Prayer 7 is particularly interesting because it seeks to interdict the respondents from dealing with the finances of the 8th respondent company. Prayer 7 is particularly

interesting because it seeks to interdict the respondents from dealing with the finances of the 9th respondent except in the ordinary course of business. I consider this quite a reasonable request.

The 1st respondent and the only one who swore an affidavit, on the face of it does not deny that as a shareholder of the 8th respondent has a right of access to the affairs of the company. However this seems to me to be mere lip-service because his attempts at participating are considered by him as meddlesome, hence his complaint when he does go to the business it is only to “*fight management*”. This raises doubts whether in fact they do allow him access as 1st respondent says.

The applicant says that he is a director of the 8th respondent. The respondent denies this and refers me to certain annexures. These are whole proceedings in a different case and I was not referred to any specific paragraph. He says these annexure will prove that what the applicant is now saying is to use his words “*a complete turn – away from what he used to say*”. A reading of the first few paragraphs of this annexure par 3 & 4 of it reveal this:

“3(1) I allege that I am lawfully the director of the company as my removal was unlawful.

4. I deny that I was not a manager of 1st respondent. After my brother tragically died in a motor car accident I took over his in the Company and I was appointed a director and manager to enable me to administer the affairs of my brother”

Contrary then to what respondent says it is a turn-away from his previous position this proves clearly that applicant has always considered himself a director of the 8th respondent company. The respondent on the other hand says that the *“directorship of the company has not taken place”* and he goes on to say the 4th respondent who has not filed any affidavit is still technically the director of the 8th respondent. I know of us such thing as a technical director. The 1st respondent does not himself claim to be a director of the 8th respondent. The only person who lays such claim is the applicant and he not been shaken in that regard. The attempt to do only served to reinforce what he has always said. Now in terms of section 140 of the companies Act:

“Every company not being a private company shall have at least two directors and every private company shall have at least one director”.

I do not know how any of the respondents could conduct the affairs of the 8th respondent without a director who on the papers before me can only be the applicant herein. That being the case the applicant has made a case for prayers 3 to 7 and 11 to 13. To that extent the application succeeds with costs.

T. Nomngcongo
Judge

For applicant : Mr Mpaka

For respondent: Mr Setlojane