Case 1

KASOMA TRUST
and
MARSZIM TRUST
and
LEADERSHIP INVESTMENT (PRIVATE) LIMITED
versus
HAYLMA TRUST
and
KENNIAS SIBANDA
and
ANTHONY CHIHIYA
and
BILTRANS SERVICES (PRIVATE) LIMITED

Case 2

AUTO SEAL TRUST HC 1270/21
and
HAYLMA TRUST
and
KENNIAS SIBANDA
and
ANTHONY CHIHIYA
and
JANITA RAMA
and
RASHI D' ALMEIDA
and
AUTO SEAL ZIMBABWE (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 26 October 2021 & 15 March 2023

Opposed Applications-*Declaratur* shareholder dispute

Mr *T Magwaliba*, for the applicants
Mr *L Uriri*, for the 1st, 2nd & 3rd respondents

MUSITHU J: This judgment is a product of two matters that were consolidated and heard as one. The issues at stake and the interests of the parties involved herein converge. At the centre of the dispute in both cases is an Extra Ordinary General Meeting (EGM or the meeting) that dealt with the business of the fourth respondent in HC 1351/21 (Case 1), and the sixth respondent in HC 1270/21 (Case 2) on 8 February 2021. The applicants in both cases contend that the meeting did not comply with certain provisions of the Companies and Other Business Entities Act[1] (the COBE or the Act), the shareholders agreements and the Articles of Association of the fourth respondent and sixth respondents in the two cases. Consequently any resolutions passed thereat were null and void. Additionally or alternatively, the applicants contend that the manner in which the meetings were held constituted an oppression of the minorities. The relief sought in Case 1 is captured in the draft order as follows:

"IT IS ORDERED THAT;-

1. It is declared that the Notice convening the extra general meeting of Biltrans Services (Private) Limited did not comply with the provisions of section 168 of the Companies and Other Business Entities Act [*Chapter 24:31*] and is accordingly set aside.
2. The Extraordinary General Meeting of the members of the Fourth Respondent held on the 8th of February 2021 be and is hereby declared null and void and accordingly set aside and all resolutions passed at the said meeting be and is hereby set aside.
3. Alternatively to 1 and 2 above it is ordered that:
   - 3.1 The resolution for the appointment of the Third Respondent as the Fourth Respondent's Company Secretary be and is hereby declared null and void and accordingly set aside.
   - 3.2 The resolution for the appointment of the Second Respondent as "Executive Director" be and is hereby set aside.
   - 3.3 The resolution for the dissolution of the board of Biltrans Services (Private) Limited dated the 8th February 2021 be and is hereby set aside.
   - 3.4 That the resolution for the reconstitution of the management team and the Executive Committee be and is hereby declared null and void and accordingly set aside.
   - 3.5 All documents filed pursuant to the resolutions passed on the 5th February 2021 be and are hereby set aside and the documents relating to the status of the company and its Directors in existence of the 8th of February 2021 be and are hereby revived.
4. That the First Respondent be and is hereby ordered and directed to acquire the minority interests in the Company within ninety (90) days of the date of this order at a value to be agreed to between

[1] [*Chapter 24:31*]

the parties failing such agreement, at a fair market value to be determined in accordance with clause 22 of the Shareholders Agreement between the parties.

5. That the First and Second Respondents pay the costs of this application on an attorney and client scale."

The relief sought in Case 2 is also captured in the draft order as follows:

"IT IS ORDERED THAT;-

1. It is declared that the Notice convening the extra general meeting of Auto Seal Zimbabwe (Private) Limited did not comply with the provisions of section 168 of the Companies and Other Business Entities Act [Chapter 24:31] and is accordingly set aside.
2. The Extraordinary General Meeting of the members of the Sixth Respondent held on the 8th of February 2021 be and is hereby declared null and void and accordingly set aside and all resolutions passed at the said meeting be and is hereby set aside.
3. Alternatively to 1 and 2 above it is ordered that:
   3.1 The resolution for the appointment of the Third Respondent as the Sixth Respondent's Company Secretary be and is hereby declared null and void and accordingly set aside.
   3.2 The resolution for the removal of DAVID EDWIN TANNER and RICHARD ERIC STENTON as Directors of the Sixth Respondent be and is hereby set aside.
   3.3 The resolution for the appointment of the Fourth and Fifth Respondents not having been done in accordance with the law be and is hereby set aside.
   3.4 All documents filed pursuant to the resolutions passed on the 5th February 2021 be and are hereby set aside and the documents relating to the status of the company and its Directors in existence of the 8th of February 2021 be and are hereby revived.
4. That the First Respondent be and is hereby ordered and directed to acquire the minority interests in the Company within ninety (90) days of the date of this order at a value to be agreed to between the parties failing such agreement, at a fair market value to be determined by a chartered accountant to be appointed by the Institute of Chartered Accountants in Zimbabwe at the request of either party.
5. That the First Respondent shall pay the costs of this application on an attorney and client scale."

I will endeavor to summarise the factual backgrounds in respect of the two cases separately to the extent that there are some minor differences in their factual matrix. This will not be necessary in those instances where the circumstances are common cause.

FACTUAL BACKGROUND TO CASE 1

The first and second applicants' founding affidavit was deposed to by Grant Littleford (Littleford) in his capacity as a trustee of the first and second applicants. The third applicant filed a supporting affidavit which was deposed to by Tracey Hunter in her capacity as director of the third applicant. She associated herself with the deposition made on behalf of the first and second applicants by Littleford. The fourth respondent is in the business of the transportation of goods and services in Zimbabwe and within the Southern African region. It operates from premises owned by a company called Auto Seal Zimbabwe (Private) Limited (the sixth respondent in case

2). The shareholders of Auto Seal Zimbabwe are the same as those of the fourth respondent. The first and second applicants are shareholders in the fourth respondent with each holding 10% of the issued share capital. The third applicant holds 15% of the issued share capital while the first respondent holds the remaining 65%.

There exists a shareholders agreement between the said parties concerning the management of the affairs of the fourth respondent. According to the applicant, as at 8 February 2021, the fourth respondent's board of directors was made up of Puckson Sibusiso Gumede (Gumede), David Edwin Tanner (Tanner), Alpa Hasmukial Bhikha (Bhika) and Thabani Mpofu (Mpofu). The day to day management of the business of the fourth respondent is reposed in Tanner as the Managing Director, Bhikha as the Finance Director, Archer as the Technical Director and Gumede as the Operations Director.

Around 23 November 2020, the first respondent made a requisition for an extra ordinary general meeting of the members of the fourth respondent. No meeting was convened pursuant to that request. Relying on the provisions of s 168(3) of the COBE Act, the first respondent proceeded to convene the EGM of members of the fourth respondent. The notice convening the meeting set out the agenda of the meeting as follows:

- to consider a resolution on the removal of the company secretary Virgin Management Services;
- the appointment of a new company secretary with immediate effect;
- the appointment of Kennias Sibanda as an Executive Director of the company with immediate effect;
- accountability by directors of the company's business;
- accountability by the directors of the company's losses;
- The termination of the management team, Excom and reconstituting thereof with immediate effect.

Littleford attended the meeting as a representative of the first and second applicants. Also in attendance was Mr Nikita Madya who had been given a proxy by Leadership Investments (Private) Limited/Hurricane Trust on behalf of the third applicant. The meeting was chaired by the second respondent who also happens to be a trustee of the first respondent. Prior to the meeting, a document prepared by Hurricane Trust objecting to the holding of the meeting and setting out several objections had been presented to the chairperson at the commencement of the meeting. The chairperson nevertheless proceeded with the meeting without considering those objections.

The chairperson was advised that the minority shareholders were not going to sanitize the meeting, but were simply staying in order to observe proceedings but not as participants. None of the applicants participated in the meeting other than to raise the objections that were ignored at the commencement of the meeting. The third respondent was appointed by the first respondent's representatives as the minute taker and subsequently as the company secretary.

THE OBJECTIONS

That the meeting was improperly convened

One of the objections raised on behalf of the applicants was that the notice convening the EGM did not comply with s 168 of the COBE Act. The applicants contend that the notice convening the meeting did not comply with the mandatory provisions of s 171(3) of the COBE as read with Article 52 of the fourth respondent's Articles of Association. The notice did not incorporate the statement required that a member is required to appoint a proxy. It also did not incorporate the form of proxy as required by s 171(3) of the COBE and the Articles of Association. That omission was fatal.

The applicants also alleged non-compliance with s 168 of the COBE which requires that resolutions to be adopted at an EGM must be set out clearly. The applicants claim that the notice contained discussion points and not resolutions to be adopted at the EGM. That omission was equally fatal. The other point was that the notice was not served on all the shareholders of the company despite the first respondent's knowledge thereof. The third applicant was not served with the notice at its chosen address of service as set out in the shareholders agreement. It only became aware of the meeting through the first and second applicants.

It was in view of the foregoing anomalies that the applicants argued that the notice calling for the meeting was improper and that the court should grant the order sought declaring such notice null and void as well as the meeting held pursuant to it.

In the event that the court upheld the validity of the notice calling the EGM, the applicant averred that some of the resolutions passed at the meeting should be set aside as they were improperly passed. The applicant cited the following.

Resolution for the appointment of Antony Chihiya as company secretary

The appointment of Chihiya was alleged to be irregular for the following reasons. In terms of s 198 of the COBE as read with article 76, the appointment of a company secretary is the sole

responsibility of the board of directors of the company and not the shareholders. The issue was raised at the EGM by the applicants' legal practitioner. It was never considered by the respondents. Further, the applicants contend that the terms of appointment of the third respondent as company secretary were also not disclosed in the documents convening the EGM. None were also disclosed at the EGM. The applicants had been made aware that the third respondent was the personal lawyer of the second respondent and probably the first respondent as well. The appointment of the third respondent was therefore meant to serve the interests of the first respondent and not the company. Having an interest in the matter, the first respondent should not have voted on the resolution.

According to the applicants, the appointment of the company secretary was reserved for the directors of the company because they would appoint such person on merit and decide the terms of reference for such appointment. It was intended to avoid what happened in *casu* where a shareholder appointed its own person to serve its interests. That resolution was therefore irregular.

The applicants further averred that even assuming the shareholders meeting could appoint a company secretary, the notice convening the meeting had not proposed a resolution for the appointment of the third respondent as the company secretary. No name had been proposed ahead of the meeting to enable minority shareholders to decide on that issue as they were expected to vote on that matter at the meeting.

The appointment of directors

According to the applicants, the articles provide that no person other than the director retiring at the meeting shall be eligible for election to the office of director at a general meeting unless, not less than three (3) days and not more than twenty one (21) days before the date appointed for the meeting, there shall be left at the registered office of the company a notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given or its intention to propose such a person for election and also notice in writing signed by that person of his willingness to be elected. No notice in writing signed by the second respondent of his willingness to be appointed director was deposited with the company at least three (3) days prior to the date of the meeting. Without such notice, the meeting could not have proceeded to deliberate on the issue and appoint the second respondent as an executive director as the minutes reflected.

Further, no terms of the appointment of the second respondent as executive director were disclosed either in advance of the meeting or at the meeting. In terms of the COBE and the articles, the appointment of executive directors was the responsibility of the board of directors and not that of the shareholders. Shareholders could only appoint a director with no executive authority. As a result, there was no disclosure to minority shareholders as to what position the second respondent was going to hold. The company already had the required directors. The applicants also averred that as a representative of the first respondent and in view of his personal interest in the appointment as an executive director, the second respondent should not have voted on the resolution. His vote was therefore disqualified.

According to the applicants, in terms of the shareholders agreement, Thabani Mpofu was already an appointee of the first respondent, and without him having resigned, the second respondent's appointment could not have been made. The applicants allege that there was an attempt to explain this on the basis that at the time he was appointed, the second respondent was not yet a trustee of the first respondent and therefore he could not have made the appointment. The applicants considered the explanation absurd because the second respondent was a beneficiary of the trust and he gave instructions to the trustees who then acted on the instructions and ensured that the appointment was done. The appointment was in breach of the shareholders agreement between the parties.

Reconstitution of the Executive Committee and the Management Committee

The applicants objected to the issue being discussed at the meeting as it was regulated by the shareholders agreement. The resolution passed therefore sought to amend the terms of the shareholders agreement without complying with the agreed procedure for the amendment of the said agreement. The first respondent could therefore not resort to the expedience of an EGM to amend the provisions of the shareholders agreement. The resolution passed which had the effect of reconstituting or amending the composition of the Executive Committee and the Management Committee was therefore invalid.

Dissolution of the Board

According to the applicants, the minutes of the meeting showed that a resolution for the dissolution of the board was passed at the meeting. A new board made up of the second respondent and Puckson Gumede was reconstituted for a period of ninety (90) days. Further, according to the

applicants, the meeting of the fourth respondent closed after the directors had made their presentation and after the resolution for the reconstitution of the Excom and management teams had been passed. The meeting of an associate company called Auto Seal Zimbabwe (Pvt) Ltd commenced immediately thereafter. It dealt with its own business and the meeting was closed. After its closure, the second respondent who was chairing the meeting then stated that he was dissolving the board of the fourth respondent. A representative of the third applicant questioned how it was possible to reconvene a meeting that had already been terminated and finished the business for which it was convened. There was also no agenda item for the discussion of this matter. He proceeded to deal with the matter.

The applicants argued that an EGM could only transact business for which it was convened. In the present matter, the notice convening the EGM did not show that there was a proposal to dissolve the board and dismiss all the directors of the company. At any rate, even assuming that the EGM could have dealt with the matter, it was trite that a notice of the passing of such resolution be given to the company in advance. Each of the directors affected by the resolution was required to be individually notified of the intention to move such a resolution. The articles specifically required that special notice of twenty eight (28) days be given of the intention to pass such resolution. Section 177(2) of the COBE also entitled the director to make representations to the meeting before the resolution was passed. None of the directors sitting on the board that was allegedly dissolved was ever given notice or invited to make representations. Such a resolution was therefore invalid.

According to the applicants, the directors that were being removed were executive directors who had employment contracts with the company. This was not considered, yet these were matters that should have been handled by the board. There was also no justification for that act which had the effect disrupting the business of the company. The applicant construed the conduct of the majority shareholder as being intended at depriving the minority shareholders of their right to participate in the running of the business of the company as set out in the shareholders agreement. The resolution was passed in direct contravention of s 202 as read with s 169 of the COBE.

The applicants averred that following these unlawful acts, and upon realizing that these shareholder fights were not in the interests of the company, they dispatched a letter to the first respondent expressing their desire to proceed with litigation and their willingness to exit the

company if their concerns were not resolved amicably. The response from the second respondent was a terse *"the minority can go ahead as they consider fit"*. That kind of response showed no desire or care to resolve the issues in dispute. The applicants contend that the manner in which the minorities were ignored at the EGM, the passing of the resolution to dissolve the board in breach of basic corporate governance tenets, was most telling.

The minutes

The applicants allege that the minutes of the EGM were not reflective of the business that was transacted at the meeting. A letter was dispatched to the third respondent in which the applicants expressed their concerns with the minutes. The third respondent did not respond to the letter. The applicants aver that the failure to respond to their concerns left no doubt that the minutes were manipulated to reflect the first respondent's position. The applicants prayed that the minutes be declared to be not a correct record of the business transacted at the meeting.

Oppression of the minority

According to the applicants, the cumulative effect of the conduct of the first respondent and its representatives constituted an oppression of the minority. The manipulation of the majority shareholders' controlling stake to elbow out the minorities by removing the representatives of the minorities from the board and the day to day management of the business was contrary to the expectations of the minorities as set out in the shareholders agreement. The decisions were made without regard to good corporate governance practices and the law.

First and Second Respondents' Case

The opposing affidavit was deposed to by the second respondent in his own capacity as well as being a trustee of the first respondent. The second respondent averred at the outset that the matter was afflicted by material disputes of fact which were unresolvable on the papers. He pointed to the applicant's allegation that the minutes of the EGM did not reflect what actually transpired at the meeting. On their part, the respondents' position was that the minutes were an accurate record of the meeting. The fact that the parties held conflicting positions regarding the status of the minutes meant that the matter could not be resolved through motion proceedings. The application ought to be dismissed or referred to trial in order that evidence may be led to ascertain the correct factual position.

On the merits, the second respondent denied that Thabani Mpofu was ever a director of the fourth respondent. He was proposed as director by the first respondent sometime in 2017. He however requested that an audit of the company be undertaken before he accepted the position. The results of the audit were not presented and as a result Mpofu never assumed the position.

The first respondent admitted that the company did not convene a meeting. The company secretary, then Virgin Management Services (Private) Limited (Virgin Management) and the fourth respondent's directors deliberately ignored the first respondent's request to convene a meeting. The first respondent had a lawful right to call for a meeting being the majority shareholder. However, the fourth respondent, through the control of the applicants denied the first respondent that right.

According to the deponent, the first respondent was created in December 2014 as a family trust. The settlor was the second respondent. The first respondent acquired majority shareholding in the fourth respondent in 2014. The current beneficiaries of the trust were the second respondent, Janita Rama and their two children Haley and Mason. At the time of its registration and up until October 2020, the first respondent's trustees were Virgin Trust Company (Private) Limited (hereafter referred to as Virgin Trust) and Virgin Management (as an alternative Trustee).

One of the directors of Virgin Trust is Littleford, who was also a trustee of both the first and second applicants. The other directors of Virgin Trust are Spencer Harron Murray, Giovanni Pietro Dionigi Rossi and Barry Anthony Rex Brice who are also directors of Virgin Management Services. From the time that the first respondent acquired the majority shareholding in the fourth respondent, Virgin Trust (as trustee of the first respondent) neglected or refused to use the voting powers attaching to the first respondent's shareholding in the fourth respondent, to secure and advance the first respondent's interests in the fourth respondent. According to the deponent, this was not surprising seeing as that one of the directors of Virgin Trust was Grant Littleford, who himself was also a trustee of the first and second applicants herein.

According to the second respondent, the reason why Virgin Management failed to convene a meeting at the first respondent's request was because there was a conflict of interest between the interests of the first and second applicants represented by Littleford as well as the interests of the first respondent represented too by Littleford, Spencer Harron Murray, Giovanni Pietro Dionigi Rossi and Barry Anthony Rex Brice. As of 29 October 2020, Virgin Trust Company and Virgin

Management were removed as Trustees of the first respondent by an order of this court under HC 1218/20.

The second respondent averred that the document containing the objections was handed to him by Mr Madya who had a proxy from Hurricane Trust. The deponent claims that he was not aware of Hurricane Trust, which entity was not even affiliated with the fourth respondent. Hurricane Trust was not a member or a shareholder of the fourth respondent. For that reason, the deponent claims that he had no basis to consider the said document or address it. He also insisted that the third respondent was duly appointed in terms of the agenda.

The second respondent argued that the notice convening the EGM complied with s 168 of the COBE Act. Any omissions alleged, even if proved, were not fatal. The second respondent averred that while it was admitted that the notice did not incorporate a statement that a member was entitled to a proxy, that omission did not invalidate the proceedings. This was arguably so considering that all the shareholders were present at the meeting and thus no conceivable prejudice was faced by the applicants in respect of the omission.

It was denied that the resolutions were not set out clearly. The document filed in opposition to the EGM showed that the applicants were aware of the resolutions that were to be sought. There was therefore compliance with all the relevant sections of the COBE, and where there was alleged non-compliance, such non-compliance was immaterial and did not prejudice the applicants. That was no basis for the nullification of the notice.

The second respondent further denied that the appointment of the company secretary was irregular or illegal. Virgin Management, as the company secretary, along with the directors of the fourth respondent that were appointed by the applicant, failed to respond to a valid notice to convene an EGM. That notice was sent by the first respondent sometime in November 2020. That alone was a contravention of the COBE. For that reason, the first respondent was forced to convene a meeting itself. The company secretary was not in attendance at the meeting. It had abdicated its duties. There was also no cooperation from the director of the fourth respondent, leaving the first respondent with no option but to appoint a company secretary in order that the fourth respondent could function.

The second respondent denied that the third respondent was his personal lawyer. He further denied any personal interest in his appointment. It was actually the deponent to the applicant's

founding affidavit who had a personal interest in the fourth respondent through his representation of the first and second applicants, and his association with the directors of the previous company secretary Virgin Management.

The second respondent claimed that the notice of the meeting clearly stated that the issue of the removal of the current directors and his appointment would be an agenda item. The notice therefore provided sufficient time for the applicant to consider his appointment. The second respondent also denied that a shareholder did not have authority to appoint an executive director.

The second respondent further claimed that the directors that were removed had run the business to the ground. They had failed to execute their mandates with the diligence and duty of care expected of them. The company was in serious debt and it was doubtful if at all it would remain as a going concern. The directors failed to conduct themselves with utmost diligence. They failed to attend to audits, they failed to explain the financial position of the company when requested to do so at the EGM. They either refused to answer questions or gave one word answers when pressed to do so. Their incompetence seriously prejudiced the first respondent as a majority shareholder.

The second respondent denied the alleged oppression of the minorities. It was the applicants who had attempted to thwart the first respondent's rights in the affairs of the fourth respondent, from the time the first respondent became a majority shareholder. The first respondent had had no say in the operation of the company from the time it became a majority shareholder.

The second respondent denied that there was a basis to compel the first respondent to purchase the applicants' shares in the fourth respondent. The procedure for the sale of shares was provided in the shareholders agreement. In any case, the first and second respondents did not have the funds to pay for the shares as a result of years of neglect of the first respondent's interests in the fourth respondent. The court was urged to dismiss the application with costs on the punitive scale for lack of merit.

Third Respondent's Case

The third respondent associated himself with averments made by the second respondent, as they pertained to events that occurred at the EGM. The third respondent is a registered legal practitioner practicing with the law firm Makonese, Chambati and Mataka and based in Kwekwe. He claimed that the applicants came to the meeting with the intention of frustrating and disrupting

the meeting. They refused to respond to questions and instead only gave one word answers. In as much as the applicants portrayed themselves as the victims, the third respondent claimed that they were actually the aggressors.

The Answering Affidavit

The deponent averred that the opposing affidavit was defective as it was not numbered consecutively. There was a repetition of para(s) 1,2,3,4 and 5, with the result that they were two paragraphs identified by the same numbering. That was contrary to o 32 r 227(1)(b) of the High Court rules. For that reason, the notice of opposition ought to be struck off the roll. I point out at the outset that this point was not pursued in the applicants' heads of argument or oral submissions. I therefore considered it abandoned.

The applicants denied the existence of any disputes of fact as alleged by the respondents. The alleged dispute of fact was not *bona fide*, and neither was it material. The respondents were informed by the applicants that the minutes did not reflect what transpired at the meeting, as far back as February 2021 following the receipt of the minutes from the third respondent. The applicants had expressed their concerns on the contents of the minutes through a letter to the second and third respondents. None of the parties responded to the letter disputing the allegations made in the said letter. There was no attempt in the opposing affidavit or supporting affidavit to deal with the issues raised in the said letter. More importantly, in their response to the queries raised in the applicants' affidavit regarding the accuracy of the minutes, the respondents merely denied the allegations and insisted that the minutes were a true representation of what transpired at the meeting.[2]

The applicants further highlighted the following matters that were not properly captured in the minutes. While it was accepted that the document setting out the applicants' objections was handed to the parties at the inception of the meeting, that fact was not recorded in the minutes. The minutes showed that the issue was discussed under general business after all the other business had been transacted. Further, while the third respondent's affidavit stated that the applicants were aggressive and wanted to disrupt the meeting, the minutes did not reflect such aggression or attempts to disrupt the meeting. Virgin Management Services were represented in the meeting by

[2] Paragraph 42 of the second respondent's opposing affidavit on p34 of the record.

the deponent. That position was stated in the meeting. The second respondent stated that the third respondent and the deponent could take the minutes. That was not stated in the minutes.

According to the deponent, annexure J to its founding affidavit highlighted specific omissions and incorrect additions, which showed that the minutes were an incorrect record of proceedings. The applicants contended that the preliminary point was raised out of fashion and without merit, in the absence of a demonstration and reference to the specific matters that were raised by the applicants in annexure J.

As regards the merits, the applicants observed that throughout the opposing affidavit, the respondents resorted to bare denials which were not sufficient to defeat the averments made in the applicants' case. The applicants denied that the directors of the fourth respondent frustrated the first respondent's request for a meeting. The applicants persisted with their averments as set out in the founding affidavit insisting that a case had been made for the granting of the relief sought.

THE FACTUAL BACKGROUND TO CASE 2

The founding affidavit was deposed to by Littleford in his capacity as a trustee of the applicant. As already observed in Case 1, the sixth respondent owns Lot 51, Hayden Park, Mount Hampden, Harare (the premises), which it leases to an associate company, the fourth respondent in Case 1. The applicant holds 35% of the issued share capital in the sixth respondent. The first respondent, which also happens to be the first respondent in Case 1 holds the remaining 65% of the issued share capital in the sixth respondent. As shareholders of the sixth respondent, the applicant and the first respondent entered into a shareholders agreement. As at 8 February 2021, the sixth respondent's board of directors was made up of Richard Eric Stenton (Stenton) and David Edwin Tanner (Tanner). Tanner was also a director of the fourth respondent in Case 1.

On 23 November 2020, the first respondent made a requisition for an EGM of the members of the sixth respondent. The sixth respondent did not convene the meeting as requested. According to the deponent, the directors sought audience with the second respondent as they felt the reasons for which the meeting was requisitioned did not justify an EGM. They reckoned that whatever grievances the second respondent had could be resolved amicably. Such overtures were ignored. There is however no proof on record that the directors sought the alleged engagement with the second respondent.

The first respondent proceeded to convene an EGM of the members of the sixth respondent in terms of s 168(3) of the COBE Act. The notice convening the meeting included the following amongst the agenda items: the appointment of a person to take minutes of the meeting; to consider a resolution of the removal of the current company secretary; the appointment of a new company secretary with immediate effect; the appointment of Janita Rama and Rashmi D'Almeida as directors and the removal of the current directors of the company with immediate effect; accountability by the directors of the company's business; and accountability by the directors for the company's losses. The deponent attended the meeting as the applicant's representative in the company of the applicant's legal practitioner. The meeting was chaired by the second respondent. The third respondent was appointed as the minute taker and subsequently as the company secretary.

Just as in Case 1, the applicant had a prepared a document outlining its objections to the holding of the meeting as well as other related issues. The second respondent proceeded with the meeting without paying any regard to the document. The objections that found the cause of action in Case 1 are more or less similar to the objections raised herein. They all emanate from the same meeting. Similarly, the respondents' responses to the applicants' founding affidavit in Case 1 are not materially different from the responses in Case 2. The submissions in respect of Case 1 and Case 2 will therefore be dealt with simultaneously. Save to note that there are certain objections which are peculiar either to the fourth respondent in case 1 or to the sixth respondent in case 2. These will accordingly be dealt with separately.

THE SUBMISSIONS AND THE ANALYSIS

Material disputes of fact

The alleged dispute of fact pertain to the objection made on behalf of the applicants that the minutes of the EGM held on 8 February 2021, circulated by the third respondent were not a correct record of what transpired at the meeting. The applicants' legal practitioners dispatched a letter to the second and third respondents pointing to those items that were not captured in the minutes. In the penultimate paragraph of the letter, the applicants' legal practitioners wrote, *"we hope that you will correct the minutes and send us proper minutes of the EGM. Please, kindly let us hear from you by the close of business on the 2nd March 2021"*. In their opposing affidavits, the respondents denied that the minutes were not a true record of what transpired at the meeting.

Mr *Uriri* for the respondents submitted that the applicants took a calculated risk in proceeding on motion in the face of the apparent disputes of fact regarding the contents of the minutes. According to Mr *Uriri*, the circulated minutes were going to be tabled at the next meeting where they would be adopted with or without corrections. The minutes were produced by a person who was acting in an official capacity. They told a story of what transpired. At this stage they were presumed to be regular until they were set aside. The court could not make a decision on the accuracy of those minutes in motion proceedings, without hearing the contested versions. The disputes of fact apparent from the contested minutes were reasonably foreseeable, such that the court could not even be persuaded to exercise its discretion and refer the matter to trial.

In response, Mr *Magwaliba* for the applicants argued that the point in *limine* was so narrow and could thus not impede upon the resolution of the matter on the papers. The point only related to the minutes of the meeting, but it did not affect the principal relief sought by the applicants. Mr *Magwaliba* further submitted that there could not be a material dispute of fact where allegations made by the applicants were not denied by the respondents.

In his brief reply, Mr *Uriri* submitted that the applicants' complaints were centred on events that transpired at the meeting of 8 February 2021. The record of that day's proceedings were the minutes that the applicants impugned. The entire proceedings were grounded on those minutes and for that reason the matter could not be dealt with on the papers.

The test for determining the materiality of disputes of fact was set out by MAKARAU JP (as she then was) in *Supa Plant Investments (Pvt) Ltd* v *Chidavaenzi*[3] as follows*:*

> "A material dispute of facts arises when material facts alleged by the applicant are disputed and traversed by the respondent in such a manner as to leave the court with no ready answer to the dispute between the parties in the absence of further evidence."

To this end, it follows that the mere allegation of a possible dispute of fact is not conclusive of its existence. The papers must expose the existence of a *bona fide* dispute of fact which is incapable of resolution on the papers without recourse to oral evidence.[4] That dispute of fact must be central or germane to the issue before the court. Put differently, it must be demonstrated that the issues pending for resolution by the court cannot be resolved without recourse to *viva voce* evidence.

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[3] 2009 (2) ZLR 132 (H) at 136F-G:
[4] See *Muzanenhamo v Officer in Charge, CID Law and Order and 7 Ors* CCZ 3/13

A reading of the draft orders which records the reliefs sought by the applicants shows that the applicants impugn: the notices convening the EGMs and the resolutions passed at the said EGMs. The applicants also require the first respondent in both cases to be ordered to acquire the minority interests in the fourth respondent in Case 1 and the sixth respondent in Case 2. The reliefs sought are common cause. They are not entirely reliant on the impugned minutes. It is not in dispute that a meeting was convened. It is also not in dispute that some contentious resolutions were passed. The contentious issues are legal in nature. They can be resolved independent of the minutes.

In both cases, the applicants make specific objections to the contents of the minutes, as not reflecting the actual business of the meeting.[5] In both cases, the applicants pray that in the event that the court upholds the meeting, then the minutes must be declared not a correct record of the business of the meeting. Thus the fate of the minutes is dependent on the finding the court makes on the main issues already alluded to above. I must also hasten to observe that both sets of draft orders do not seek any specific relief on the minutes.

For the foregoing reasons, the court determines that there is no merit in the preliminary objection. The contentious issues can be resolved independent of the minutes of the meeting.

Whether the EGM was properly convened

Mr *Magwaliba* submitted that a valid requisition for a meeting of shareholders was a prerequisite for the accrual of the right to convene an EGM by shareholders. Counsel submitted that the notice of 23 November 2020 requisitioning the meeting, was directed to the offices of the company secretary, Virgin Management Services, at No. 7 Normandy Road, Alexandra Park, Harare. This was not the registered address of the company (Fourth respondent in Case 1 and sixth respondent in Case 2). The requisition was therefore not directed to the directors of the company in both instances. It did not require the directors of the company to convene the EGM.

It was further submitted that s 168 (2) of the COBE imposed this requirement in peremptory terms. Once the directors were served with the notice requisitioning a meeting, they were required to convene a meeting of the shareholders within 21 days and not less than 14 days' from the date of the deposit of the requisition at the registered office of the company. The respondents did not

[5] Paragraphs 46 to 48 of the founding affidavit in respect of Case 1, and paragraphs 40 to 42 of the founding affidavit in respect of Case 2.

deny that the requisition was not deposited at the registered office of the company. The applicants contend that the directors were therefore under no obligation to convene the EGM, since the requisition was never deposited at the registered offices of the companies.

In response, Mr *Uriri* submitted that it was a basic principle of corporate law jurisprudence that courts must be slow to interfere with the internal arrangements of the company since the company must regulate itself in terms of its constitutive documents. Breaches of a technical nature were not fatal for as long as the majority could sit and arrive at the same conclusion that would have been arrived at had there been no breach.

It was submitted on behalf of the respondents that the deponent to the applicants' founding affidavit, Littleford admitted that both companies did not convene the meetings as per the request. It was further submitted that there was no averment that the directors of the fourth respondent in Case 1 were not aware of the meeting. As regards the sixth respondent in case 2, it was submitted that there was an admission that the directors were aware of the meeting. This was because Littleford averred in his founding affidavit that the directors had attempted to engage the second respondent as they felt that there was no need for an EGM. In his answering affidavits, Littleford alleged that he had received the notices but did not advise the other directors. He also alleged that the notice was sent to an incorrect address.

In their heads of argument, the respondents argue that s 168(3) of the COBE provided a remedy to a member where a company sought to deny the member the right to have a meeting convened. The respondents further argued that in terms of s 198(3) of the COBE, one of the functions of a company secretary was to ensure that notices of all shareholders meetings, board meetings and board committee meetings were given in accordance with the Act. Littleford was therefore legally obliged to ensure that the notice sent by the first respondent was given in accordance with the COBE. Failure to do so attracted a civil penalty in terms of s 168 (6) of the COBE.

The procedure for requisitioning of a meeting is set out in s 168 of the COBE Act as follows:

> "**168 Convening of extraordinary general meeting on requisition**
> (1) On the requisition of members of a company holding at the date of the deposit of the requisition not less than five per centum of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company the directors of the company, notwithstanding anything in its articles, shall, within twenty-one days of the deposit of the requisition,

> issue a notice to members convening an extraordinary general meeting of the company for a date not less than fourteen nor more than twenty-eight days from the date of the notice:
> Provided that if a special resolution is to be submitted the period of the notice shall not be less than twenty-one days.
> (2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.
> (3) If the directors do not within twenty-one days from the date of the deposit of the requisition issue a notice as required by subsection (1) the requisitionists, or any of them numbering more than fifty or representing more than fifty per centum of the total voting rights of all of them, may themselves convene a meeting, stating the objects thereof, on twenty-one days' notice, but no meeting so convened shall be held after the expiration of three months from the said date.
> (4) Any meeting convened under this section by the requisitionists—
> (*a*) shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors;
> (*b*) at an extraordinary meeting, only business within the scope of the notice and agenda previously sent may be voted on."

From a reading of that law, the starting point is that directors of a company must on the requisition of members, issue a notice to members convening an EGM of the company within the period stated in s 168(1). My understanding of the applicants' contention in their heads of argument and submissions by their counsel is that the directors of the two companies were under no obligation to issue a notice convening the EGM because they were not aware of the requisition by members. What underpins that submission is the argument that the requisition by members was not deposited at the registered offices of the two companies. However the submission is at variance with the applicants' own case as pleaded in the founding affidavits. In both cases, Littleford does not make the non-service of the requisition on the two companies an issue. The written objections submitted at the commencement of the meeting do not make it an issue either. What the applicants take issue with is the notice issued by the requisitionists consequent upon the failure by the directors to issue a notice upon request by members.

That the failure to serve notice on the company, and consequently on the directors was not an issue is clear from the following. In paragraph 24 of his founding affidavit in Case 1, Littleford makes the following point:

> "As Annexure "E" would show, one of the issues that was raised was that the notice issued convening the EGM was not in compliance with Section 168 of the COBE Act. In particular, the Directors having failed to convene the EGM following a requisition, the shareholder concerned is required to convene such a meeting in a manner as nearly as possible to the manner in which such a meeting would have been convened by the company."[6]

[6] Page 8 of the founding affidavit in Case 1. See also para 21 on p2 of the founding affidavit in Case 2

Further in paragraph 3 of their written objections in both cases the applicants state as follows:

> "The Notice calling for the EGM was not properly given in compliance with section 168(4) of the Companies and Other Business Entities Act ("the Companies Act"). In particular, the Notice Convening the EGM is defective and does not comply with section 168(4)(a) of the Companies Act……"

Section 168(4) applies to a notice issued by requisitionists in terms of s 168(3) following the failure by directors to act in terms of s 168(1). What is clear is that the applicants were not at all concerned about the alleged failure by the shareholders to properly serve the requisition on the directors. The applicants are therefore estopped from challenging the validity of the requisition of the meeting by the shareholder, when in their founding affidavits they never made it an issue. In fact the founding affidavits acknowledge the fact that the directors failed to convene an EGM following a requisition by the member. For that reason, the court finds that there is no merit in the objection.

Validity of the Notice Convening the Meeting

None Compliance with section 171(3) of the COBE Act

According to the applicants, following the failure by the directors of the fourth and sixth respondents to convene the meeting, the first respondent purportedly convened the meeting of the shareholders in terms of s 168(3) of the Act. The notice itself was defective in that it did not comply with s 171(3) of the COBE. The respondents had not denied that the notice was defective, arguing that the alleged irregularity was not fatal. The applicants dismissed the respondents' contention that the notice could still be valid without complying with the mandatory requirements of s 171(3).

The applicants further submitted that any conduct that was contrary to the express prohibition of a statute was unlawful. Reference was made to the authority of *Schirhout* v *Minister of Justice*[7].

In response, Mr *Uriri* submitted that there was nothing irregular about the notice, with the meeting having been convened as nearly as possible, to a meeting that would have been convened by directors. In their heads of argument, the respondents denied that there was a contravention of s 171(3) of the COBE Act. They argued that the duty to comply with the s 171(3) rested with the officers of the company and not shareholders. The definition of officer in s 2 of the COBE did not include a shareholder. It was the directors and the company secretary of the two companies that

[7] 1926 AD 99 at 109

were in contravention of s 171(3), as they knowingly permitted the default by not advising the first respondent when it convened the meeting.

It was further submitted on behalf of the respondents that all shareholders of the two companies duly attended the meeting either in person or by proxy and thus no conceivable prejudice was encountered by the omission of the proxy forms.

Section 171(3) of the COBE states as follows:

> **"171 Proxies and voting on poll**
> (1) ……...
> (2) ……..
> (3) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear, with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to act in the alternative, to attend and vote and speak instead of him or her, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting every officer of the company who authorizes, knowingly permits or is party to the default shall be liable to a category 1 civil penalty."

Section 2 of the COBE defines the terms *"officer"* and *"officer who is in default"* as follows:

> **"officer"** in relation to a company, means an officer appointed by the company's board of directors as provided in section 221 ("Officers of company") and includes a director, manager or secretary;
> **"officer who is in default"**, in relation to a civil penalty provision, means—
> (*a*) an officer or employee of a company; or
> (*b*)……;
> who knowingly authorised or permitted the default, refusal, omission or contravention mentioned in the provision;"

I accept the respondents' contention that the word officer as used in s 171(3) does not include shareholders or members of the company. The responsibility to appoint officers of the company is vested in the board of directors in terms of s 221 of the COBE. The same section also states that a person may be both a director and an officer. In terms of ss 3 of s 221, *"the officers shall be under the direction of the board of directors and their responsibility shall include management and operation of current activities of the company or parts thereof, other than matters within the exclusive competence of the board of directors or the members"*. A reading of the entire s 221 leaves one in no doubt that the person is intricately involved in almost the day to day management of the company's affairs. Shareholders tend to be far removed from the day to day activities of the company as would be required of officers.

Section 171(3) must therefore be interpreted with an understanding of the position of the officers in a company in mind. It is the court's view that the level of compliance required of officers of the company by virtue of s 171(3), and the sanctions attendant upon a default cannot be extended

to members or shareholders. Section 168(4)(a) immediately comes to mind. It states that any meeting convened by requisitionists *"shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors."* The words *"as nearly as possible"* are not defined in the COBE, but they can easily be interpreted to mean that the standard by which a meeting convened by directors and one convened by members should be measured would obviously be different. The drafters of the law were mindful of the fact that members would not have the same level of skill and expertise as directors. Some latitude should be allowed in respect of meetings convened by such requisitionists.

For the foregoing reasons, the court determines that the failure to comply with s 171(3) did not make the notice irregular. The persons who were required to attend the meeting were indeed in attendance. The applicants have not pointed to any prejudice suffered as a result of the alleged non-compliance. The objection is therefore without merit.

Non-compliance with section 168(2) of the COBE

It was also submitted that the notice was defective as it fell foul of s 168(2) of the Act. That section commands that the objects of the meeting be stated in the notice. An object is a statement of what is intended to be achieved by the meeting. It was not a statement of issues to be discussed but the resolutions to be adopted. For instance, the notice only indicated that a new company secretary would be appointed. The person was not identified and neither were their qualifications stated. Further, in respect of the fourth respondent in case 1, there was a proposal to appoint the second respondent as an executive director. The fourth respondent had a full complement of executive directors. The notice did not give sufficient detail of why the appointment was necessary and what role he would play.

The notice also referred to accountability by directors of the companies' losses and accountability for the companies' business. The agenda items were too broad and vague. Also attacked in respect of the notice convening the meeting of the fourth respondent in case 1 was the item on the termination of the management team and reconstitution of the executive committee. There was no indication of who would be removed and who would replace the removed persons.

In response, the respondents argued that the purpose of s 168(2) was to ensure that the receivers of the notice were aware of the goal or purpose of the meeting. A reading of the notices showed that the first respondent in both cases was clear on the goals and purpose of the meeting.

It was further argued that at any rate, a contravention of the section would not invalidate the proceedings. The proceedings could have been postponed to allow the parties to exchange any information that was required in order for an informed decision to be taken on the resolutions. The applicants simply did not wish to be subjected to a meeting called by the majority shareholder. This explained why Littleford made reference to attempts to resolve the issues amicably, and his failure to convene the meeting. It was further submitted that the respondents were not expected to know and comply with every single requirement of the COBE when convening a meeting where directors of the company had failed to do so.

Section 168(2) requires the requisition to state the objects of the meeting amongst other things. I agree with the respondents' contention that the infractions alluded to by the applicants in respect of the non-compliance with s 168(2) are not so grievous as to diminish the significance of the notice. Further, in view of the import of s 168(4)(a) of the COBE that I have already alluded to, the defects complained of are not so significant to warrant the setting aside of the notice. A meeting convened at the instance of requisitionists cannot be benchmarked against a meeting convened by directors.

Failure to serve the third applicant

The applicants also averred that the notice was not served on all the shareholders. The third applicant in case 1 was not served, while the first and second applicants received vague and unhelpful information. In case 2, the applicant averred that it was not supplied with information in sufficient detail and clarity. The applicants further averred that they had therefore validly protested against the conduct of the meeting in the face of all these irregularities.

In response the respondents claimed that the third applicant was fully represented at the meeting. There was a full quorum to allow for the conduct of the business of the meeting.

The objection is devoid of merit. The third applicant claims that it became aware of the meeting through the first and second applicants. In as much as it was irregular not to serve the notice of the meeting on all the parties, that irregularity is not serious as to invalidate the proceedings especially when all the required parties attended the meeting. The third applicant did not point to any prejudice it suffered as a result of the non-service. Also devoid of merit is the objection that the second applicant was not supplied with information in sufficient detail. That anomaly would have been cured by a request for more information or further particulars.

THE RESOLUTIONS

The Appointment of the third respondent as Company Secretary

Three submissions were made in support of the argument that the appointment was irregular. First it was averred that there was no proper notice in terms of s 168 of the COBE. While, the letter of 23 November 2020 proposed the appointment of a new company secretary, it did not propose the termination of Virgin Management as company secretary. The issue was not raised in the requisition, and therefore it could not be competently discussed at the meeting. Further, a new company secretary could not be appointed where there was no vacancy. The second issue was that a company secretary could not be appointed by shareholders at an EGM. It was the domain of directors in terms of s 198(2) of the COBE as read with article 76 of the company articles. The third issue was that the third respondent was conflicted as the personal lawyer for the first and second respondents. That offended s 198(4)(d) as read with s 198(7)(c) of the COBE.

In response, the respondents denied that the appointment of the company secretary was in conflict with the law. They argued that s 198(2) imposed an obligation on directors to appoint a secretary in respect of a public company and not a private company. It did not apply herein and shareholders were within their rights to appoint one. As regards the absence of a vacancy for the position, the respondents argued that the previous company secretary, Virgin Management had failed to convene a meeting when requested to do so by the majority shareholder. The company secretary did not even attend the meeting and had therefore abdicated its role. There was no company secretary to speak of. There was therefore a vacancy to be filled and it was filled. On the question of conflict of interest, it was argued by the applicants that the past company secretary was equally conflicted. Littleford was a director in Virgin Management as well as a trustee of the first and second applicants in case 1 and the applicant in case 2.

The court has already expressed itself on the issue of the validity of the notice issued by the requisitionists in terms of s 168(3) of the COBE. There was substantial compliance with the law as required by s 168(4)(a) of that Act. In any event, the notice of the meeting of 11 January 2021 clearly stated that the meeting was going to consider a resolution for the removal of the current company secretary and the appointment of a new company secretary with immediate effect.

The applicants were therefore aware that the matter of the removal of the secretary and the appointment of a new one would arise.

The question of the legality of the appointment of a company secretary by shareholders instead of directors is resolved by the very law that the applicants claim was violated. Section 198(2) of the COBE states as follows:

> "**198 Company secretary: functions, qualifications and disqualifications**
> (1) Every company shall have at least one secretary ordinarily resident in Zimbabwe.
> (2) The board of a public company shall appoint one or more secretaries, being a person or persons who are qualified in terms of subsection (4) to be the secretary of a public company, and who must not also hold another office as an officer of the company." (Underlining for emphasis)

Article 76 of the articles of association of the fourth respondent in case 1 states that the *"board shall appoint a Secretary who shall be ordinarily resident in Zimbabwe….."*. Article 3 of the sixth respondent's articles defines secretary as *"any person appointed to perform the duties of the secretary of the company"*. What is clear from a reading of s 198(2) is that the provision applies to directors of a public company and not a private company. If the intention of the legislature was that the section ought to apply to every company then then they would have dispensed with the use of the words *"board of a public company"*. It is common cause that the two companies at the centre of the dispute herein are private companies and for that reason s 198(2) is not applicable to the directors of the two companies.

In the court's view, it follows that the appointment of a company secretary of a private company must done in terms of the constitutive documents of the company. In the case of the fourth respondent in case 1, the appointment of the third respondent ought to have been made by the fourth respondent's board in terms of Article 76 of the fourth respondent's articles. Failure to comply with that requirement therefore made the appointment of the third respondent as the company secretary irregular.

As regards the appointment of the third respondent as company secretary of the sixth respondent in Case 2, one needs to read the articles with the regulations in Table A of the old Companies Act. This is because the preamble to the sixth respondent's articles of association provides that the regulations in Part 1 of Table "A" of the First Schedule of the Companies Act [*Chapter 24:03*], shall be the articles of the company, and in the event of inconsistency between the regulations in Part 1 of Table "A" and the regulations, then the provisions of the regulations would prevail. Paragraph 111 of the said regulations in Table A provides that *"the secretary shall*

be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them." It therefore follows that in terms of the sixth respondent's own constitutive documents, the appointment and the removal of the company secretary was a preserve for the directors and not shareholders. The appointment of the third respondent as the company secretary for the sixth respondent was therefore equally irregular.

The question of conflict of interest was raised in the context of s 198(4)(d) as read with s198(7)(c) of the COBE. The said sections make specific reference to the qualifications of a secretary of a public company. In the case of a legal practitioner, the person must be registered or entitled to be registered as a legal practitioner in terms of the Legal Practitioners Act[8]. The cited section is not relevant to the present case as it specifically applies to the secretary of a public company. The articles of both entities do not define the qualifications required of a company secretary and whether one is disqualified by virtue of having some professional relationship with a shareholder.

The respondents also pointed to the fact that Littleford was a director in Virgin Management as well as a trustee of the first and second applicants in case 1 and the applicant in case 2. For that reason they argued that he could not raise the question of conflict when he himself was in the same position. Given that scenario, the court cannot prescribe who should qualify to be the company secretary of the two entities.

In view of the foregoing, the court determines that the appointment of the third respondent as company secretary was therefore irregular in that the appointment was made by shareholders in violation of both companies' constitutive documents.

The appointment of the second respondent as director of the fourth respondent in case 1

The appointment is impugned on the following grounds. Firstly, it was averred that the second respondent did not deposit with the company a notice confirming his acceptance of the appointment at least three days before the meeting. That was a requirement in terms of the articles of association. Neither in the oral submissions nor heads of argument did the applicants' counsel refer to the article that requires one to signify their acceptance by way of notice three days in advance. The submission is therefore without substance.

[8] [*Chapter 27:07*]

Secondly, it was averred that executive directors were appointed by directors and not shareholders. At any rate it was further averred that the fourth respondent had a full complement of executive directors, and as such there was no vacancy. Thirdly, it was argued that there was no disclosure of the material terms of the appointment to enable the applicants to decide whether or not to vote for or against the appointment. It was further submitted that clause 14.1.5 of the shareholders agreement entitled the first respondent to one director. The first respondent had already appointed Mr Mpofu, as its representative and had thus exhausted its quota. The fact that the appointment was allegedly done by the second respondent before he became a trustee of the first respondent did not have the effect of invalidating Mpofu's appointment.

Lastly, it was averred that in terms of clauses 14 and 15 of the shareholders agreement, the shareholders agreed to place the management of the company under the board of directors, the management team and the executive committee. It was therefore not open for the EGM to reconstitute the board of directors or any of the management organs of the company. It was further submitted that where shareholders entered into a shareholders agreement, that agreement superseded any rights deriving from the Act. Further, the applicants argued that in terms of clause 25 of the shareholders agreement, in the event of a conflict between the articles of the company and the agreement, then the agreement would prevail.

In response, the first respondent argued that it was entitled to appoint directors to represent its interests in terms of clause 14 of the shareholders agreement. It claimed that the appointment of Thabani Mpofu was never put into effect as it was conditional on him receiving the company's audited statements. That condition was never satisfied and the appointment did not materialize.

Article 56 states that the first directors of the company shall be elected at the first meeting of the shareholders. Article 60 states that where the office of a director falls vacant and is not filled by the company, the board may appoint a director to fill that vacancy. In terms of article 65, the board may from time to time appoint a managing director or directors, and any such person as general or local manager or managers upon such terms as it may think fit. In terms of clause 14 of the shareholders agreement, each shareholder is entitled, but not obliged, to nominate one director. The agreement does not state whether such directors are executive or not.

Clause 15 of the shareholders agreement deals with the management of the company. Clause 15.1 states that both the incoming and existing shareholders undertake that they will all

continue to run the business of the company in the manner it had always been run as at that point of signing the agreement. Clause 15.2 states that:

> "Therefore, the Board shall delegate the day to day management and operation of the Company, to the Management team of Richard Stenton, Dave Tanner and Richard Mann, all of whom shall be executive directors. The decisions of the Management team shall be outlined in Schedule 2."

Clause 15.3 states that *"each of the executive directors are entitled to a salary and benefits amount per month."* From my reading of the shareholders agreement and the articles, the management team was responsible for the day to day management functions on the basis of powers delegated by the board. It follows that the Board of Directors and the executive directors were not one and the same. These were two independent levels of authority. Any other interpretation would yield an absurdity. It would mean that the same people constituting the board would metamorphose into executive directors and enjoy the day to day management of the company on the basis of powers they delegated to themselves.

In terms of schedule 2 to the shareholders agreement, some of the functions of the management team include: implementing board decision and initiatives; management and implementation of company strategy as set out by the board; periodic reporting back to the Board on all functions. The executive directors could not periodically report to themselves. They could only be answerable to the board of directors.

It is in this context that the appointment of the second respondent should be considered. The notice of the meeting dated 11 January 2021shows that one of the agenda items was to consider the appointment of the second respondent *"as an Executive Director of the company with immediate effect."* By virtue of such appointment, it meant the second respondent was going to be part of the management team made up of executive directors and answerable to the board. He was going to enjoy such salary and perks that are a preserve of executive directors. Such an appointment could only be made by the board of directors and not shareholders. Shareholders could only make appointments to the board of directors and not executive directors.

For the foregoing reasons, the court determines that the appointment of the second respondent as an executive director to represent the interests of the first respondent was highly irregular. It was not done in terms of the company's articles or the shareholders agreement.

There is no sufficient evidence before the court to confirm that Mpofu was indeed appointed as a director of the second respondent. The Form C.R. 14 attached to the applicant's

founding affidavit is not stamped nor signed by the registrar of companies. It is dated 1 June 2017, and lists Mpofu as one of the directors, having been appointed curiously, on the same day, 1 June 2017.

What makes the C.R. 14 even more unreliable is that on 1 August 2017, Messrs Mushoriwa Pasi Corporate Attorneys wrote to the fourth respondent's managing director on behalf of the first respondent. The first respondent wished to appoint Mpofu as director in the company. However Mpofu had requested that the company's books be audited for his own comfort before he accepted the appointment. It is not clear whether that audit was then ever conducted. To the extent that the C.R. 14 predates the letter from the first respondent's attorneys, it follows that Mpofu could not have been appointed director before the request for the audit was made, when it was a precondition for his appointment.

The dissolution of the board of directors and its substitution with a new board of two persons.

According to the applicants in Case 1, one of the resolutions adopted at the EGM was the dissolution of the fourth respondent's board and its substitution by a board of two persons for a period of 90 days. Those two persons were the second respondent and one Puckson Gumede. The applicants contend that the resolution was irregular for the following reasons. There was no notice of the intended resolution in the letter of 11 January 2021. There was also no notice of the intention to adopt a resolution appointing Gumede as a director in the said letter. The notice convening the meeting could also not have been valid without describing the purpose for which the meeting was called.

It was further submitted that the dissolution of the board was made after the EGM for the fourth respondent had been concluded. The termination of the EGM was a juristic act with its own attendant legal consequences. It could not be reopened to discuss a matter in respect of which no notice had been given. There was nothing in the affidavits of the second and third respondents which answered to this irregularity.

In response, the respondents submitted that agenda item number 8 of the Notice convening the meeting dealt with this matter. That item referred to *"the termination of the Management Team, Exco and reconstitution with immediate effect"*. On that score, the respondents argued that the dissolution and reconstitution of the board was an agenda item and proper notice was given. They

further argued that the failure to provide information on the proposed new board members did not invalidate the resolution.

The respondents further submitted that it was oppressive of the applicants to allege that the management and executive committee put in place by the shareholders could not be reconstituted when the need arose.

From a reading of the company's articles, it is clear to me that there was a difference between the Board and the management team. The management team was constituted by the Board of directors. Agenda item 8 of the notice convening the meeting referred to *"the termination of the Management Team, Exco and reconstitution with immediate effect"*. It did not refer to the dissolution of the Board and its reconstitution. That the notice had nothing to do with the dissolution of the board is clear from the last two pages of the maligned minutes. Under the broad heading *"The termination of the Management Team, Exco and reconstituting thereof with immediate effect"*, there are two further subheadings, which are *"General Business"* and *"Results & Closure"*. Under the heading *"Results & Closure"*, the following is captured:

> "The majority shareholders resolved-
> 1. Removal of Virgin Management Services as Company Secretary.
> 2. Appointment of Mr. A Chihiya as Company Secretary with immediate effect.
> 3. Appointment of Mr. K Sibanda as an Executive Director, member of Management Team.
> 4. Dissolving of the current Board of Directors of BILTRANS SERVICES P/L and appointment of an interim board for 90 days consisting of Kenias Sibanda and Puckson Gumede."

From the above it is clear that the agenda item was concerned with the termination of the management team and its reconstitution. The second respondent was first appointed as an Executive Director, which automatically made him part of the Management team. The shareholders then dissolved the company's board and replaced it with an interim board for 90 days.

I have already determined that there appears to be a difference between the management team and the board. In the court's view the notice convening the meeting was concerned with the termination of the management team and its reconstitution. The item on the dissolution of the board was the very last item in the minutes. Whether or not the item was discussed after the termination of the EGM is not stated in those minutes. It forms part of the dispute concerning the regularity of those minutes.

The court agrees with the applicants' contention that the dissolution of the board was irregular seeing as there was no notice that such a resolution would be taken at the EGM.

The appointment of Janita Rama and Rashmi D'Almeida as directors to the sixth respondent in case 2

The applicant claims that a resolution was taken at the EGM to appoint new directors for the sixth respondent. The existing directors were removed from their positions. No requisite notice was given in terms of the articles of association. The second respondent had not deposited a notice confirming his acceptance of the appointment at least 3 days prior to the 8 February 2021 notice. An objection was raised by applicant's counsel at the meeting, but it was met with an inadequate response.

The second respondent is alleged to have communicated the dismissal of the sitting directors and the appointment of Janita Rama and Rashmi D'Almeida. All this was not recorded in the minutes. By omitting those important matters from the minutes, the third respondent is alleged to have shown his bias towards the first and second respondent. He did not even address the allegations in his opposing affidavit.

The applicant also averred that the dissolution of the entire board and its substitution with a board of two persons also meant that the shareholders representing the applicant were removed from their directorships. No cogent reason was given for their removal in the notice convening the meeting. The notice convening the meeting was therefore defective in failing to adequately inform the applicant and the directors of the reasons and nature of their removal. This was contrary to the shareholders agreement. The dissolution of the board and the appointment of the new board could therefore not have been valid.

The respondents did not address this point in their heads of argument nor in the oral submissions by their counsel. In their notice of opposition, the first and second respondents averred that the notice of the meeting clearly referred to the issue of the removal of the current directors and the appointment of the fourth and fifth respondents as directors. They also denied that Tanner and Stenton were removed as directors. The only resolution passed pertained to the appointment of the fourth and fifth respondents as directors. They also averred that the first respondent had the right to appoint directors in terms of the shareholders agreement.

In its response, the applicant admitted that the appointment of the fourth and fifth respondents was itemized as an agenda item. It however insisted that the procedure provided for in the articles of the company was not followed since no notice was deposited with the sixth respondent of the intention to propose the fourth and fifth respondents for election. No notice was also signed by the fourth and fifth respondents indicating their willingness to be elected. The applicant insisted that Tanner and Stenton were removed as directors. They also averred that the minutes were doctored to create an impression that this did not happen. Having set out to remove them, what then became of the issue? The records of the company and the minutes had to reflect what transpired at the meeting.

Item 5 of the notice of 11 January 2021 convening the meeting made reference to the appointment of the fourth and fifth respondents as directors. It also made reference to the removal of the current directors of the company with immediate effect. The minutes of the meeting recorded the issue as follows:

> "The Halyma trust according to the SHA appointed Ms. Janita Rama and Ms. Rashmi D'almeida as Directors of AUTOSEAL ZIMBABWE P/L. NM stated that according to SHA Halyma Trust could not remove director appointees by the minority, but instead could only add their appointees for Halyma Trust."

The words 'SHA' refer to the shareholder agreement while 'NM' refers to Nikita Madya the applicant's counsel. Clause 6.1 of the shareholders agreement provides that the directors of the company shall consist of not more than five directors. In terms of clause 6.1.1, the shareholders were expected to nominate directors in writing as follows: Auto Seal Trust (the applicant herein), was entitled to nominate two directors; Halyma Trust (the first respondent herein) was entitled to nominate two directors; Chadwick 4 was entitled to nominate one director.

Clause 6.4 of the shareholders agreement states that the *"parties record that, except as is provided for in this clause 6, the Articles of the Company provide for the appointment and removal of the Directors, the proceedings at meetings of Directors and of the members as well as the rights, duties and powers of Directors."* As already stated, the preamble to the sixth respondent's articles of association provides that the regulations in Part 1 of Table "A" of the First Schedule of the Companies Act [*Chapter 24:03*], shall be the articles of the company, and in the event of inconsistency between the regulations in Part 1 of Table "A" and the regulations, then the provisions of the regulations would prevail.

Regulation 94 of Table "A" of the old Companies Act[9] states as follows:

> "94. No person other than a director retiring at the meeting shall be eligible for election to the office of director at any general meeting unless not less than three nor more than twenty-one days before the date appointed for the meeting there shall have been left at the registered office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election and also notice in writing signed by that person of his willingness to be elected."

It is this regulation that the applicant contends was not complied with in the proposed resolution to appoint new directors of the sixth respondent. The issue was raised in the written objection that was submitted to the chairperson at the commencement of the EGM.[10] It was not considered at all by the second respondent. The failure by the second respondent to address the objection made by the applicant at the onset of the meeting made the purported appointments irregular. In *Marting* v *Van Oordt Russel and Co Ltd*[11] the court held that where a shareholder present in a meeting does not protest against an illegality, he cannot subsequently challenge the proceedings on the basis of the irregularity if the irregularities are such as could have been corrected. In the instant case, the applicant protested the irregularities, but the second respondent chose to ignore its concerns. He ought to have addressed the alleged irregularities before proceeding with the business of the meeting.

What is also not clear from the papers is whether the nominations by the first respondent were intended to replace the first respondent's own representatives who were already on the board or the removal was targeting the applicant's representatives. This is because the shareholders agreement only permitted the first respondent to nominate two directors.

I however agree with the applicant's submission that the shareholders agreement as read with the articles did not permit any shareholder to remove the other shareholders representatives on the board. My interpretation of the shareholders agreement is that each shareholder was entitled to representation at the board level in order to protect its interests in the company. The first respondent denied that the applicant's directors were removed. The applicants insisted that its representatives were removed. No evidence was placed before the court to explain what exactly transpired. The extract from the minutes merely records that the applicant's counsel pointed out to the chairperson that the first respondent could not remove the minority shareholders'

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[9] [*Chapter 24:03*]
[10] See paragraph 5 of the objection on p 35 of the record in Case 2.
[11] 1939 CPD 106

representatives to the board. Whether that then transpired is a matter of conjecture. Be that as it may, if any resolution for the removal of the minority shareholders representatives on the board was ever passed, then it was also irregular.

Oppression of minorities

The applicants' contention in both Case 1 and 2 is that the conduct of the respondents is oppressive of the minority rights of the applicants. The respondents are accused of trampling upon the rights of the minorities in complete violation of the shareholders agreement, the articles and the provisions of the COBE. The relationship between the shareholders had completely broken down. The applicants in Case 1 gave as an example, the hostile takeover of the management of the company's executive functions by the second respondent and the removal of directors representing minority interests. In Case 2, the applicants cited the hostile removal of directors representing minority interests and all the matters referred to as part of their complaints.

It was in view of the foregoing that the applicants petitioned the court for an order compelling the first respondent to purchase their entire shareholding within 90 days of the date of the court's order in terms of clause 22 of the shareholders agreement, as read with ss 223 and 225 of the COBE. The applicants further submitted that the court is empowered to grant a variety of remedies in order to regulate the company's future affairs.

In response, the respondents argued that while the applicants had alleged oppression, they had not proved such oppression. The fact that a majority shareholder called a meeting and sought resolutions did not render such actions oppressive. There was a distinction between being oppressed and simply not liking a decision that was properly taken. The respondents further argued that the applicants were at liberty to appoint directors of their choice in the two companies, and those directors had not been removed. The respondents also argued that the dissolution of the management teams and the Exco committee constituted a breach of contract capable of resolution by way of arbitration as provided for in the shareholders agreement.

Section 223 of the COBE provides an avenue through which a member of a company can approach the court for relief where they allege that the affairs of the company are being conducted by the majority in a manner which is oppressive or unfairly prejudicial to their interests. The section states as follows:

"**223 Order on application of member**
A member of a company may apply to the court for an order in terms of section 225 ("Powers of High Court in applications under sections 223 to 224") on the ground that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, including himself or herself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial."

Section 225 (1) of the COBE provides that if the court is satisfied that an application under s 223 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of. Section 225(2), provides the kind of relief the court may grant. It states as follows:

"(2) Without prejudice to the generality of subsection (1), the court's order
(*a*) regulate the conduct of the company's affairs in the future;
(*b*) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;
(*c*) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons as the court may direct;
(*d*) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly." (Underlining for emphasis)

The court was urged to grant the relief in s 225(2)(d). TURBETT AJ dealt with a provision similar to s 223 of the COBE in *Aspek Pipe Co (Pty) Ltd* v *Mauerberger*[12]. The court held as follows:

"It is quite clear, in my view, that an applicant for relief under this section (111) must show that the affairs of the company are being conducted in a manner oppressive to him as a member, or to some part of the members of the company as members of that company. In other words the conduct complained of must be oppressive to the petitioner qua shareholder and member … and not to him in some other capacity such as a director or servant or employee or agent of the company."

In the case of *Wilds Home Owners Association and Others* v *Van Eeden and Others*[13], the court held that the test is one of fairness and the court noted that there must be evidence *"of a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely*."

It is common cause that the applicants' complaints herein were triggered by events that occurred at the EGM. It is mostly about the manner in which the meeting was called by the first respondent, the manner in which the meeting unfolded, and the resolutions passed at the meeting.

[12] 1968 (1) SA 517 (C)
[13] (53643/09) [2011] ZAGPPHC 101 (25 May 2011)

Littleford, who happens to be the deponent of the applicants' founding affidavit in both Case 1 and 2 acknowledged that the first respondent made a requisition for the extra ordinary general meeting of the members of the two companies. That requisition was not complied with for reasons that the court finds rather unconvincing. From a reading of the founding affidavit, and the reasons given, one is excused to conclude that the parties that were supposed to convene the meeting were simply uncooperative. That would probably explain the second respondent's somewhat abrasive approach at the meeting as narrated by the applicants. The first respondent was left with no option but to proceed in terms of s 168(3) of the COBE.

One is also justified to surmise that had the company secretary complied with the requisition for the EGM by the first respondent, perhaps events would not have unfolded in the manner they did at the EGM. Battle lines had already been drawn even before the meeting took off. That kind of rift between the parties, which was triggered by events that occurred at one meeting can hardly justify the intervention of this court in terms of s 223 of the COBE. I agree with the respondents' submissions that there is no sufficient evidence that justifies the relief sought in terms of s 225 of the COBE.

While the court accepts that the first, second and third respondents may not have conducted themselves at the meeting in a manner that is consistent with the law, the companies constitutive documents and the shareholders agreement, the court is not satisfied that it is the sort of conduct for which the court can be approached under s 223 of the COBE. That section requires an applicant to show that the company's affairs *"are being or have been conducted"* in a manner that the applicant finds to be oppressive to the interests of the minority. That suggests to the court that the improper conduct complained of was persistently and consistently repeated.

In the alternative, the applicant is required to show that *"any actual or proposed act or omission of the company including an act or omission on its behalf is or would be so oppressive or prejudicial."* That alternative wording suggests to me that even a single act or omission may justify an approach to the court for the relief sought herein. But the considerations do not just end there. The conduct complained of can be corrected by the court without the need to resort to the more drastic measure provided in s 225(2)(d). The remedies provided in s 225(2)(a)-(c) can be granted by the court without the need to resort to the remedy in s 225(2)(d), which should be considered as a last resort. Put differently, from my reading of s 223 and the remedies provided in

s 225(2)(a)-(d), the conduct complained of by the minority shareholders should be so grave so as to leave the court in no doubt that only the remedy provided under s 225(2)(d) must resorted to in order to arrest an untenable state of affairs in the company. The remedy provided under s 225(2)(d) comes with many consequences that the court must be alive to. It has serious financial implications on the part of the majority shareholder, and yet the court does not have sufficient information to determine whether its order will be complied with.

I have already highlighted that the infractions complained of by the applicants in both cases emanate from certain procedural flaws in the manner in which the EGM was convened, as well as the manner in which certain resolutions were taken at the same meeting. In the applicants' papers, it was not suggested that such infractions have been ongoing. They appear to have been confined to the EGM. What is clear to me is that there is some serious mistrust between the majority and minority shareholders going by the accusations that were traded by either side. It all boils down to accountability, with the second respondent accusing the management teams of not having been transparent in the manner they have been running the affairs of the two companies.

It is a simple principle of corporate law that those reposed with the duty of superintending over the affairs of the company on a day to day basis must do so cognizant of their duties to the shareholders of the company. Going by the accusations exchanged by the parties, those simple and basic tenets of company management appear to have been missing. These can be fixed within the boardroom without resort to the measures provided for in s 225(2)(d). I agree with the respondents' contention that some of the disputes are easily resolvable in terms of the parties' shareholders agreement. That's what a shareholders agreement stands for. The courts should always be slow to interfere in the affairs of the company by prescribing the kind of relief prescribed in terms of s 225(2)(d), unless the circumstances are so grave to justify such intervention. Companies must be left to regulate their affairs in terms of their constitutive documents. The court finds no merit in the relief sought by the applicants.

The fate of the minutes

Earlier in the judgment, the court resolved that the fate of the minutes could be determined independent of the main complaints raised by the applicants. The draft orders in both cases do not seek specific relief regarding the minutes. It is in the board of the affidavits that the applicants stated that in the event that the court upholds the meeting, then the minutes should be declared not

to be a true record of what transpired at the EGM. It is common cause that the minutes of a meeting are only proposed and adopted as a correct record of what transpired at the meeting, in the next meeting. They are circulated in advance to afford attendees an opportunity to go through and make corrections if need be. Such corrections will be formerly adopted at the next meeting where the minutes will then be adjusted accordingly before being accepted as a true record of the earlier meeting.

Section 180 of the COBE which provides for minutes of meetings of members only speaks of the need to prepare minutes of meetings promptly at least within 20 days after the meeting. It also makes reference to the matters that should be captured in those minutes.[14] That provision does not provide much guidance on how disputes concerning the correctness of minutes must be resolved. In my view, any dispute concerning the correctness of the minutes is matter that should be dealt with by the meeting itself. The parties that are dissatisfied with the contents of the minutes must do so within the parameters that permit the correction of minutes of a company generally. Although the third respondent did not respond to the applicants' concerns as regards the correctness of the minutes, it is the court's view that those concerns must be dealt with at the next meeting. The court cannot substitute itself as the chairperson of the meeting in order to determine whether the minutes correctly reflect the business of the meeting. It is purely an internal administrative matter that should be resolved by the company itself.

CONCLUSION

In conclusion, the court determines that the notice convening the EGM of the two companies issued by requisitionists, in terms of s 168(3) and (4) of the COBE was not as deficient as to render it fatal. The EGMs of the two companies were convened in a manner that was as nearly as possible to an EGM convened by directors. The court further determines that the resolutions passed at the EGMs were not passed in terms of the companies' constitutive documents and the

[14] "**180 Minutes of meetings of members**
(1) A record of each meeting of members shall be prepared as promptly as possible but not later than twenty (20) days after the meeting, and shall be signed by the chairperson and any secretary of the meeting, who shall be responsible for its completeness and accuracy.
(2) The minutes shall include the date, time and place of the meeting, the name of the chairperson and any secretary of the meeting, in the case of a private company, the names of the shareholders present, the agenda, the number of shares and votes represented both in person and by proxy, the ballot or other procedures used for voting, the issues voted on and the number of votes "for," "against" or abstained on each issue, a summary of speeches and discussions, and a list of the decisions actually made at the meeting.
(3) The minutes shall be retained by the company and made available to any shareholder for inspection and copying at his or her expense during normal business hours."

law thus rendering them null and void. The resolutions must be set aside. The court also resolved that there was no sufficient justification to order and direct that the majority shareholder in both companies must acquire the minority shareholders' interests in terms of s 225(2)(d), as read with s 223 of the COBE.

COSTS OF SUIT

The general rule is that the successful party is entitled to costs on a scale which must be determined depending on the nature of the case and the manner in which litigation was conducted. While the applicants portrayed themselves as the aggrieved parties herein, and were to a larger extent successful, their conduct was not entirely without blame. It was the applicants' failure to call for the EGM in line with the requisition by the first respondent in both matters that triggered the litigation that could probably have been avoided. The court considers it befitting in the circumstances that each be ordered to bear its own costs of suit.

DISPOSITION

Resultantly it is ordered that:

In respect of HC 1351/21:

1. The resolution for the appointment of the Third Respondent as the Fourth Respondent's Company Secretary be and is hereby declared to be null and void and accordingly set aside.
2. The resolution for the appointment of the Second Respondent as Executive Director is hereby declared null and void and accordingly set aside.
3. The resolution for the dissolution of the board of Biltrans Services (Private) Limited dated the 8th February 2021 is declared null and void and it is hereby set aside.
4. That the resolution for the reconstitution of the management team and the Executive Committee be and is hereby declared null and void and accordingly set aside.
5. All documents filed pursuant to the resolutions passed on the 8th of February 2021 be and are hereby set aside and the documents relating to the status of the company and its Directors in existence prior to the 8th of February 2021 be and are hereby revived.
6. That each party shall bear its own costs of suit.

In respect of the HC 1270/21:

1. The resolution for the appointment of the Third Respondent as the Sixth Respondent's Company Secretary be and is hereby declared to be null and void and accordingly set aside.
2. The resolution for the removal of DAVID EDWIN TANNER and RICHARD ERIC STENTON as Directors of the Sixth Respondent is declared to be null and void and it is hereby set aside.

3. The resolution for the appointment of the Fourth and Fifth Respondents not having been done in accordance with the law and the company's constitutive documents is declared to be null and void and it is hereby set aside.
4. All documents filed pursuant to the resolutions passed on the 8th of February 2021 be and are hereby set aside and the documents relating to the status of the company and its Directors in existence prior to the 8th of February 2021 be and are hereby revived.
5. Each party shall bear its own costs of suit.

Wintertons, applicant's legal practitioners
Tanaka Law Chambers, first & second respondents' legal practitioners