CHARLENE HEWAT
and
VERONICA ANN CHAPMAN
versus
BRIM INVESTMENTS [PRIVATE] LIMITED
and
CLIVE W HUMPHREYS
and
STEVEN C HUMPHREYS
and
REGISTRAR OF COMPANIES

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 24 & 31 May 2016; 24 August 2016

Opposed application

Adv T. Magwaliba, with him *E. Chimombe*, for the applicant
Adv L. Uriri, for the first respondent
No appearance for second, third & fourth respondents

MAFUSIRE J: Brim Investments [Private] Limited, the first respondent herein, was a duly registered private company [hereafter referred to as "***the company***" or "***Brim***"]. The liability of members was limited by shares. It was non-trading. But it was the registered owner of an immovable property, Mcllwaine 10, situate around Lake Chivero, on the outskirts of Harare [hereafter referred to as "***the property***"]. Upon that property was established some thirty [30] residential units, or cottages, and common area amenities. The development was called *Kuimba Shiri*.

None of the parties expressly stated what the objects of the company were. But I discerned that it was one of those property holding entities whose members enjoyed certain rights, through their shareholding, over a unit or units. These rights included that of occupation and use of the unit or units. Membership of the company was limited to fifty [50]. The right to transfer shares was restricted. Any invitation to the public to subscribe for shares was prohibited.

At all relevant times the second and third respondents were members of the company. Among others, they were the joint owners of two [2] fully paid-up shares. By reason of such shareholding, they were entitled to the exclusive use and occupation of Cottage 16 on *Kuimba Shiri*. By a written agreement signed by the two applicants, as purchasers, and the second and third respondents, as sellers, in May 2012 and June 2012 respectively, the second and third respondents sold to the applicants their two shares aforesaid. The sale was subject to the provisions of the Memorandum and Articles of Association of the company.

Clause 30 of the Articles of Association ["***the Articles***"] prohibited the transfer of shares in the company without the prior consent and approval of the directors. However, such consent would not be unreasonably withheld.

At the time of the sale aforesaid, the second respondent owed the company an amount in excess of $23 000.00 in outstanding levies. In terms of the Articles, members of the company were obliged to pay levies, as assessed by the directors from time to time, for the purposes of meeting all the expenses of the company by way of repairs and maintenance of common arrears; rates; salaries for employees, and the like. Clause 16 of the Articles gave to the company a first and paramount lien over the shares for all amounts owing to it, whether by way of levies or costs incurred in legal proceedings instituted by it. For the purposes of enforcing the lien, the directors could forfeit and sell a member's shares and apply the net proceeds thereof to the outstanding amounts. The residual balance, if any, would be paid to the member.

In March 2011 the company had instituted proceedings in this court against the second respondent for an order confirming the forfeiture of his shares, including those relating to Cottage 16, and for the payment of the outstanding levies. The second respondent was defending the action. However, the case was settled in July 2013. The Deed of Settlement recorded, among other things, that the defendant, the second respondent herein, had paid in full all the amounts owing to the company.

In this application the applicants sought, in substance, an order directing the company to transfer to them the second and third respondents' shares in respect of Cottage 16 on the basis that the directors' refusal to register the transfer was unreasonable. The original draft order was couched as follows:

"1 It is declared that the 1st Respondent's refusal to recognise the 1st and 2nd Applicants as the registered owners of two [2] paid up shares in the 1st Respondent and the refusal to register the transfer of shares from the 2nd and 3rd Respondents into the Applicant's names was unlawful.

2 Consequently, the 1st Respondent shall within seven days of service of this order upon it sign the issued share certificates in the names of the Applicants herein and simultaneously register the Applicants as the holders of two paid up shares in the 1st Respondent.

3 If the 1st Respondent fails to comply with the terms of clause 2 hereto, the Sheriff for Harare be and is hereby authorised to sign all documents and do all things necessary to record the Applicants as the holders and registered owners of two [2] paid up shares in the 1st Respondent.

4 The 4th Respondents be and is hereby ordered to record the 1st and 2nd Applicants as shareholders in the 1st Respondent."

The company vigorously contested the application. The major basis of opposition, repeatedly stated in the opposing affidavit by one Gary Clive Stafford ["***Stafford***"], the Managing Director at the time of opposition, was that the transfer of the shares from the second and third respondents to the applicants could not be registered because no prior approval and consent of the directors had been received when the sale had been done.

Strafford stressed that at the time of the purported sale, the second and third respondents had forfeited their shares to the company which, in turn, had instituted proceedings to confirm the forfeiture and for the recovery of the outstanding levies. He also said upon intimating their intention to buy the second and third respondents' shares, the applicants had been advised repeatedly to wait until the court case that was pending against the second respondent had been concluded, but that they had ignored such advice and had gone ahead to purchase.

In counter, the applicants argued that the company, through one or other of the directors, especially one Peter Hobart, the company's chairman at the relevant time, had been apprised of the applicants' intention to buy the second and third respondent's shares in relation to Cottage 16 and that, at the very least, tacit approval had been granted. Contemporaneous correspondence was produced in support of that argument.

That was the case before me.

The parties somewhat cluttered their arguments with numerous side issues and some ill-conceived technical objections. In this judgment I deal only with such issues as are relevant and decisive of the dispute.

[i] **Applicants' *locus standi* to proceed directly against the company**

Mr *Uriri*, for the company, argued that the applicants were aliens to the company. They had purported to sue on the basis of the Articles. That was incompetent. The articles of association of a company are a private contract between the company and its members. In the present matter, there was no privity of contract between the applicants and the company. Their cause of action, if any, lay against the second and third respondents who were the members in the company and who had purported to sell them the shares.

It was largely on account of this argument that I reserved judgment. I needed to reflect on it in greater detail. At the hearing, I felt both counsel had not fully ventilated the point. Therefore, I granted them the indulgence, if they so wished, to make any further written submissions. I would consider them for as long as they reached me before I concluded my judgment. Counsel obliged. I commend them for their industry. But unfortunately, and with all due respect to such seniority, I still found their treatment of the subject unsatisfactory.

Mr *Magwaliba*, for the applicants, relied on the classical definition of *locus standi*, namely, a party's direct and substantial interest in the subject matter and outcome of the litigation: see *Zimbabwe Teachers Association & Ors v Minister of Education and Culture*[1] and *Henri Viljoen [Pty] Ltd v Awerbuch Brothers*[2]. He then argued that it was doubtless the applicants had the requisite *locus standi in judicio*.

But I consider that having bought, or purported to have bought, the second and third respondents' shares in the company, it was hardly that broad question, namely, whether or not the applicants did have *locus standi* in the suit that they themselves had brought against the company, jointly with the second and third respondents, that was the matter. Rather, the question, in my view, was much narrower. It was this: could, in the scheme of things, the applicants proceed directly against the company to force the directors to recognise their contract with the second and third respondents and give effect to it? Not being subscribers to the Memorandum and Articles of Association, could they rely on the Articles and enforce a right which, on the face of it, was exclusive to members of the company only, when they themselves were not?

[1] 1990 [2] ZLR 48 [H], @ p 52
[2] 1953 [2] SA 151 [O]

Mr *Magwaliba* argued that the applicants could proceed directly against the company on the basis of *stipulatio alteri*. This, in my view, and with all due respect, was part of the clutter.

A *stipulatio alteri* is a contract for the benefit of a third party. The law says that a person who is not a party to a contract cannot, among other things, claim on it because he is not privy to the contract: see *PTC Pension Fund* v *Standard Chartered Merchant Bank Zimbabwe Ltd*[3]. However, an exception to that rule is the doctrine of *stipulatio alteri* under the Roman-Dutch law. By this doctrine, a contractual opportunity is secured for a third party without his prior authorisation or even knowledge: see R H CHRISTIE *Business Law in Zimbabwe*, 1998 ed. at p 75.

Mr *Magwaliba* argued that by their intimation to the directors of the company of their intention to buy the second and third respondents' shares in respect of Cottage 16, to which no objection, allegedly, had been received, and by proceeding to pay the purchase price, the applicants had accepted the benefit of Article 30. As such, counsel's argument continued, the applicants could competently challenge the refusal by the directors to transfer the shares.

I find the applicants' reliance on the doctrine of *stipulatio alteri* rather tenuous. In my view, a typical *stipulatio alteri* situation makes it clear, or is easily ascertainable, that the contract is for the benefit of a third party. It was not the same with Article 30. Even though cast as one clause, Article 30 was demonstrably in two parts. The first part was framed as follows:

> "Save as otherwise provided in these Articles, no share may be transferred to any transferee without the prior consent and approval of the directors of the company, which consent shall not, however, be unreasonably withheld."

The second part was framed as follows:

> "This Article shall not apply however, to the transfer of any shares by a member, or by his Executors or Administrators, or other Legal representatives, to the spouse or any descendant of such member."

In my view, *stipulatio alteri* could possibly be read into the second part, but only in relation to the persons expressly identified therein, namely, spouses or descendants of members. In other words, if the directors of the company were to resist the wishes of a member, or those of the legal representatives of his estate, to transfer his shares to the

[3] 1993 [1] ZLR 55 [H]

beneficiaries named therein, I should think that such beneficiaries could sue the company directly in their own right, to effect the transfer, relying on the doctrine of *stipulatio alteri*. But the applicants, being none of the beneficiaries named in the second part of Article 30, could only have brought the present suit on the basis of the first part of the article. But I find that the first part of the article was not speaking to third parties like them, but to members of the company only, who alone had privity of contract with the company.

However, that Article 30 might not have conferred on the applicants such a benefit as might have enabled them to found a cause of action directly against the company, was not the end of the matter. I have preferred to approach this matter on the basis of broad principles of company law and the law of equity.

In general, when floating a company, the promoter may opt to adopt, with or without modifications, the model articles of association set out in Table A of the First Schedule to the Companies Act, [*Chapter 24:03*]. With Brim the Articles stated, in the preamble, that Table A was adopted with modifications. Article 30 was undoubtedly a modification. In the Companies Act, the relevant model article in Table A Part II, was Article 3. It read as follows:

> "The directors may, **in their absolute discretion and without assigning any reason therefor**, decline to register any transfer of any share, whether or not it is a fully-paid share." [my emphasis]

The underlined portions show and emphasise the extent to which the promoters or founders of Brim, by Article 30, wished, and did decide, to relax or trim the powers of the directors in relation to the transfer of shares. In terms of the model article, they could have had the **absolute discretion** to refuse to sanction a transfer of shares. But in terms of Article 30, such discretion was deliberately taken away.

Further, in terms of the model article, the directors could have had no obligation to ascribe a reason for their decision. But in terms of Article 30, such privilege was deliberately taken away. Instead, the directors were expressly enjoined to refrain from being unreasonable. The article unequivocally stated that the directors' prior consent and approval to a transfer of shares should not be unreasonably withheld. Thus, in my view, a person, if he had the requisite *locus standi*, could take the directors to task, and found a cause of action against the company, if he or she were to show that the directors' refusal to transfer shares was being unreasonable.

However, none of all this so far answers the question whether or not the applicants were such persons as clothed with the requisite *locus standi* to sue the company directly on the basis of an unreasonable refusal to transfer shares.

My first consideration is that, by deliberating steering clear of the obviously more oppressive and burdensome provisions of the model article in relation to the directors' powers regarding the transfer of shares, the drafters of Article 30 incepted a more democratic and accommodative tenet. Therefore, one scrutinizes the conduct of the directors using that liberal and democratic tenet as a yardstick.

Secondly, and as I have found above, *stipulatio alteri* may not be read into Article 30 in relation to the applicants. However, whilst the articles of association of a company are, in a way, the contract between the company and its members, and also as between the members themselves, in my view, it will be problematic to treat them purely in accordance with the ordinary rules of the law of contract. The rights and obligation contained in articles of association of a company differ, considerably, from the rights and obligations of an ordinary contract. For example, *in casu*, the articles provided for the manner in which the resolutions of the company might be made by poll. Thus, once validly made, a resolution was binding on all the members, even those that might have voted against it, or might have abstained or might have been absent. Furthermore, by subscribing for shares in the company, one automatically became bound by its articles, whether or not one was aware of their existence or their contents. Ordinary principles of contract law do not operate that way. You do not get bound by something that you have not assented to.

The memorandum and articles of association of a company are documents registered in the companies office. They are documents that are open for public inspection in terms of s 357 of the Companies Act. What this means is that any person contemplating to do business with Brim could, on payment of the prescribed fee, inspect its founding documents to establish what could, or could not be done. In the present case, the applicants did not have to. The second and third respondents availed to them the Articles. So the applicants would have seen for themselves what could, or could not been done. They would have seen, among other things, that Brim was a private limited liability company which, even though the transfer of shares was restricted, was not altogether prohibited. They would have seen that, by Article 30, the prior consent and approval of the directors were required, but however, that they

would not be unreasonably withheld. With that knowledge they decided to invest in the company.

I consider that the company's refusal to transfer the shares in respect of Cottage 16 from the second and third respondents to the applicant was not only unreasonable, but also in bad faith. The only plausible ground of opposition proffered in the opposing affidavit was that there had been a case pending by the company against the second respondent in respect of outstanding levies. But that case having been settled amicably, and all the outstanding levies having been paid, incidentally from the payments received from the applicants – an aspect expressly acknowledged by one Peter Hobart in his circular to the shareholders and residents in August 2013 – it is difficult to appreciate the directors' continued intransigence. In that circular, after noting that the second respondent had settled the outstanding amounts at the last minute, thereby leading to a withdrawal of the levy case and to a deed of settlement, Peter Hobart, at the relevant time the chairman of the homeowners association, on behalf of the board, wrote in part:

> "We do not look upon this as defeat. It is a disappointing result and we feel we were badly advised by our legal representatives."

Thus, it appears the matter had become personal. That was a most unreasonable attitude. Article 30 did not countenance it. The applicants did not require the prior consent and approval of the directors to conclude the agreement of sale. The prior consent and approval was limited to the transfer of shares only. I am satisfied that the applicants were entitled to bring the company's directors to book. They had the requisite *locus standi*, more so where they had joined the second and third respondents to the application. They identified who the cause of their plight was. They then sought an order that would be efficacious and effectual. A remedy against any other party would not solve their problem, especially given that the second and third respondents were not opposing. In fact, documents submitted by their attorney indicated that the second and third respondents desired to have the shares transferred.

Even though they did not require it, I have been satisfied that despite Stafford's steadfast denial, the totality of the documentary evidence produced shows that there was tacit approval of the applicants' investment into Brim. For example, on 21 December 11, some five [5] or six [6] months before the agreement of sale, the applicants wrote to the

"***Homeowner's Committee***" of Brim, expressing their intention "***… in purchasing No 16 if it should become available***." Despite the loose language, it was clear what they meant, or who the letter was meant for. Stafford said he did not see that letter. He might have been speaking for himself. Subsequent documentation shows that the applicants made it known to anyone and everyone that mattered, both by their physical presence at *Kuimba Shiri* on certain important occasions, and in further written communication, that they intended to buy the second and third respondents' shares in relation to Cottage 16. For example, on March 2012, i.e. before the purchase of shares, one Robbie Lewis, one of the directors of Brim at the time, sent an e-mail to the applicants, among other things, advising that their letter had been discussed at some meeting in February, but that no reply had been sent to the applicants. The e-mail disclosed that "***Gary***", obviously Stafford, would oppose the applicants' attendance at the forthcoming annual general meeting. It was supposed in that e-mail that Stafford had another buyer interested. Clearly the matter had become personal. The issues had become clouded by self-interests.

Most telling was the fact that corrected share certificates in respect of the shares in question had been availed to the applicants by the company to enable them to undergo an interview with the Zimbabwe Revenue Authority ["***ZIMRA***"] for the purposes of the capital gains clearance certificate in terms of the Capital Gains Tax Act, [*Chapter 23:01*]. Initially they had been given the old or expired share certificates. But upon their representation, corrected ones were availed. The capital gains tax clearance certificates in respect of the shares were issued by ZIMRA in September 2012. So, in effect, the company had taken steps to transfer the shares. There is more.

It seems soon thereafter, new share certificates in the names of the applicants and a formal share transfer had, in fact, been prepared and signed by the secretary of the company. The directors were yet to sign. Stafford did not recognise these. He inferred some collusion between the applicants and the company secretary, allegedly aided and abetted by the second and third respondents' attorney, whose ethics he put into serious question. The attorney filed papers refuting any untoward conduct on his part, and explaining how the second and third respondents' share certificates had got to be released. Mr *Uriri*, in his argument, stayed clear of this side show. He had been wise to do so. Stafford's allegations appeared manifestly spurious.

Not only that, but the applicants had openly taken over entirely the obligation to pay the levies in respect of Cottage 16. For some months the receipts for such levies were being issued in their names until an instruction was dispatched to the cashier to desist from doing so and to revert to issuing the receipts in the names of the second and third respondents. This was despite the knowledge by everyone that the payments were being received from the applicants physically. On this aspect, Stafford resorted to some tortuous and irrelevant explanation as to why receipts should always have been issued in the names of the second and third respondents. But on 16 May 2012, Peter Hobart sent an e-mail to the second respondent, among other things, seeking confirmation of the number of the share certificates that he had been issued with for Cottage 16 "***… to facilitate transfer …***". Hobart expressly acknowledged in that e-mail that a sum of money had been received from the applicants in respect of Cottage 16.

All this shows that the company had been aware of the applicants' intention to buy the shares and that the directors had approved. In all the circumstances therefore, the applicants were entitled to sue the company directly because the directors' subsequent intransigence was extremely unreasonable.

[b] **Applicants' cause of action not identifiable, Brim being a company contemplated by s 27 of *Cap 20: 05***

One of the arguments sprung by Mr *Uriri* was that the applicants' cause of action was unidentifiable. He argued that Brim was not an ordinary company limited by shares but was one contemplated by s 27 of the Deeds Registries Act, [*Chapter 20:05*].

Section 27 of the Deeds Registries Act, in my own paraphrase, governs the transfer by owners of undivided shares in land in urban areas. Such ownership and such transfer may be coupled with exclusive rights of occupation. The section regulates the rights of such owners. By notarial deeds the owners, or each one of them, may be assigned the exclusive right of occupation in conjunction with the undivided share or shares. The notarial deed, to be registered against the title deed, has to specify, among other things, the number of undivided shares which are coupled with the exclusive right of occupation. The deed has to specify which buildings, or portions of them, on the land, identified by means of distinct numbers, are coupled with the exclusive right of occupation; and what reciprocal rights and obligations are applicable to the owners. The deed also has to provide for the administration and

maintenance of the land, and of the buildings, and the liability for rates and expenses relating thereto, and the manner in which the deed itself may be amended.

Section 27 also provides that the undivided share and exclusive right of occupation aforesaid are to be dealt with as one entity. They cannot be registered separately. Those rights may not be held by virtue of more than one title deed. The exclusive right of occupation constitutes a real right in land. Provision is made for the transfer of a share of a co-owner which is coupled with an exclusive right of occupation. The new deed of transfer is registered in the name of the new co-owner and the remaining co-owner or co-owners. Finally, such undivided shares that are coupled with exclusive rights of occupation are not to be regarded as subdivisions of the land concerned for the purposes of the Regional, Town and Country Planning Ac, [*Chapter 29:12*].

Mr *Uriri's* argument was that by claiming to have bought shares in Brim, and then claiming transfer of them, the applicants had missed the point. That point was that Brim, being a s 27 company, each issued share in it had to correspond and be married to a specific building or cottage on *Kuimba Shiri*. Each share had to be identified by a specific number. That not being the case, the applicants' cause of action was incompetent. It was vague and embarrassing because it was not premised on an allegation that identified the specific shares that they alleged to have purchased.

In response, Mr *Magwaliba* dismissed the argument as one lacking the factual foundation. Among other things, he argued that nowhere was it stated that *Kuimba Shiri* was land in an urban area and that the onus to state and establish that aspect had been on the company. But despite that stance, Mr *Magwaliba*, with my indulgence, proposed to, and did amend, the applicants' draft order. The effect of the amendment was to specifically identify, by the share certificate numbers, the actual shares that the applicants had purchased from the second and third respondents and which they wanted transferred.

It was common cause that in 2010, and in line with government directives after the advent of the multi-currency system in this country, the denomination of Brim's shares was changed from the old Zimbabwean dollar to the United States dollar. It was also common cause that in May 2010, following an extra-ordinary general meeting, the company had cancelled all the existing share certificates, replacing them with new ones.

However, and with all due respect, Mr *Uriri's* argument on s 27 of the Deeds Registries Act was a red herring. It was part of the clutter. That provision was irrelevant.

Undoubtedly, counsel confused the term "**share**" as used in that section, with the share capital of a company. The arrangements set out in Brim's Articles of Association were certainly not what s 27 of the Deeds Registries Act deals with. The section deals with the transfer of certain special real rights in land. Such real rights are the undivided shares in an urban land which may be held by an owner or owners under sectional title. Mcllwaine 10, the property, was not held under sectional title. It was wholly owned by Brim under one title deed. The Articles did not create any sectional title in the property.

Furthermore, the transfer sought by the applicants was not of undivided shares in land. It was of shares in a company. A company may own land, as Brim did. But the shares in a company are not undivided shares in the land owned by it. A share in a company is the interest a shareholder has in the company, measured by a sum of money: see *Borland's Trustees v Steel Brothers & Co Ltd*[4]. The share comprises various rights as contained in the articles of association. CILLIERS AND BENADE on *Company Law*, Durban Butterworths, at p 83 describe "share" as follows:

> "The term 'share' as such denotes that the holder thereof has a claim on part of the share capital of the company – **and does not refer to a right of ownership in any part of the net assets of the company**. A share in a company is not a corporeal object but represents a complex set of rights and duties." [my emphasis]

Some of the rights accruing to a shareholder via his shareholding in the company, and depending on the type of shares, are the right to dividends when they are declared, and the right to participate in a distribution on liquidation. There is also the right to vote at meetings, and so on.

Furthermore, the argument that Brim was not just an ordinary company limited by shares but rather one whose nature and incorporation was premised on s 27 of the Deeds Registries Act, was contrary to the specific provisions of the Articles. The preamble introduced the company as one limited by shares. Admittedly, substance ordinarily overrides form. One looks at the nature and substance of an object, rather than how it describes itself. But *in casu*, Brim was clearly not the situation or arrangement contemplated by s 27. Here is why.

The share capital in the company comprised issued and unissued shares. The issued shares fell into classes 1 to 50. Each such class consisted of two [2] shares of nominal value.

[4] [1901] 1 Ch 279, at p 288

The rest of the share capital remained unissued. By Article 7, the holders of classed shares were entitled to all rights of occupation in respect of the cottage bearing the corresponding number, together with any outbuildings connected thereto. But it seemed none of the share certificate numbers corresponded with the cottages to which they related.

It was common cause that the shares sold by the second and third respondents to the applicants were held under share certificate numbers 121 and 122. After the company's entire shareholding had been voided in 2010 the shares in respect of Cottage 16 were re-issued under share certificates numbers 166 and 167. In the company's action against the second respondent in respect of the outstanding levies, the declaration said he owned classed shares numbers 25-26, 35-36, 39-40, 41-42, 47-48, 57-59 and 59-60 which were said to entitle him to the occupation of Cottages 16, 19, 20, 24, 26 and 27. In the present application, the company did not show in what way the numbering on the share certificates was connected to, or corresponded with, the numbering on those thirty [30] cottages on *Kuimba Shiri*. Mr *Uriri* argued that such incongruence, or the absence of such specificity, made it incompetent for the applicants to sue. I disagree. On the contrary, it made it incompetent for the company to rely on it. The onus was on it. It was making the claim. He who alleges must prove.

Section 27 defines "***urban area***" as "***any township and any area which is declared by the Minister[5], by statutory instrument, to be an urban area for the purposes of [the] section***".

It was not shown that *Kuimba Shiri* was an "urban area". It was not shown that it was a township and an area which the government, through the Minister of Justice had, by statutory instrument, declared to be an urban area for the purpose of s 27. The onus had been on the company. It was making that claim. But other than mentioning that *Kuimba Shiri* was a development on Mcllwaine 10, a piece of property in the district of Harare, comprising thirty [30] residential cottages and common area amenities, the papers disclosed nothing else about the land or the nature of the development thereon. In fact, this bit was in the applicants' papers which the company did not challenge.

However, all this does not detract from the fact that the provisions of s 27 of the Deeds Registries Act were not applicable.

In the premises the applicants were entitled to the relief sought.

[5] Of Justice, Legal and Parliamentary Affairs

The applicants were also entitled to amend the draft order. A court order has to be effectual. However, I consider that some provisions of both the original draft order, and those of the amended one, particularly the *declaratur* sought, were tautologous.

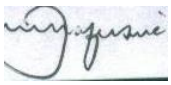
In the final analysis I issue the following order:

1 The first respondent is hereby ordered and directed to transfer to the applicants the second and third respondent's shares in it relating to Cottage 16, Admiral's Cabin, Lake Chivero, which are, or have at all relevant times been held under share certificate numbers 121 and 122 and, subsequently, share certificate numbers 166 and 167, by signing all the transfer documents, registering the transfer and doing all that is necessary and possible to effect the transfer, and to record the applicants as shareholders in the first respondent's share register.

2 If within seven [7] days of the date of this order, or such other extended period as may be shown to be necessary, the company fails or neglects to comply with the order aforesaid, then the Sheriff for Zimbabwe, or his lawful deputy, or assistant deputy, or authorised representative, shall be authorised and empowered to stand in the first respondent's stead, and sign the relevant documents, and do all that is necessary to effect the transfer.

3 The first respondent shall pay the costs of suit.

24 August 2016



Magwaliba & Kwirira, applicant's legal practitioners
Mtetwa Law Chambers, first respondent's legal practitioners
Matizanadzo & Warhurst, second and third respondent's legal practitioners