MEIKLES CONSOLIDATED HOLDINGS [PVT] LTD HCHC 807-24
versus
MEIKLES LTD ***Case 1***

MEIKLES LTD HCHC 814-24
versus
MEIKLES CONSOLIDATED HOLDINGS [PVT] LTD ***Case 2***
and
ZIMBABWE STOCK EXCHANGE
and
SECURITIES COMMISSION OF ZIMBABWE

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

MAFUSIRE J

Dates of hearing: 28 November 2024, 4 & 9 December 2024
Date of written judgment: 16 December 2024

Urgent chamber applications

T. Mpofu, with him *M. Mbuyisa*, for the applicant in Case 1, and for the first respondent in Case 2.
T. Magwaliba, with him, *E. Jera*, for the respondent in Case 1, and for the applicant in Case 2.
A.B. Chinake, for the second respondent in Case 2 [Watching Brief].
No appearance for the third respondent in Case 2.

MAFUSIRE J

[1] Meikles sues Meikles. Moxon fights Moxon. That about sums up the drama in the Commercial Division in the last days of November 2024 and the beginning of December 2024.

[2] Meikles Consolidated Holdings [Pvt] Ltd is a private company in Zimbabwe. John Moxon ["***John Moxon***"], or himself and some members of his household, hold the largest shareholding. Meikles Ltd is a publicly listed company on the Zimbabwe Stock Exchange. At 48.38%, Meikles Consolidated Holdings [Pvt] Ltd is the largest single shareholder in Meikles Ltd. John Moxon is a director in Meikles Consolidated Holdings [Pvt] Ltd. He is also a director and chairman of the board in Meikles Ltd.

[3] The second and third respondents in Case 2 above are statutory bodies and regulatory authorities in respect of companies and other business entities in Zimbabwe. The second respondent has, through counsel, advised of its neutral stance and its willingness to abide by any order the court may see fit to grant. The third respondent in Case 2 has filed no papers and has made no appearance.

[4] To avoid confusion and clutter, the parties and their deponents shall be referred to by their names or monikers. Meikles Consolidated Holdings [Pvt] Ltd, the applicant in Case 1, and the first respondent in Case 2, shall be referred to as "***Consolidated Holdings***". Meikles Ltd, the respondent in Case 1 and the applicant in Case 2, shall be referred to as "***Limited***" or "***the Company***". The Zimbabwe Stock Exchange, the second respondent in Case 2, shall be referred to as "***the Stock Exchange***". Lastly, the third respondent in Case 2, if it ever gets mentioned again, shall be referred to as "***the Securities Exchange Commission***."

[5] In Case 1, Consolidated Holdings, through John Moxon, filed an urgent chamber application against Limited for multiple interdicts the life spans of which are primed to last until 18 December 2024. 18 December 2024 is the date Consolidated Holdings has scheduled an extraordinary general meeting of members ["***EGM***"] for Limited. The resolutions sought to be passed include the removal of certain independent non-executive directors and their replacement with certain individuals, and the removal of certain executives of the company.

[6] Distilled, the interdicts sought by Consolidated Holdings against the directors of Limited until the EGM has happened are along the following lines:

[6.1] That they should suspend all communication with any third party that is interested in the disposal of certain assets belonging to Limited;

[6.2] That they shall not alienate, encumber or transfer any property belonging to Limited, or act in any manner as may erode its share value;

[6.3 That they shall refrain from passing any resolutions concerning the following issues:

- removing, replacing, or otherwise appointing officers and executives for Limited;

- carrying out the 2024 executive level performance appraisals and the payment of incentives;
- incurring new debts, making any new investments or capex committals;
- appointing and paying legal advisors for Limited for the purpose of challenging the calling of the EGM and some meeting on 1 October 2024;
- holding any meeting to consider the declaration of dividends or any disbursements from Limited.

[7] A provisional order granted in an urgent chamber application has to be confirmed on the return date where a final order is sought. For its final order, apart from the confirmation, Consolidated Holdings seeks that Limited should abide by the decisions to be passed at the EGM and thereafter have its board of directors reconstitute.

[8] John Moxon alleges that the draft order seeks no remedies as are related to Limited's normal business operations and that as such, they are not prejudicial. On the surface, this is extraordinary. The remedies sought by Consolidated Holdings are as invasive to any normal business operations of a company as they come. There ought to be a very good reason why the court should supplant the powers of the directors of a business entity. John Moxon says such good reasons exist. We shall see.

[9] Limited responded. Through Matthew John Stewart Moxon ["***Matthew Moxon***"] Limited not only filed a robust opposition to Consolidated Holdings' application in Case 1 above, but also it countered with its own urgent chamber application for an equally invasive interim interdict in Case 2. Matthew Moxon is a director of Limited. At all relevant times he was deputy chairman to John Moxon in Limited. Press reports allege Matthew Moxon is John Moxon's son. But none of the deponents makes any reference to this filial relationship. This may, or may not be besides the point.

[10] As interim relief, Limited seeks that the holding of the forthcoming EGM on 18 December 2024 be barred pending the determination and finalization of the matter.

[11] A coterie of remedies is sought on the return day. In paraphrase, they are these:

[11.1] that John Moxon's notice on 26 November 2024 calling for the EGM on 18 December 2024 be declared invalid for want of compliance with Limited's articles of association and the law;

[11.2] that the proposed resolutions to appoint certain individuals as independent non-executive directors for Limited be declared invalid and should not be carried into effect;

[11.3] that the proposed removal of certain non-executive directors of Limited be declared invalid and should not be carried into effect;

[11.4] that with immediate effect John Moxon should step down as chairman of Limited's board of directors;

[12] These are strange remedies for a company to seek from a court. Evidently, like John Moxon before him, Matthew Moxon also believes that the remedies are justified. Again, we shall see.

[13] Not unexpectedly, Consolidated Holdings has vigorously opposed Limited's application. Both parties have fired very strong port shorts against each other. As shall emerge, certain sensitive issues have stuck out quite prominently.

[14] Both applications landed on my desk as the Judge on duty during the start of the 2024 third term vacation. Shorn of the emotional hyperbole, the applications emerged as two sides of the same coin. For that reason, I directed that they be heard together for convenience and expediency. Counsel agreed. Counsel also agreed to abandon technical preliminary objections, or points *in limine*, that they had raised against each other. These related to urgency, lack of authority, the impropriety of the draft orders, and so on. Counsel sensibly opted to deal with the substance of the dispute between the parties. I thank them.

[15] In paraphrase, here is what John Moxon is saying to justify the order to impeach and muzzle Limited's directors, other than himself. Minus himself, the board has gone rogue. At all relevant times one Malcolm Mycroft ["***Mycroft***"] was the Chief Executive Officer ["***CEO***"] of Limited and an *ex officio* member of the board. The board summarily and unprocedurally dismissed him at a board meeting on 1 October 2024 which John Moxon failed to attend due to illness.

[16] Since June 2024 the board has published several cautionary statements relating to the disposal of a certain asset for Limited. Such a transaction requires shareholders' approval. For a listed company, such a transaction is price sensitive. It has to be carried out lawfully to avoid serious financial losses to the company.

[17] The meeting on 1 October 2024, chaired by Matthew Moxon, was meant to ratify the signing of a memorandum of understanding ["***MOU***"] for the disposal of the company asset. Instead, all that ever got to be discussed and transacted, in John Moxon's absence, was Mycroft's unprocedural dismissal under the item 'any other business'. He was fired for simply having followed John Moxon's instruction to sign the MOU.

[18] Mycroft's dismissal was unlawful in that, among other things, as an *ex officio* director he *was* a director of the board and thus, could not be removed by fellow directors. Furthermore, there was no quorum when that decision was taken because all the executive directors had been asked to leave the room when the item had been tabled. Still further, despite Matthew Moxon himself being an executive director, he had remained in the room. Subsequent to Mycroft's unlawful dismissal, Matthew Moxon unprocedurally assumed the position of acting CEO for the company.

[19] Under the pretext that his communication devices have been hacked or tampered with, and that there are certain individuals who manipulate him behind the scenes, especially during virtual board meetings, Limited's directors have sought to exclude John Moxon from the business of the company. They have purported to ban virtual board meetings and they have effectively executed an internal *coup de tat* against him.

[20] In order to protect Limited's shareholders in the interim period pending the holding of the EGM on 18 December 2024, the Stock Exchange, at John Moxon's instance, has suspended trading on Limited's shares. However, such a move is inadequate to protect shareholders from the roguish behaviour of the impugned directors.

[21] By reason of the foregoing and more, John Moxon alleges there is a reasonable apprehension of harm on Limited's members if the directors are allowed to continue making decisions that are not in the normal course of business. Therefore, Consolidated

Holdings will seek the removal of the directors at the EGM. In the meantime, Consolidated Holdings seeks interim relief to preserve the status quo pending the EGM.

[22] In the counter-attack, Limited, in paraphrase, says this in seeking to justify the equally invasive order against Consolidated Holdings. John Moxon's notice on 26 November 2024 for the EGM on 18 December 2024 is a sham. It does not comply with the articles of association for Limited and the provisions of the law. John Moxon is abusing his position in Consolidated Holdings and in Limited. He is purporting to call an EGM for members in circumstances in which he has failed or neglected to requisition the same in his capacity as chairman of the board for Limited.

[23] John Moxon has breached all tenets of corporate governance. All along he had been the executive chairman of Limited until it was decided to comply with principles of corporate governance and the new dispensation created by the recently enacted Companies and Other Business Entities Act [*Chapter 24:31*] ["***the Act***"]. Unfortunately for him, he has failed to adjust to the new order as he continues to meddle in Limited's affairs as if it is still his private concern.

[24] One of the independent non-executive directors, Catherine Chitiyo ["***Chitiyo***"], a seasoned legal practitioner, has recently had to resign because of the continuous breach of corporate governance principles by John Moxon. Those independent non-executive directors that John Moxon wants removed at the EGM, unlike Chitiyo, have vowed to stay on and protect the company from John Moxon's predatory tendencies.

[25] Evidence abounds that John Moxon is no longer his own person. His communication gadgets have been compromised. To minimise the damage to the company, no board meetings may be held virtually. There is no provision for this anyway in the company's statutes of incorporation.

[26] There is also abundant evidence that none of the individuals John Moxon is rooting for as replacements for the independent non-executive directors that he wants removed, are themselves independent. They are his own people that are programmed to protect his own personal interests.

[27] As an *ex officio* member of the board for Limited, Mycroft was answerable to the board. At the meeting of 1 October 2024 which had been called to interrogate the highly prejudicial MOU, Mycroft was defiant. At first, he refused to own up to the fact that it was himself who had signed the MOU on behalf of Limited when in fact he had had no such authority. Later on, he claimed brazenly that he was only answerable to Limited's shareholder and not its board. He deserved to be fired. There was nothing unprocedural in the manner he had been relieved of his duties.

[28] At any rate, John Moxon has no standing to be fighting Mycroft's personal battles. Mycroft has himself instituted legal action to protect his interests.

[29] That is the brief but full conspectus of the two cases before me at the end of argument on Monday, 9 December 2024. I reserved judgment and promised to hand it down by not later than Friday, 13 December 2024. However, by Wednesday, 11 December I had already reached a decision. I dismissed both applications with costs and promised to supply the reasons shortly thereafter. These are they.

[30] Both applicants seek far reaching remedies against each other. But quite remarkably, these are remedies the courts here and abroad have steadfastly refused to countenance. The reason is simple and rather elementary. Courts are slow to interfere in the day-to-day management of business corporations. Business entities such as companies, are run by boards of directors. The rights and obligations of these directors are spelt out quite succinctly in the Act and the common law. Investors or shareholders who set and make up these companies also have their rights and obligations set out. Except in exceptional situations where they may be invited and compelled to quell what may be excesses of the management or the directorate or the shareholders, courts of law stay clear of random and routine business disagreements.

[31] In the English case, *Poole v National Bank of China Ltd* 1907 AC 229, LORD LOREBURN LC said, at p 236:

> "It is no part of the business of the Court of justice to determine the wisdom of a course adopted by a company in the management of its own affairs."

[32] In another English case, *Caldwell & Co Ltd v Caldwell* 53 SC LR 251, LORD SHAW, writing on behalf of the HOUSE OF LORDS said, at p 253:

> "I cannot find any trace in the statute of a suggestion that the Court ought to review the opinion of the company and its directors, in regard to a question which primarily at least is domestic and commercial."

[33] That position has been followed in South Africa: see, for example, the judgment of CENTLIVRES CJ in *Levin v Felt & Tweeds Ltd* 1951 (2) SA 401 [A], at 414 – 415. It has been followed in Zimbabwe: see the judgment of HUNGWE J, as he then was, in *Matanda & Ors v CMC Packaging [Pvt] Ltd & Ors* 2003 (2) ZLR 221 [H], at 223H – 224B, where he graphically put it as follows:

> "Before a member invites the court to interfere in the internal arrangement of a private company, that member must be reminded of the words of Centlivres CJ in *Levin v Felt & Tweeds Ltd* 1951 (2) SA 401 [A] at 414 – 415 where he stated:
>
> *'It is not part of the business of a court of justice ...'*"

[34] 'Member', 'Director', 'Private Company', 'Public Company', *et cetera*, it is all the same. DOWLING J in *Yende v Orlando Coal Distributors [Pty] Ltd & Ors* 1961 (3) SA 314 [W], at 316, put it beyond doubt:

> "In general, the policy of the Courts has been not to interfere in the internal domestic affairs of a company, where the company ought to be able to adjust its affairs itself by appropriate resolutions of a majority share-holders. On the papers there appears to be nothing to prevent the applicant from requisitioning a general meeting of the company …. If the applicant can secure the vote of the majority of the shareholders, the second respondent and his co-directors may be removed, and fresh ones be appointed."

[35] In the cases before me, John Moxon claims the board of directors for Limited, minus himself, has gone rogue. As a result, he invokes the court to paralyse its operations until some of the independent non-executive directors are removed at the EGM. The sins of that board include their action in dismissing the company CEO and replacing him with one of them. They also include alleged machinations to ease John Moxon out of Limited.

[36] However, none of what John Moxon is saying is sufficient to justify the court's intervention, more so on an urgent basis. The court perceives no Armageddon. Companies routinely hire and fire their executives. They routinely appoint and remove

their directors. I see no reasonable apprehension of an irreversible harm. In considering the requirements of an interdict, I said in *Masango & Anor v Minister of Primary and Secondary Education and Ors* HMA 07-17, at p 6 of the cyclostyled judgment:

> "Under this head there ought to be [1] a fear or an apprehension of harm that is [2] well-grounded, judged objectively, that is to say, what a reasonable man, in Latin, a *diligens paterfamilias*, would consider harmful or perilous or prejudicial, and [3] that the fear or the apprehension must be of a peril or a harm or prejudice that will be irreversible, if the court does not intervene."

[37] Everything John Moxon fears as irreversible is reversible. Mycroft can be reinstated or replaced. He himself may stay on or be replaced. It is for the company to decide at an appropriate meeting, not the courts. No considerable harm to the company has been shown. In fact, by causing the freezing of trading of Limited's shares on the stock market, it can be said that it is Consolidated Holdings that has taken drastic measures.

[38] The court weighs carefully the risk of disqualifying directors of a company, especially for the reasons John Moxon advances. Section 54 of the Act requires every director or officer of a company, among other things, to perform their duty with care and skill. They can seek outside accounting or legal help. John Moxon does not want Limited's directors to do this before they are fired. There is no sufficient justification for this. According to s 218 of the Act, a company's board of directors is responsible for the oversight and decision-making related to the strategic direction of the company.

[39] The issue relating to the disposal of Limited's asset seems to have generated more heat than light. I perceive that both parties want the asset gone. It seems the major difference between them is on whose terms the asset may be disposed of. That cannot be a reason to invite the court to interfere at this stage. The company must decide.

[40] If Consolidated Holdings, through John Moxon, has no case, Limited, through Matthew Moxon, is worse. At least Consolidated Holdings has had the good sense to call for a general meeting. Limited does not want it to happen for the reason that the requisitioning of it has been done irregularly or illegally. It accuses John Moxon of wanting to profit from his own inaction. The parties have traded accusations as to whose duty it was to requisition the EGM. Limited claims John Moxon failed to convene a board meeting to get directors to properly sanction the EGM. Having been derelict in

this regard, he has purported to ensconce himself as a shareholder and called for one. This is said to be in breach of s 168 of the Act.

[41] On the other hand, Consolidated Holdings rely on the same provision of the Act to argue that John Moxon's actions in calling for the EGM are legitimate. It accuses Limited's directors for having failed and or neglected to call for a meeting despite the requisitioning by Consolidated Holdings. This aspect was one of the flash points during argument.

[42] However, with all due deference, such arguments as were put before me should be reserved for the EGM. It is up to either party to convince members of the validity or invalidity of the requisitioning of the general meeting. They must go to that meeting and either pass the resolutions that have been sponsored or shoot down the meeting altogether. Directors cannot stop a members' meeting, especially for reasons of procedural impropriety. LINDLEY LJ said in *Browne v La Trinidad* (1887) 37 ChD 1 at 17:

> "I think it is most important that the Court should hold fast to the rule upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules, where the irregularity complained of can be set right at any moment."

[43] In *Bentley-Stevens v Jones & Ors* [1974] 2 All ER 653; [1974] 1 WLR 639 [Ch], at 640 – 641, PLOWMAN J said:

> "In my judgment, even assuming that the plaintiff's complaint of irregularities is correct, this is not a case in which an interlocutory injunction ought to be granted. I say that for the reason that the irregularities can all be cured by going through the proper processes and the ultimate result would inevitably be the same."

[44] This court has accepted that this principle is part of our law: see *James North Zimbabwe Limited v Mattison* 1989 (1) ZLR 322 [H], at p 332.

[45] Directors cannot stop being removed by members. In terms of s 202 of the Act, directors may be removed with or without a stated reason or cause where advance notice has been given. Courts cannot interfere with this inviolable right of members.

[46] Some of the issues that Matthew Moxon has tried to interest the court with in his affidavit are rather surprising. A bit of detail has been given on how the individuals that Consolidated Holdings would want to replace the impugned non-executive directors with are not independent, but rather are John Moxon's mere surrogates. However, it is not the function of the courts to vet potential directors for a company. That is a vested right for members. No interdict by a court can be hinged on the suitability or unsuitability of potential directors.

[47] A dispassionate reading of the papers in these two matters does not locate the interests of the actual companies involved. It betrays the parochial and individual interests of their officers. Manifestly, they are the real protagonists. But they must go to the general meeting of the company and pitch their arguments there, not in this court. It is for these reasons that I dismissed both applications with costs.

16 December 2024

Mtetwa & Nyambirai, applicant's legal practitioners in Case 1, first respondent's legal practitioners in Case 2
Moyo & Jera Legal Practitioners, respondent's legal practitioners in Case 1, applicant's legal practitioners in Case 2
Kantor & Immerman, second respondent's legal practitioners in Case 2