STEWART PHILLIP CRANSWICK
versus
MEIKLES LIMITED
and
MEIKLES CONSOLIDATED HOLDINGS (PRIVATE) LIMITED
and
JOHN RALPH THOMAS MOXON
and
ZIMBABWE STOCK EXCHANGE
and
SECURITIES AND EXCHANGE COMMISSION OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 9th January & 3rd February 2025

Urgent Chamber Application

Mrs *R Mabwe,* for the applicant
A.Mugandiwa, for the first respondent
K. Kachambwa, for the 2nd and 3rd respondents
No appearance for the 4th and 5th respondents

MUREMBA J: The applicant is Stewart Phillip Cranswick a minority shareholder in the first respondent. The first respondent is Meikles limited a publicly listed company incorporated in terms of the laws of Zimbabwe. The second respondent is Meikles Consolidated Holdings (Private) Limited, a corporate registered in terms of the laws of Zimbabwe and the largest shareholder (holding 48,38% of the issued share capital) in the first respondent. The third respondent is John Ralph Thomas Moxon, a director in the second respondent and a chairman of the first respondent. The fourth respondent is the Zimbabwe Stock Exchange, a corporation set up in terms of s 121 of the Stock Exchange Act [*Chapter* 24:25]. The fifth respondent is the Securities & Exchange Commission of Zimbabwe, a body corporate established in terms of s 3 of the Stock Exchange Act [*Chapter 24:25*] The fourth and fifth respondents are cited as interested parties as they regulate matters relating to listed companies. However, no relief is being sought against them.

The applicant is seeking a stay of implementation of the resolutions passed at an Extraordinary General Meeting (EGM) held by the first respondent on the 18th of December, 2024, pending the determination of the summons matter filed under HC 5846/24 on the 24th of

December 2024, five days after the resolutions were passed. The pending summons matter is seeking among other things the setting aside of the resolutions of the 18th of December 2024 on the grounds that they were marred with procedural irregularities. In the present application the interim relief the applicant is seeking is couched as follows.

"RELIEF SOUGHT

TERMS OF THE FINAL RELIEF

That you show cause to this Honourable Court why a final order should not be made in the following terms:

1.Pending the determination of HC 5846/24, implementation of the resolutions passed in favour of the first Respondent or against it at the annual meeting on 18th December 2024 be and is hereby stayed.

2.The second and third respondents shall not interfere with first respondent's operations until the matter under summons case HCH 5846/24 is resolved.

3.The resolutions passed against the first respondent are set aside for being in contravention of s 54 and s 55 of COBE.

4. Second and Third respondents shall pay costs of this suit.

TERMS OF THE INTERIM RELIEF GRANTED

Pending the determination of this matter on the return date, the applicant is granted the following relief:

1. Implementation of the resolutions passed in favour of the first respondent or against it at the annual meeting on 18th December 2024 be and is hereby stayed.

2.The second and third respondents shall not interfere with first respondent's operations.

SERVICE OF THE PROVISIONAL ORDER

1. The applicant/applicant's Legal Practitioner and/or employees be and are hereby permitted to serve copies of this provisional order on the respondents or their Legal Practitioners/employees.

The applicant averred that on the 18th of December 2024, the first respondent held an Extraordinary General Meeting (EGM). The business of this meeting was to remove incumbent independent non-executive directors, employees, and officers, and replace them. The applicant stated that he was one of the non-executive directors targeted for removal. The applicant averred that he did not attend the meeting but he was reliably informed that the meeting was

marred by procedural irregularities. For instance, it was a virtual meeting where some of the microphones were muted, preventing some board members from contributing to the discourse and, more importantly, to the critical decisions concerning the first respondent.

The applicant averred that he subsequently sought legal advice from his lawyers regarding his concerns about the Extraordinary General Meeting. Resultantly, just five days after the meeting, on the 24th of December 2024, he filed the summons case under HC 5846/24. After filing the summons, he filed an urgent chamber application for a stay of execution (matter no. HCH 1/25), which was scheduled for a hearing on the 3rd of January. He averred that however, after liaising with one of the Directors of the first respondent who happens to be the third respondent's son, he was persuaded to withdraw the urgent chamber application with the promise of settling the matter amicably. Unfortunately, this did not happen, leading to the filing of the present urgent chamber application.

The only respondents who are opposed to this application are the second and third respondents. Mr *Mugandiwa* who appeared for the first respondent submitted that the first respondent would abide by the decision of the court but he had instructions to follow the proceedings. The second and third respondents filed a notice of opposition and the opposing affidavit was deposed to by the third respondent. The third respondent is a director in the second respondent. He deposed to the opposing affidavit in his personal capacity and on behalf of the second respondent, as authorized by a resolution of the board of directors of the second respondent. Additionally, the third respondent is also a director in the first respondent.

In their opposing affidavit, the second and third respondents initially raised three points *in limine*, but at the hearing, they abandoned one of the points, opting to address it in the merits of the case. I will proceed to deal with the two points in *limine* that were pursued below.

1. Matter Not Urgent

The third respondent averred the following: The need to act arose on the 18th of December 2024, the day of the EGM. The summons was issued on the 24th of December 2024, and the applicant did not provide any explanation as to why an urgent chamber application was not filed together with the summons or immediately thereafter. The present application was only filed on the 6th of January 2025, without any explanation for the delay. Furthermore, the third respondent denied any knowledge of HCH 1/25 (the urgent chamber application the applicant mentioned in his founding affidavit). The third respondent also professed ignorance of any communication from the applicant to either himself or the second respondent. He

averred that if the applicant had indeed spoken with his son as averred in the application, the son had no authority to represent the second respondent or himself. The third respondent also stated that the applicant failed to explain the irreparable harm that could result from the resolutions made at the EGM on December 18, 2024, which only related to the appointment of new directors. The third respondent averred that the applicant's apprehension that the directors could collude to sell a major asset belonging to the first respondent is baseless, as the directors have no power to do so without shareholder approval. He added that the High Court has a specialized commercial division for expedited procedures to deal with commercial disputes, yet the applicant chose to file the summons in the general division. In arguing the matter, Mr. *Kachambwa* submitted that the application failed on both time and consequence regarding the issue of urgency.

In response, Mrs. *Mabwe,* for the applicant, submitted that the applicant acted timeously. The need to act arose on the 18th of December 2024, and on the 24th of December 2024, the applicant filed summons. Then on the 1st of January 2025, he filed an urgent chamber application under HCH 1/25, which was withdrawn for negotiations with the third respondent's son, who is a director in the first respondent and the second respondent. The negotiations failed, resulting in the filing of the present application on the 6th of January 2025. Mrs. *Mabwe* submitted that the third respondent did not dispute that there were engagements between the applicant and his son. All he said was that if engagements were made, his son did not have the authority to represent him or the second respondent.

In light of what Mrs. *Mabwe* submitted, I am satisfied that the application passes the test of urgency. This is because the applicant fully explained his actions from the 18th of December 2024, when the Extraordinary General Meeting was held, which is the date the cause of action arose. His explanation shows that from that date until the 6th of January 2025, when the applicant filed the present application, he was not sitting on his laurels. He sought legal advice and filed the summons case on the 24th of December 2024. Then on the 1st of January 2025, he filed an urgent chamber application, which he later withdrew. Although the third respondent averred that they were never served with that application, he did not dispute that the applicant filed such an application. He also did not dispute that the applicant engaged with his son over the application and failed to settle it amicably. That the third respondent's son did not have the authority to represent him or the second respondent is immaterial. The applicant provided a clear and logical sequence of actions taken from the date of the EGM to the filing of the present application, demonstrating active efforts taken to address the issue. He even

made attempts to resolve the matter amicably by engaging the third respondent's son who is a director in both the first and second respondent. It cannot therefore be said that the applicant sat on his laurels. For an urgent application to pass the test of urgency, the applicant must provide a satisfactory explanation for any delay in making it. See *Kuvarega v Registrar General & Anor* (1998) (1) ZLR 188. In other words, there has to be an explanation for the delay. In *Econet Wireless* v *Trustco* SC 43/2013 an urgent chamber application was filed almost three weeks after the events giving rise to the dispute had occurred. This court considered a number of factors and found the matter to be urgent, a decision which was upheld on appeal by the Supreme Court. The Supreme Court found the matter urgent, with the delay in filing explained satisfactorily. It saw no reason to impugn this court's decision to treat the matter urgently. The foregoing shows that what is necessary is a satisfactory explanation for the delay in filing the application if it has been filed late. In the circumstances of this case, I am satisfied that the applicant gave a satisfactory explanation for the delay. It is not even a case where it can be said that the applicant waited until the day of reckoning or a critical moment. The delay was not deliberate or careless. I thus dismiss the point in *limine* that the matter is not urgent.

2. *Relief Sought is Incompetent*

The third respondent averred that it is incompetent for a party to seek interim relief that is substantially similar to the final relief sought. He noted that paragraphs 1 and 2 of the interim relief sought and the final relief sought are similar, both seeking an order to stay the implementation of resolutions passed on the 18th of December 2024, and an interdict against the second and third respondents. Mr *Kachambwa* submitted that para 2 of both the final and interim reliefs is too wide such that it bars the second and third respondents from being involved in the operations of the first respondent completely.

Mrs *Mabwe* submitted that the two reliefs are different in that the interim relief is being sought pending the return date whilst the final relief is being sought pending the determination of the summons matter. She however conceded that para 2 of both the final and interim reliefs is too wide and submitted that if the application finds favour with the court para 2 can be deleted.

I take note that the applicant's counsel conceded that para 2 is defective as it is too wide in its scope and that it should be deleted if the provisional order is to be granted. Therefore, in determining this point *in limine* I will confine myself to para 1. It is a settled position of law

that courts should not grant interim relief that is similar to or has the same effect as the final relief sought. Interim relief should be limited to necessary temporary measures to protect rights until the final decision. In the *Kuvarega* case *supra* this court criticised the practice of seeking identical interim and final relief, as it grants final relief without the case being proven. It was held that this is undesirable as interim relief requires only a *prima facie* case. The point is that interim measures should not be used as a final solution without proper judicial scrutiny. Interim relief is meant to be temporary and should not be used to achieve final outcomes prematurely. Put differently, interim relief should not be used as a shortcut to achieve final relief without proving the case thoroughly. In *casu* it is my observation that the relief sought in the final order and in the interim order share some similarity but also have distinct differences. The similarity is that both the final and interim reliefs seek to stay the implementation of the resolutions passed at the EGM on the 18th of December 2024, in favour of or against the first respondent. The difference in the reliefs lies in their duration and scope. The interim relief is temporary and the applicant wants it granted pending the determination of the matter on the return date. It seeks to maintain the *status quo* until the court can make a final decision on the return date. Thus, the interim relief seeks to restore the previous state of affairs to prevent any immediate harm or change in circumstances. The final relief, on the other hand, is permanent and is sought pending the determination of the summons matter in HC 5846/24. In other words, on the return date, the court will be required to re-evaluate the situation to decide whether to confirm or discharge the provisional order pending determination of the summons case. In the circumstances therefore, I am of the view that the interim relief prayed for does not have the same effect as the final order sought. Accordingly, this point *in limine* must fail.

The Merits

The applicant made numerous averments that largely relate to how the second and third respondents were running the affairs of the first respondent before the EGM of the 18th of December 2024 was held. In short, he averred that the third respondent was acting illegally and not in compliance with his fiduciary duties in terms of the Companies and Other Business Entities Act [*Chapter 24:31*] (COBE). A Memorandum of Understanding seeking to dispose of one of the first respondent's major asset was even signed without the approval of the first respondent before the 1st of October 2024. The first respondent is even owed a loan of USD 11.7 million by the second respondent and the loan is due for payment on the 30th of June 2025. The second respondent is the vehicle through which the third respondent holds his indirect

interests in the first respondent. The third respondent expects the board of directors of the first respondent to rubber stamp whatever he decides. He has continued to make executive decisions and usurping the powers of the board of directors. He even made unfounded allegations against the board of directors. He has been ill and has abandoned his duties. He is unable to make sound decisions and is being influenced by third parties. The applicant averred that he later opted to resign as an independent non-executive director of the first respondent on the 18th of December 2024 which was the date the EGM was held. The applicant averred that he resigned before the meeting because the third respondent had dragged his name in the mud publicly through false accusations alleging that he had violated corporate governance principles. The applicant averred that the second and third respondents have acted oppressively towards him in that they can no longer conduct the business of the first respondent to his advantage, yet the issues he had raised were all about protecting the interests of the shareholders, especially minority shareholders. The applicant averred that he was reliably informed that the EGM held on the 18th of December 2024 was marred with procedural irregularities as some members were barred from participating. He went on to attach an affidavit of Tendayi Mundawarara who was one of the attendees of the meeting. The applicant averred that he consequently filed the summons case for relief in terms of s 62 of the Companies and Other Business Entities Act [*Chapter 24:31*]. He averred that notwithstanding the pendency of the said summons matter, which will resolve the dispute between the first respondent on one hand against the second and third respondents on the other, there is a possibility that the second and third respondents will seek to implement the resolutions made in the EGM of the 18th of December 2024. The said resolutions have further not been circulated but the resolutions removed certain members who were not aligned to the third respondent from the directorship of the first respondent. The first respondent is technically stopped from trading. The unsuspecting public and minority shareholders are likely to be affected by the manner in which the business of the first respondent is being run. This court must therefore place a moratorium on the implementation of any resolutions passed in respect of the first respondent by the second, third respondents and any parties to preserve the litigation in the summons case under HC5846/24. The applicant contended that the implementation of the resolutions passed becomes concerning against the background that the first respondent is owed a debt of over USD11 million by the second respondent which debt is unsecured and that the first respondent is on the verge of disposing of its major asset.

The plaintiff's claim (applicant in the present application) in the summons case is for:

a. An order declaring the conduct of the business of the first and second Defendants by the third defendant and every manager, director or any other person under his control to be illegal, fraudulent or oppressive towards the Plaintiff as well as the first Defendant.
b. An order declaring a deadlock in the conduct of the affairs of the first Defendant's business as a result of the third defendant's conduct or a division in the directorship of the 1st Defendant or another reason, and that as a result irreparable injury is likely to be caused to the first defendant's business or alternatively, the business of the first defendant can no longer be conducted to the members' advantage.
c. An order declaring the third Defendant and every manager, director or any other person under his control to have abdicated his duty of care, business judgment and loyalty to the first Defendant's companies.

Consequently: -

d. An order for the removal of third defendant from the directorship of the first defendant and the removal of any manager, director or officer, or persons appointed to the first defendant company post 30th of November 2024 within 24 hours of granting of this order.
e. An order declaring nullification of all the appointments made at the extra ordinary general meeting of the 18th of December 2024.
f. An order for the setting aside of any transaction or other action of its members, managers or directors of the first Defendant company dissipating any of its assets to any parties.
g. An order for a financial audit to be carried out within five (5) days of this court's order to assess the ramifications of the financial effects of the matters in dispute between first defendant and second companies, including a forensic audit.
h. An order for the payment of damages or any losses that may have resulted from the actions of the third Defendant and every manager, director or any other person under his control (being the failure to exercise duty of care, business judgment and loyalty to the first Defendant companies) which damages shall be payable within 5 days from the date of the finalization of the forensic audit.
i. Costs of suit by the Second and Third defendants."

In response to the merits of the application, the third respondent denied the applicant's account of events and affirmed his own as true. He denied that the EGM was unlawful and averred the following. This court dismissed the first respondent's challenge to the EGM's legality in judgment number HH 601-24. The EGM of the 18th of December 2024, resulted in resolutions for the removal and appointment of directors, with the majority of shareholders voting to remove the applicant and three others, replacing them with Fayaz King, Marcel Golding, and Benjamin Word. He averred that this must be respected to uphold justice. The EGM was virtual, and participants could speak when unmuted. Virtual meetings are allowed by the first respondent's Articles of Association, and all previous meetings were virtual.

The third respondent denied a binding agreement for asset disposal existed and averred the following. The 1st of October, 2024, meeting ratified a non-binding memorandum for asset

sale, pending board approval. His illness does not affect his duties and neither do third parties influence his decisions. Tendayi Mundawarara's claim that he was not allowed to address the meeting of the 18th of December 2024, was false; he did speak. The applicant's challenge to the 18th of December 2024, resolutions, citing violations of others' rights, lacks prospects of success as those affected can challenge them independently. The first respondent's directors cannot dispose of major assets without shareholder approval. The $11 million debt owed to the first respondent by the second respondent is documented in the 2023 Annual Report. The trading suspension that was imposed on the first respondent by the fourth respondent protects the investing public. The first to third respondents will suffer great prejudice if the application is granted, as the first respondent must have seven directors by law. Suspending the December 18 resolutions leaves only four directors, crippling management. The application is an abuse of process, filed to frustrate the 18 December 2024 resolutions. The second and third respondents prayed for the dismissal of the application with costs on an attorney-client scale.

It was Mr *Kachambwa's* argument that the applicant is seeking to interdict the implementation of the resolutions of the shareholders of the first respondent and should therefore satisfy the requirements of an interdict which are: (i) showing that he has a *prima facie* right. This means that there must be a legally recognizable right that the applicant seeks to protect; (ii) showing that an injury has been committed or is reasonably apprehended. This refers to harm that has occurred or is likely to occur if the interdict is not granted; (iii) showing that there is no adequate alternative remedy available. This means that the applicant cannot achieve the desired protection or relief through any other means or other legal actions; and (iv) showing that the balance of convenience favours granting the interdict. This means that the court should weigh the potential harm to the applicant if the interdict is not granted against the potential harm to the respondent if it is granted.

Mr *Kachambwa* submitted that the applicant who admits to having tendered his resignation before the meeting started on the 18th of December 2024, did not state in the application his right which was infringed in that meeting. He submitted that in terms of s 214 of COBE, the applicant's fear that the first respondent's directors will dispose of a major asset was baseless as there is need for shareholder approval before an asset can be disposed of. Mr *Kachambwa* submitted that there was no harm at all to the applicant, let alone irreparable harm. He further submitted that the application should be dismissed as the applicant did not meet the requirements of an interdict. He added that the granting of the interim relief the applicant is seeking will result in an illegality as it will result in a breach of s 195 (1) of COBE which

provides that directors of a company should not be lower than seven. The granting of the application will result in the first respondent having four directors instead of seven. Mr *Kachambwa* argued that this court should not be invited to interfere in the running of the first respondent.

Mrs *Mabwe's* argument was that this application is not for an interdict and that as such the requirements of an interdict as stated by Mr *Kachambwa* do not apply. She submitted that the application is for stay of implementation of resolutions passed on the 18th of December 2024. It was her further submission that the requirements of an application for stay of implementation of resolutions are different from the requirements of an interdict, but similar to the requirements of an application for stay of execution. Citing the case of *Mupini v Makoni* 1993 (1) ZLR 80 (S) which dealt with an application for stay of execution, Mrs *Mabwe* submitted that the main consideration in an application for stay of execution and in an application for stay of implementation of resolutions is the issue of real and substantial justice. She submitted that the court will act where real and substantial justice so demands like in instances where it will be difficult to restore the original position if the application is not granted. She submitted that the pending summons matter is meant to determine if the directors are acting in compliance with their fiduciary duties under s 57. 58. 59 of the COBE. She further submitted that there is no guarantee that s 214 which provides for the disposal of assets after approval by shareholders will be complied with. She argued that real and substantial justice requires that the parties' positions be frozen until the summons case is determined.

To resolve the issue of which requirements are applicable in the present application, it is necessary to analyse the substance of the interim relief that the applicant is seeking. It reads:

> "Pending the determination of this matter on the return date, the applicant is granted the following relief:
> 1. Implementation of the resolutions passed in favour of the first respondent or against it at the annual meeting on 18th December 2024 be and is hereby stayed."

The applicant wants the first respondent stopped from implementing the resolutions passed in its favour or against it at the meeting of the 18th of December 2024. This is a temporary measure that the applicant is asking for until a final decision is made on the case on the return date. Essentially, it is a "pause button" to maintain the *status quo* and prevent any changes before a final decision is made on the return date. This means that those resolutions should not be put into action until the court decides on the matter. An order that stops someone from doing something is a prohibitory order. Therefore, relief that the applicant is seeking in

the present case falls in that category as it seeks to prevent the implementation of resolutions passed on the 18th of December 2024. This therefore means that Mr *Kachambwa* was correct in his submission that the applicant is seeking an interdict.

I take note that Mrs *Mabwe* did not dispute that what the applicant is seeking is an interdict. However, her submission was that the requirements of an application for stay of implementation of resolutions are different from the requirements of an interdict, but similar to the requirements of an application for stay of execution. She raised an interesting point. However, she did not refer me to any legal authorities that support her submission and neither did she explain why she was saying the requirements of an application for stay of execution and the requirements of an application for stay of implementation of resolutions are the same. In the case of *Vengai Rushwaya* v *Nelson Bvungo & Anor* HMA 19-17 and at page 5 MAFUSIRE J said the following with regards to an application for stay of execution:

> In *Golden Reef Mining [Pvt] Ltd & Anor v Mnjiya Consulting Engineers [Pty] Ltd & Anor* HH631/15 I said an application for a stay of execution was a species of an interdict. In my view, there is some difference between an ordinary, typical or orthodox interdict with a stay. With an ordinary interdict, the applicant must show a clear right in his favour, or, in the case of an interim interdict, a prima facie right having been infringed, or about to be infringed; an apprehension of an irreparable harm if the interdict was not granted; a balance of convenience favouring the granting of the interdict, and the absence of any other satisfactory remedy: See *Setlogelo* v *Setlogelo* 1914 AD 221; *Tribac (Pvt) Ltd* v *Tobacco Marketing Board* 1996 (1) ZLR 289 (SC); *Hix Networking Technologies* v *System Publishers (Pty) Ltd* 1997 (1) SA 391 (A); *Flame Lily Investments Company (Pvt) Ltd* v *Zimbabwe Salvage (Pvt) Ltd and Anor* 1980 ZLR 378 and *Universal Merchant Bank Zimbabwe Ltd* v *The Zimbabwe Independent & Anor* 2000 (1) ZLR 234 (H).
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> On the other hand, in a stay of execution, the requirement is simply real and substantial justice. See *Cohen* v *Cohen* 1979 (3) SA 420 (R); *Chibanda* v *King* 1983 (1) ZLR 116 (SC); *Mupini* v *Makoni* 1993 (1) ZLR 80 (S) and *Muchapondwa* v *Madake & Ors* 2006 (1) ZLR 196 (H). The premise on which a court may grant a stay of execution pending the determination of the main matter or of an appeal is the inherent power reposed in it to control its process. In Cohen's case above, Goldin J said at p 423 B – C:
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> 'Execution is a process of the court and the court has an inherent power to control its own process subject to the rules of Court. Circumstances can arise where a stay execution as sought here should be granted **on the basis of real and substantial justice**. Thus, where injustice would otherwise be caused, the court has the power and would, generally speaking grant relief."

In short what MAFUSIRE J said was that an ordinary interdict requires showing a clear or *prima facie* right, apprehension of irreparable harm, balance of convenience, and no other satisfactory remedy whereas stay of execution focuses on achieving real and substantial justice to prevent injustice. The court uses its inherent power to control its process. Essentially what

the judge said was that, ordinary interdicts have specific legal requirements, while stays of execution prioritize fairness and justice. The court can grant a stay to prevent injustice using its inherent authority.

Since Mrs *Mabwe* submitted that the requirements of an application for stay of execution are similar to the requirements for stay of resolutions, it is necessary to look at the similarities between an application to stay implementation of resolutions and an application to stay execution. Stay of implementation of resolutions is a temporary measure to prevent the enforcement of resolutions until a matter is resolved. It maintains the *status quo*. On the other hand, stay of execution pauses the execution of a judgment while a pending matter such as application to rescind a default judgment is considered. Similarities between the two are that both aim to maintain the current state until a final decision is made. Both are therefore concerned with preventing harm that could arise from changes during the pendency of the main matter. The legal basis for both is procedural, often linked to maintaining the current state until the matter is resolved. In terms of their duration, they are temporary, lasting only until the final decision on the pending matter is made.

However, I also take note that there is some difference between a stay of execution and a stay of implementation of company resolutions. Stay of execution is typically used in the context of court judgments or orders. Its purpose is to suspend the enforcement of a court judgment or order. It prevents the winning party from executing the judgment until an appeal or another legal challenge is resolved. The defendant or respondent can apply for a stay of execution to temporarily halt execution of judgment until a pending matter is heard. On the other hand, stay of implementation of company resolutions is used within the realm of corporate governance. Its purpose is to halt the enforcement or actioning of decisions made by a company's board or at a shareholders' meeting. It prevents the company from carrying out resolutions that have been passed until further review or resolution of a related legal matter. An affected party can apply for a stay of implementation to temporarily halt any changes made at a meeting until a court can review the legality of the resolutions.

What is clear from the foregoing is that applications for stays of execution and applications for stays of implementation serve to temporarily halt actions pending further legal review, but they do so in different contexts and for different purposes. While the contexts and specific purposes of stays of execution and stays of implementation of company resolutions differ, both are forms of interdicts, as they seek to temporarily prevent certain actions until further legal determination. To be specific, both are prohibitory interdicts. However, the major

difference between the two is that stay of execution of court judgments or orders is a process of the court and the court has an inherent power to control its own process. On the other hand, a stay of implementation of resolutions has nothing to do with court process but corporate governance. The requirements for the two applications cannot therefore be the same. For this reason, it is my considered view that in an application for stay of implementation of company resolutions, the applicant should satisfy the requirements of an interdict as was submitted by Mr *Kachambwa.* He must show that he has a *prima facie* right in the matter; he will suffer irreparable harm if the interim relief is not granted; the balance of convenience favours granting the relief to him rather than to the respondent; and that there is no other effective or satisfactory remedy.

However, even if it is accepted that Mrs *Mabwe* is correct in her argument that the requirements of an application for stay of implementation of resolutions are the same as the requirements of an application for stay of execution, is it correct to say that the applicant is not required to prove the requirements of an ordinary interdict? In *Vengai Rushwaya v Nelson Bvungo & Anor supra*, MAFUSIRE J cited a plethora of cases and said, "*in a stay of execution, the requirement is simply real and substantial justice*." In *Makoni* v *Mupini supra*, it was held that in an application for stay, the court will act where real and substantial justice so demands.

The question that then arises is what is real and substantial justice? How does the court determine what amounts to real and substantial justice in a particular case? In *Zuwa Damson* v *Lovemore Dzipange* and Anor HH 830-22 CHITAPI J had this to say:

> "Whether real and substantial justice is served in any case depends on the facts and circumstances of the individual case. It follows that the phrase is not capable of precise definition. To attempt to define it would amount to an act of folly. The determination of what amounts to real and substantial justice in a given case is therefore a value judgement exercised in the discretion of the judge or court. The converse of whether it is in the interests of real and substantial justice to grant a stay must in my view be, whether real and substantial justice will be realized if a stay of execution is not granted in the particular case."

What CHITAPI J said shows that the court's approach to determining real and substantial justice is pragmatic and flexible. My understanding is that "real and substantial justice" in the context of an application for a stay of execution refers to ensuring that the court's decision is fair, just, and equitable, considering the interests of both parties involved. Obviously, for the court to achieve real and substantial justice it has to be assisted by the applicant. In my considered view, the applicant has no better way of assisting the court than by establishing the requirements of an ordinary interdict since an application for stay is a species of an interdict. By being a species of an interdict, it means it is an interdict. I therefore do not see how the

requirements of an interdict can be dispensed with. The applicant must therefore show a *prima facie* right. By requiring a *prima facie* right, the court ensures that there is a reasonable ground for the pending challenge. This aligns with the principle of fairness. The applicant must also prove the existence of irreparable harm if stay of execution is not granted. The court must weigh the potential harm to the applicant if the stay is not granted against the potential harm to the respondent if it is granted. The goal is to prevent any undue or irreversible damage while the legal issues are being resolved. In essence, the court aims to maintain a balance where neither party is unduly prejudiced, and the principles of fairness and justice are upheld. Demonstrating irreparable harm aligns with the concept of real and substantial justice by preventing undue or irreversible damage. The applicant must also prove that the balance of convenience favours that the application be granted. The applicant must also show a reasonable prospect of success in the pending challenge.

In essence I am saying proving the legal requirements of an interdict is essential for achieving real and substantial justice in an application for stay of execution. These requirements provide a framework for the court to make fair and just decisions that balance the interests of all parties involved. After these requirements have been proven, the court can then arrive at the conclusion that in this particular case real and substantial justice demands that stay of execution be granted.

In light of the foregoing discussion, it follows therefore that if in an application for stay of implementation of resolutions the requirement is real and substantial justice, it is still necessary for the applicant to meet the requirements of an interdict. So, whichever way, an applicant in an application for stay of implementation of resolutions is required to prove the legal requirements of an interdict. It is my considered view that the applicant must establish that he or she has a *prima facie* right that has been infringed and also demonstrate that the resolutions may be unlawful or improper. The applicant must demonstrate that implementing the resolutions would cause irreparable harm. The balance of convenience must favour granting the stay, meaning the harm to the applicant from implementing the resolutions must outweigh the harm to the company or other shareholders from staying the implementation. There should not be an alternative remedy. In some cases, considerations of public interest or the interests of shareholders may be relevant.

Disposition

In casu, the applicant in his founding affidavit raised numerous issues about how the second and third respondents have been mismanaging the first respondent, dating back well before the EGM on December 18, 2024. The bulk of these averments predate the EGM and are irrelevant to the current application for the stay of implementation of the resolutions. These issues only serve to cloud the matter and distract from the core issue—the implementation of the resolutions passed on December 18, 2024. The crucial point the applicant needed to address was the invalidity of the resolutions passed, regardless of the long-standing mismanagement of the first respondent by the second and third respondents before December 18, 2024.

The applicant's founding affidavit does not disclose which of his rights were violated or infringed at the EGM held on December 18, 2024, that prompted him to file the present application. While the second and third respondents may have mismanaged the first respondent, the key question remains: what *prima facie* right of the applicant was violated by the passing of the resolutions on December 18? The founding affidavit is silent on this matter. Mrs. *Mabwe* did not assist the situation as she argued that an applicant is not required to establish a *prima facie* right in this application. Consequently, she also did not specify which right of the applicant was violated. The situation is further compounded by the fact that the applicant stated in his founding affidavit that he tendered his resignation before the EGM commenced, due to the oppressive actions of the second and third respondents towards him. After resigning, he did not attend the meeting. While the meeting may have been flawed due to alleged procedural irregularities, the applicant did not specify which of his prima facie rights were violated at that meeting. Therefore, the applicant has not established a *prima facie* right in this application.

Mrs. *Mabwe* argued that the applicant fears the resolutions may be implemented, potentially leading to the dissipation of the first respondent's major asset and the first respondent's inability to recover its debt from the second respondent. She contended that for these reasons, the court should grant a stay of implementation of the resolutions. However, Mrs. *Mabwe* was unable to refute Mr. *Kachambwa's* argument that, according to s 214 of the COBE, the directors of the first respondent cannot dispose of the first respondent's assets without shareholder approval. The provision states:

> 214 (1) "Notwithstanding anything in the articles, the directors of a company shall not be empowered, without the approval of the company in general meeting—
> (a)……

> (b) to dispose of the undertaking of the company or of the whole or the greater part of the assets of the company."

Clearly, the first respondent's major asset is protected by this section. The applicant has therefore failed to prove the existence of irreparable harm if the stay of implementation of the resolutions is not granted. The applicant did not even establish that there was a resolution to dispose of the first respondent's asset at the EGM. Having failed to prove a *prima facie* right and the existence of irreparable harm, the balance of convenience does not favour granting the application. This application to stay the implementation of the resolutions passed at the EGM held on the 18th of December 2024 must therefore fail.

Regarding costs, I will award costs to the respondents on the ordinary scale because, although there was a claim for costs on a higher scale by the second and third respondents, no submissions were made to justify such costs.

In the result, the application is dismissed with costs.

Mawonera Attorneys, applicant's legal practitioners
Mtetwa & Nyambirai Legal Practitioners, second and third respondents' legal practitioners