

BACCOOL RAJSHIN SHINGADIA  
And  
VANRAJ KARSON SHINGADIA  
versus  
SHINGADIA FURNITURE MART (PRIVATE) LIMITED  
and  
KUMARPAL NATWAR SHINGADIA  
and  
ARUNA SHINGADIA  
and  
REGISTRAR OF COMPANIES

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 19 June 2023

### **Opposed Application**

*M. Zinyakatira*, for Applicants.

*T. Chagudumba*, for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

MUZENDA J: Applicant approached the court seeking the following relief:

“, ***IT BE AND IS HEREBY ORDERED THAT:***

1. *The application is allowed*
2. *The removal of the first and second applicants from the directorship of Shingadia Furniture Mart (Private) Limited be and is hereby declared unlawful*
3. *The appointment of third respondent as director of Shingadia’s Furniture Mart (Private) Limited be and is hereby declared unlawful.*
4. *The increment of share capital by a special resolution dated 23 June 2022 issued with the forth respondent be and is hereby declared unlawful and CR14 amended as of 13 September 2022 be and is hereby deemed illegal, rendering it null and void.*
5. *Consequently, the first applicant and second applicant be are hereby reappointed as directors of Shingadia’s Furniture Mart (Private) Limited and third respondent be and is hereby disqualified as a director of Shingadia’s Furniture Mart (Private) Limited.*
6. *The dividends from Shingadia’s Furniture Mart (Private) Limited Building an immovable property of the first respondent shall be shared proportionally in terms of the ratio as per share certificate and an independent estate agent be appointed by the Directors to regulate the affairs of the building.*
7. *Respondents be and is hereby ordered to pay the costs of this application on an attorney and client scale”*

## **Facts**

The background of the application is captured in the affidavits of the parties. First applicant states that first respondent private company limited was formed in March 2007. First and second, the late Prabhavati Rajsinh Shengadia and second respondent were appointed company directors of the entity. The CR14, Annexure B (*p. 18 of the record*) shows first applicant as “Alternate to P.R. Shingadia” that is Prabhavati Rajsinh Shingadia, one of the Directors. First applicant also appears under CR 14 as secretary. First respondent acquired an immovable property located at corner Railway and Tembwe Street Mutare. Rental proceeds from that property were to be proportionately shared *pro rata* to the shares held by each shareholder as dividends

First applicant added that he resides in Harare and second applicant now resides in the United Kingdom and second respondent runs the affairs of the company. On an unknown date first applicant went to the registrar of companies in Harare and discovered that both applicants had been resigned and third respondent added as a director of first respondent. Second respondent’s shares in the company were also increased and a new structure of first respondent excluding both applicants had been formed. Appellants contend that second respondent did not follow the memorandum and articles of association of first respondent in effecting these changes. He denies resigning as director of the first respondent company. He impugns the manner third respondent was appointed adding further that third respondent’s elevation was not sanctioned by the shareholders. All steps and resolutions orchestrated by second respondent leading to these changes are condemned by first applicant and rubbished them as a nullity. Applicants pray that they be returned to their old positions and that second respondent be removed from the CR 14 on allegations of fraud. Third respondent should also be removed from the CR 14 and that a neutral estate agent be appointed to run the affairs of first respondent’s Building. First respondent’s affidavit was signed on 31 January 2023 at Harare.

Second applicant’s supporting affidavit is signed in United Kingdom and dated 9 January 2023 and in that affidavit second applicant confirms first applicant’s founding affidavit and associates himself with first applicant’s averments and prayer sought. Delane Shingadia also deposed to an affidavit in the United Kingdom signed on 10 January 2023 and in that affidavit associates herself as a director to first applicant’s affidavits. She equally expects a similar relief as prayed for by first applicant in his papers

The second respondent representing first respondent as well as himself in opposing the application, denies that first applicant is a director of first respondent. What second respondent knows is that first applicant was appointed as an alternate director to the late Mrs Prabhavati Rajsinh Shingadia, first respondent was also appointed as company secretary of first respondent. He added that first respondent has never declared dividends since its formation. In addition to being company secretary of first respondent. First applicant was its book-keeper. It is second respondent's further contention in his affidavit that first applicant ran down first respondent and as a company secretary, he never called for a single meeting from 2007 to 2019 and did not submit any annual returns as required by the statutes. Upon the death of Mrs Prabhavati Rajsinh Shingadia on 9 January 2014 first applicant ceased to be an alternate director and at an Annual General Meeting held on 11 August 2022 first applicant retired from being a director by virtue of Article 93 of first respondent. Second respondent is adamant that first applicant's removal is above board. In March 2021 at a meeting attended by first applicant he was suspended. Between March 2021 and August 2022, second respondent contends that first applicant's offer to the affairs of first respondent had fizzled out hence his removal as director on 11 August. Second respondent attached minutes of that Annual General Meeting removing first applicant from CR 14 and affairs of first respondent. The procedures taken were above blame, second respondent concluded. He prayed for the dismissal of the application.

As for second applicant, second respondent condemns its affidavit as irregular and irrelevant. Second respondent contends that given the difference on dates of signing of applicant's affidavit on 9 January 2023 there was no first applicant's affidavit to speak of which was being confirmed by second applicant's hence he moved the court to that second applicant's "affidavit" be expunged from the record with costs. In any case second respondent stays in United Kingdom and cited laws barring second applicant from being notified of any meetings. Further second applicant had granted a power of attorney to first applicant for such notices to be given to first applicant, second respondent added. Second respondent justified the increase in the allocation of his shares due to the massive capital investment he ploughed into the extensive renovation of the dilapidated structure owned by first respondent and attached pictures to the affidavit. He denies allocating shares to his wife, third respondent. He however admits that third respondent was added to the list of first respondent's directors at an Annual General Meeting held on 11 August 2022. Both applicants and Delane Shingadia, second respondent further contends, did not add value to first respondent nor its renovations and

subdivisions and now want to come back and benefit from rentals coming from the tenants. He prays for the dismissal of the application and punitive costs.

Third respondent associates herself with all the averments advanced by the second respondent in his papers and prays for the dismissal of the application with costs on attorney client scale.

### **Points *in limine* Raised by respondents**

On the date of hearing, counsel for first to third respondents, Mr *Chagundumba* raised a preliminary point citing Rule 15 (8) and (9) of the High Court Rules SI 202/21 and submitted that applicant did not comply with that rule.

Rule 15 (8) provides thus

“At any time of filing an appeal, application or pre-trial conference request, as the case may be, a party shall deposit with the sheriff an amount as determined by the sheriff for costs of service of all notices of set down.

Rule 15 (9): A copy of the receipt of such deposit shall be furnished to the registrar by the party within (5) five days of filing the appeal, application or pre-trial conference request, shall be regarded as abandoned and in the event of an appeal or application, shall be deemed to have been dismissed” (**my own emphasis**)

Applicant’s Counsel conceded unreservedly that applicant failed to comply with the cited rules. He attempted to apply for condonation which was also opposed by respondents.

It is common cause Rule 15(8) is crafted in a manner that makes payment for costs of service of a notices of set down compulsory and such proof of payment should be shown to the registrar within a period of 5 days calculated from the date of filing. The record shows non compliance with the rules of this court and that is not in dispute.

As aptly stated in the matter of *Farai Bwatikona Zizhou v The Sheriff of Zimbabwe and 2 others* HH 201/23, it was held that

“The sanctions for failure to comply in this instance is that the matter is regarded as abandoned and is “deemed dismissed”. This is by operation of the law hence nothing can be done at this stage to salvage the case. (see *Watermount Estates v The Registrar of the Supreme Court and Others*. SC 135/21). The applicant did not apply for condonation for failure to comply with the rule. The applicant remains non-compliant hence the case is considered abandoned and deemed dismissed. As a consequence, there is no matter before me. That being so there is nothing to determine” (per MUNANGATI MANONGWA J on p. 5 of the cyclostyled judgment)

The point *in limine* by respondents has merit and is upheld.

*Accordingly it is ordered as follows:*

*The applicant be and is hereby struck off the roll with costs.*

*Nyamundanda & Mutimudye Attorneys, Applicant's Legal Practitioners..*  
*Atherstone & Cook, Legal Practitioners for 1<sup>st</sup> – 3<sup>rd</sup> Respondents.*