ARTHUR FERNANDO PEREIRA DIAS
and
ROSALIE MERCEDES DIAS
versus
DAWID JOHANNES ERASMUS
and
YAN YU in Her Capacity as Executrix Dative for the Estate of ZHAOSHENG WU
and
YAN YU
and
ERAS ACCOUNTING & EXECUTOR SERVICES
and
SHOMET INDUSTRIAL DEVELOPMENT (PVT) LTD
and
THE REGISTRAR OF DEEDS
and
MONOMOTAPA GARDEN FURNITURE (PVT) LTD

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 25, 26, 27 & 28 November 2013 & 4 December 2013 & 16, 17, 18 & 19 June 2014 & 22, 23, 24 & 25 September 2014 & 21, 22 & 23 October 2014 & 17 November 2014 & 15, 17 & 18 December 2014 & 3 February 2015 & 23, 24, 25, 26, 27 & 30 March 2015 & 17, 19 & 31 August 2015 & 18 September 2015 & 26 October 2015 & 25, 26, 27, 28 & 29 January 2016 & 10 March 2016 & 21, 25 & 26 April 2016 & 18 & 19 July 2016 & 15, 16, 19 & 22 August 2016 & 16 May 2017 & 20 July 2018 & 2 & 5 August 2019 & 10 March 2021

Opposed Application

Miss *F. Mahere* (later *J. Samukange*), for the plaintiffs
R. Harve,y for the 1st & 4th defendants
L. Uriri, 2nd, 3rd & 5th respondents

ZHOU J: This judgment is in respect of three matters which were consolidated for the purpose of the hearing. These are HC 1442/10, HC2480/10 and HC 6520/10. By agreement reached at the pre-trial conference, the citation embraced herein is what is to apply in respect of the three matters. At the pre-trial conference the parties agreed, among other things, that none of

them has the right to represent the seventh defendant in these proceedings. This is so because what is at the centre of the dispute is the shareholding in that company which shareholding was the subject of a sale agreement between the plaintiffs on the one hand and, on the other hand, the fifth defendant represented by the second and third defendants. The first and fourth defendants were cited because of their involvement in the transfer of the shares which are at the centre of the dispute in this case.

A combination of factors caused the delay in the finalization of this matter. At the last hearing counsel undertook to file their closing submissions on the agreed dates. These have not been filed to date. Since the written closing submissions are not compulsory the court has decided to proceed to prepare the judgment without them. The parties were advised accordingly. During the trial the attendance of an interpreter who could speak the Chinese language was required since some of the witnesses did not speak the court's official languages. He was not always available. One of the parties who is now represented by the second defendant passed on outside this country during the trial. There were issues pertaining to the appointment of an executor of the deceased party, Zhaosheng Wu. At some point a default judgment was granted following the default of the defendants. The judgment was subsequently set aside and the trial had to resume.

The central dispute in all the three cases is the shareholding and directorship in the seventh respondent. The seventh respondent owns an immovable property, Stand No. 16985 Harare Township of Stand 16969 Harare Township situate in the District of Salisbury, also described in some papers as Stand 16985 Graniteside, Harare. It carries on its business from there. The shareholders and directors of the seventh defendant were the first and second plaintiffs prior to the transfer of the shares into the name of the fifth defendant and the appointment of the second and third defendants as the directors. The plaintiffs seek the reversal of the transactions in terms of which the shareholding and directorship in the seventh defendant were taken away from them.

The facts which are common ground are as follows: The plaintiffs entered into an oral agreement of sale of shares in terms of which they sold their shareholding in the seventh defendant to the fifth defendant represented by the second and third defendants. The second and third defendants are the directors of the fifth defendant. The agreement was entered into in or about 2005. The precise purchase price agreed upon by the parties is in dispute because the original

purchase price appears to have been changed at some point. The details of the re-negotiated purchase price are in dispute. What is common cause is that there is a written document that is headed: "Agreement on the finally solution" (*sic*). It states on the face of it that it was signed by F. Dias representing the seventh defendant and the now deceased Zhaosheng Wu representing the fifth defendant. The document suggests that it was signed on 24 November 2008. An amount of US$200 000.00 was agreed therein as the final balance to be paid on or before 8 December 2008. The document also stipulated that the seventh defendant as represented by Mr F. Dias would submit the deed of transfer in respect of the seventh defendant's immovable property and pieces of ivory registered in the name of the seventh defendant upon payment of the sum of US$200 000.00. Subsequent to the conclusion of the agreement but prior to the payment of the agreed purchase price, the plaintiffs surrendered control of the seventh defendant and its business assets to the second and third defendants. The basis and terms upon which the defendants were given control of the company are disputed. By letter dated 7 December 2009 written on their behalf by their erstwhile legal practitioners the plaintiffs cancelled the agreement of sale on the basis that the second, third and fifth defendants had failed to pay the sum of US$200 000.00 which had been agreed upon as outstanding in 2008. They demanded that the said defendants vacate the premises of the seventh defendant and give vacant possession thereof to the plaintiffs. The defendants tendered the sum of US$200 000.00 in a letter written on their behalf by their legal practitioners on 8 December 2009. The tender was rejected on the basis that the agreement had now been cancelled.

It is also common ground that through the involvement of the first and fourth defendants the plaintiffs were removed as directors of the seventh defendant and were replaced by the first, second and third defendants. Documents suggesting that shareholding had also been transferred were produced by the first and second defendants. The first and fourth defendants were cited herein on account of the alleged fraudulent conduct in transferring the directorship and shareholding of the plaintiffs in the seventh defendant to the second, third and fifth defendants.

Five issues were referred to trial as detailed in the consolidated joint pre-trial conference minute which was signed on 28 February 2013. These are: (1) What were the terms and conditions of the sale of shares agreement entered into by first plaintiff on behalf of 7th defendant in 2005?

(2) Whether or not the fifth defendant breached the 2005 sale of shares agreement; (3) Whether or not the 2005 sale of shares agreement was cancelled; (4) Whether or not the fifth defendant breached the terms and conditions of the written agreement of 24 November 2008; and (5) Whether or not the agreement of 24 November 2008 was cancelled.

The papers filed in this matter were unnecessarily bulky and showed lack of clarity in the minds of those who prepared them. The pleadings were not bound together and paginated. There is also implied and expressed in some of the documents, including the joint pre-trial conference minute, the allegation that the seller of the shares was the seventh defendant. Clearly the seventh defendant could not be the seller of shares in itself. The plaintiffs would have been the sellers, hence they are the ones who have instituted the claims. As if that was not burdensome enough, the evidence led at the trial was equally convoluted. As for the issues, it is difficult to understand why there was still a reference to the 2005 agreement in the joint minute given the explicit admission in the joint pre-trial conference minute that the existence of the 24 November 2008 agreement was not being placed in issue by any of the parties. Implicit in that agreement of 2008 is the fact that there was still an outstanding portion of the purchase price which was then agreed to be US$200 000.00. Indeed, there is nowhere in their papers or evidence where the defendants alleged, let alone proved, payment of the full purchase price agreed upon in 2005. If they had paid the full purchase price for the shares there would have been no need to agree to pay a further uS$200 000.00. Clearly, as at 24 November 2008 the defendants had not paid the full purchase price in terms of the agreement. They were in breach of the agreement. However, the parties seemed to have then compromised on that aspect of the failure to pay the purchase price by concluding the 2008 agreement.

The case can therefore be resolved on the basis of the last two issues in the joint minute.

The evidence

The plaintiffs led evidence from four witnesses. These are Artur Fernando Pereira Dias (the first plaintiff herein), Liliana Dias who is the first plaintiff's wife, Jakob Jan Dekker, a senior manager with the Standard Bank of South Africa, and Witen Ndamuka Muriro an estate agent who gave a valuation in respect of the immovable property belonging to the seventh defendant. The essence of the evidence of the first plaintiff and Liliana Dias was that they kept indulging the

defendants on numerous occasions, including reducing the purchase price, after the defendants had failed to pay the purchase price. The payments which they acknowledged as having been made by the defendants did not come anywhere near the purchase price. A payment of $20 000 was received on behalf of the plaintiffs by Liliana Dias on 25 February 2008. That payment was duly receipted. It was not part of the purchase price but for the trucks. Undertakings to pay the purchase price were not fulfilled. They disputed that a payment of US$45 000 was made into the first plaintiff's account in South Africa. The first plaintiff and his wife denied holding the alleged account. His evidence in this respect was supported by Jakob Jan Dekker who denied the existence of such an account and even stated that such an account number did not reflect the numbering of accounts at the Standard Bank. The US$50 000 allegedly paid in cash was also denied. Liliana Dias stated that the 30 000 which was paid into her son's account was for the accommodation and sustenance of a delegation of Chinese visitors which had been organized by the defendants and, also, for some cables.

The second, third and fifth defendants' first witness was Workmore Musakasa who is employed by the CBZ Bank as Head of Treasury and International Operations. He testified on a "Swift" copy which he said showed a payment of US$45 000 into an account held by A. F. P. Dias in May 2005. The transaction was reversed by the American Express Bank. The money, according to this witness, was then redirected to Standard Chartered Bank Inc. in Jersey on instructions from the representatives of the fifth defendant.

The second witness for the second, third and fifth defendants was the now deceased Zhaosheng Wu. This witness died before the matter had been completed but after he had given his evidence. He was a Chinese national. He stated that the agreed purchase price for the shares in the seventh defendant was US$300 000.00. He testified that he caused transfer of US$45 000 into the South African account of A. F. P. Dias. Later on he gave Dias US$50 000 in cash. No receipt was issued. He stated that the total amount paid to the plaintiffs was US$105 000.00, leaving a balance of US$195 000. He stated that after a meeting of 28 November 2007 he paid US$23 000 to the plaintiff. A further $2 000 was paid on 29 November. He said after taking into account all the payments made the amount which remained outstanding was US$150 000. He stated that this balance was paid. He agreed to pay the US$200 000 because the first plaintiff had

demanded a further payment on the basis that the transaction had taken too long and the assets had appreciated in value. He also stated that the money was for the ivory. He did not pay the US$200 000 because the plaintiffs failed to avail the documents pertaining to the company as well as the ivory.

The third defendant testified as the third witness. Her evidence was that when she and the second defendant became family friends with the first plaintiff the latter asked to borrow US$20 000 which he needed for his trip to South Africa where he needed to attend to his son. The plaintiff refunded the amount after his return from South Africa. At this stage there had only been mention of a sale but no serious negotiations had taken place. She was not personally involved when the sale of shares was negotiated and concluded. She was only informed by her husband about it in April/May 2005. She had no knowledge of the payment made by her husband to the first plaintiff pursuant to the sale at that stage. In August of the same year there was a formal takeover of the seventh respondent by the fifth respondent. However, even after that the first plaintiff kept an office at the premises of the seventh respondent. She stated that the purchase price was US$300 000. The amounts paid were in instalments of $50 000, $30 000 (transfer), $20 000 (in cash) and $45 000 by way of transfer. She stated that just before the written agreement contained in the memorandum of 24 November 2008 she paid a sum of US$150 000 to the first plaintiff in cash. According to her the agreement to pay US$200 000 was a compromise brought about by the offer by the plaintiff to sell some ivory to the fifth defendant and also his demand for a top-up on the original purchase price. She stated that she tendered payment of the US$200 000 but was advised that the first plaintiff was now demanding US$1 000 000.00. That was when she instructed the legal practitioners for the fifth defendant to proceed with litigation.

Two witnesses testified on behalf of the first and fourth defendants. These were the first defendant and Brian Shawn Murphey. The two were partners in an accounting firm which was practising under the name Erasmus Murphey & Associates. It was later incorporated into Eras Accounting (Pvt) Ltd by the first defendant after Brian Shawn Murphey had left it. Their firm provided accounting and secretarial services to the seventh defendant. Murphey confirmed that a Form CR 14 which listed among the directors Frank Wu Willa Yu had been submitted by a Mrs Mudimu who was their member of staff. This was irregular because Frank and Willa were the

nicknames of the second and third defendants, respectively. Not only was it irregular to use nicknames in that document; they are listed as if the names ore of one person. Murphey stated that at some point the first plaintiff approached him with a request for him to be a director of the seventh defendant. He declined the invitation because he was going to leave the country in the foreseeable future. He referred him to the first defendant for assistance in that regard. He recalled an instruction from the first plaintiff to issue an additional fifty per cent shareholding in the seventh defendant to the second defendant. The company had no share register or share certificates. Upon being challenged about what he had told the police Murphey stated that the instruction from the first plaintiff was to sell shares. Later he changed and suggested that the effect of a sale of shares was the same as allotment of shares. He never issued a Form CR2 in respect of the instruction. There was no share certificate signed by the directors of the seventh defendant which he was aware of. There was no resolution to either transfer or allot shares. He was acting on verbal instructions, allegedly because the first plaintiff had said that he did not want any written record of the transactions. He understood the purchase price for the fifty percent shareholding to be in the sum of US$200 000.

Dawid Johannes Erasmus, the first defendant herein, gave evidence that the first plaintiff mentioned his intention to sell his shares in the seventh defendant to the Chinese. He then advised him to deal with the last witness, Murphey, who was responsible for dealing with transfer of shares. After that the plaintiff met him only in connection with the accounts of the company. On a subsequent day he brought a copy of the deed of transfer for the immovable property of the seventh defendant. He received communication from the second and third defendants' legal practitioner about why they were not the directors of the seventh respondents. He asked for their correct particulars in order to proceed to make them directors. He also met the third defendant who produced a written agreement of 2005 and another one of November 2008. He acted on these agreements without recourse to the plaintiffs and proceeded to sign a share certificate giving shares to the fifth defendant. He said he signed in his capacity as director. His appointment as director is not based on any resolution.

The standard of proof

The onus is on the plaintiffs to prove their case against the defendants on a balance of probabilities, see *Miller v Minister of Pensions* [1947] 2 All ER 372 at 374; *Ocean Accident and Guarantee Corporation Ltd v Koch* 1963 (4) SA 147(A) at 157D. The existence of the agreement of sale was proved. What has to be considered is whether the onus was discharged in respect of the contentious issues.

Analysis of the evidence

The evidence of the plaintiff's witnesses proved that after the agreement in 2005 the fifth defendant, represented by the second and third defendants, did not pay any money towards the purchase price. The only payment which was admitted, which was evidenced by a written acknowledgment of receipt, was the sum of US$20 000.00. Liliana Dias explained that this payment was for use of their trucks. The receipt does not state that it was in respect of the purchase price. The plaintiffs' witnesses denied receiving any of the other alleged payments. Their evidence is credible. The defendants did not explain why they would insist on a written acknowledgment of receipt for a small sum of US$20 000.00 but not for large sums such as US$150 000.00, US$45 000.00, and US$30 000. The evidence of the plaintiffs' witnesses on these alleged payments makes sense. In respect of the US$45 000 which was alleged to have been paid into a South African account but later said to have been transferred into an American account, the plaintiffs showed that the first plaintiff never held accounts in the alleged banks. His evidence in this respect was supported by that of Jakob Jan Dekker who testified that the alleged account was non-existent. It is not without significance that when Dekker gave evidence the defendants were busy trying to prove that such an account existed only to later turn around and claim that the payment was made into an American account and not in the South African account.

The evidence of Workmore Musakasa does not prove payment of US$45 000 to the first plaintiff. Firstly, the suggestion that the payment was to an account in the United States of America was itself inconsistent with the defendant's case that payment was into a bank in South Africa. The witness did not produce a statement to show that the account of the fifth defendant was debited with the amount in question. There is also mention of a sum of US$44 970 as the amount that went to the account at Jersey. This allegation, including the alleged payment into the account at Jersey, were not put to Jakob Dekker when he gave his evidence. In fact, if it had been the

defendants' case that the payment was credited into an account in the United States then it would not even have been necessary for the plaintiffs to call the witness from the Standard Bank in South Africa. This happened because of what was being alleged by the defendants that the payment had been made into a South African account. There was also the fact that in the file of this witness there was reference to A & G Enterprises as the customer, not the fifth respondent. Yet there was another swift copy in which there was no reference to A & G Enterprises. In another document relied upon by this witness the name mentioned was A & J and not A & G. The suggestion that these entities were the same or that A & G Enterprises was a trading name for the fifth defendant is not only unconvincing but is not supported by any evidence. During cross-examination by the plaintiff's counsel the witness admitted that the Swift copy relied upon by the defendant (p. 18 of exh. 3) was not authentic and was suspicious. He even admitted that the insertion of the name of the fifth defendant in the disputed document was a forgery. This very same witness had written that payment was made into a Standard Bank account in South Africa only to change his evidence in court upon being confronted with his own documents referring to a bank in Jersey.

Zhaosheng Wu readily stated that he was a Chinese national when he was being led in evidence. However, there are some copies of the Form CR 14 in which he represented himself as a Zimbabwean. His statement that he paid US$50 000 was unsupported by evidence other than his mere say so. It is inconceivable how he would insist on getting a receipt for US$20 000 but not for the bigger amount. The problems pertaining to the alleged transfer of US$45 000 have been discussed above. There is no need to repeat the deficiencies in the evidence of the defendants. The witness relied on a document which mentioned a sum of R35 000 as having been paid to prove payment of US$45 000. The two figures and the currencies are different. The suggestion that he agreed to state a sum of $35 000 because there was a dispute as to the correct amount paid does not make sense and is clearly false. He would have obtained the proof from his bank if indeed such a payment had been made. The witness confirms that the sum of US$200 000 was not paid. The amount was only tendered after the agreement had been cancelled.

Upon being asked during examination in chief whether there had been compliance with the agreement concluded in 2005, the third defendant's response was: "Not in detail". This was an admission that there had not been full compliance with the terms of the contract. Earlier on she

stated that she was not aware of the amount paid by her husband to the plaintiff when the agreement was concluded. Later she stated that he had paid $50 000. She was changing her evidence as the trial progressed. Also, she referred to a telegraphic transfer of US$30 000 made in September 2006. Even on her own figures the amount paid did not amount to the US$300 000 which she alleged was the purchase price. She stated that the sum of $200 000 was tendered. There is no proof of such a tender except for the one that was made after the agreement had been cancelled.

Whether the fifth defendant breached the agreement of 24 November 2008

The more appropriate formulation of the issue should be whether the fifth defendant breached the agreement of sale. This is so because the memorandum of 24 November 2008 was merely a written configuration of the obligations of the parties under the existing agreement. It clarified beyond doubt the agreed outstanding amount which the fifth defendant was obliged to pay and the date by which the payment was to be made. It also stated the obligations which the plaintiffs were obliged to discharge once the payment of US$200 000 had been made. Hitherto the parties had related to each other informally with very little documentation of what had been agreed upon and the deadlines for performing. Significantly, the memorandum of 24 November 2008 does not mention that the defendants had paid the sum of US$300 000 already. The third defendant's evidence was that she was the one who prepared it. If indeed there had been previous payments these would in all probability have been mentioned. In any event, as noted earlier on, there was no proof of payment of the $300 000.

It is common cause that the US$200 000.00 was not paid before the agreed date of 8 December 2008. The suggestion that it was verbally tendered is not supported by both the probabilities and the evidence led. The first tender of payment of that amount is contained in the letter written by the defendant's legal practitioners on 8 December 2009, exactly twelve months after the due date for payment. That letter does not refer to any previous tender. The letter expressly states as follows: "Our client now hereby tenders the amount of US$200 000.00 in full settlement." The sentences immediately preceding that sentence show that there was a "problem relating to the US$200 000.00". That problem is not described. Whatever the problem was, it did not represent a tender of payment of that amount. Clearly, therefore, the fifth defendant breached

the agreement of 24 November 2008. I also find, as a fact, that it had also breached even the initial terms of payment even on the version put forward by its own witnesses.

Whether the agreement of 24 November 2008 was cancelled

The agreement was cancelled by letter dated 7 December 2009. The cancellation is unequivocal. The letter states in paragraph 8: "In the premises, we have been instructed to give you notice, as we hereby do, that the agreement dated the 24th November 2008 regarding the acquisition of Monomotapa Garden Furniture (Pvt) Ltd by Shomet Industry Development (Pvt) Ltd has been cancelled with immediate effect. Pursuant to this cancellation, we are instructed to demand . . . ". In the letter dated 8 December 2009 the defendants through their legal practitioners challenged the cancellation on the one ground that there was no offer to refund a sum of US$300 000. As held above, there is no evidence that this amount was ever paid. The only acknowledged payment was in the sum of US$20 000 which the plaintiffs stated to be for the hire of the trucks. My conclusion, therefore, is that the agreement was validly cancelled for breach.

The liability of the first and fourth defendants

The first defendant's evidence was that matters pertaining to sale and transfer of shares were handled by his partner, Murphey. However, he himself went on to include himself as director of the seventh defendant without any resolution appointing him as such. His conduct about the circumstances in which he signed the share certificate giving the fifth respondent shares in the seventh respondent raises a lot of questions. He had never met the third defendant before. She merely telephoned him and at the meeting that he was seeing her for the first time he was prepared to sign the share certificate. More significantly, he did not even consult the plaintiffs when he signed the share certificate. His testimony was that he signed in his capacity as director. But his directorship is one of the issues being contested in this dispute. But this is the same witness who earlier on stated that matters concerning transfer of shares fell outside his duties. He was also clearly conflicted in that his firm was handling the affairs of the seventh defendant but now he had become a director of the seventh defendant without the authority of a resolution. Without a resolution of the directors, he went on to sign a share certificate. It is clear, too, that the first defendant was now representing the interests of the second and third defendants. When he wrote his email of 10 January 2010 he knew that the fifth defendant had already breached the agreement

by failing to pay the US$200 000 by the agreed date. He states in that email that the payment was indeed overdue. But he was trying to pressurize the plaintiffs to surrender their shareholding in the company. He was now communicating with the other defendants' legal practitioners. He was now dealing with the matter as if he was an agent of the second, third and fifth defendants. His company, the fourth defendant, was handling the affairs of the fifth defendant as at about January 2010 which placed the first defendant in a situation of conflict of interest. It is also clear that the appointment of the second and third defendants as directors of the seventh respondent was done on his authority without any resolution from the directors of the company. When he appointed the second and third defendants as directors of the seventh defendant and signed a share certificate in favour of the fifth defendant he was aware or ought to have been aware that the purchase price for the shares had not been paid. His conduct was therefore fraudulent.

Conclusion

In my view the plaintiffs have proved their case against the defendants on a balance of probabilities. They are therefore entitled to the relief sought.

Costs

The plaintiffs asked for costs on the attorney-client scale. The special order of costs is warranted where there are special reasons, such as reprehensible conduct on the party of the party concerned or the defence tendered is vexatious. In this case the defendants strenuously opposed the plaintiffs' claims even though they knew that they did not pay the purchase price for the shares. The conduct of the second, third and fourth defendants, supported by the first defendant, shows that they were determined to get the shares for free. Even after being given the indulgence to pay the sum of US$200 000.00 before 8 December 2008 the defendants did not act. They were jolted into action by the cancellation of the sale. The so-called tender of payment came more than a year after the deadline given to them to make the payment. They sought to cloud issues by referring to the title deeds and ivory yet it is clear that these would only be delivered upon payment of the US$200 000.00. Any demand for the delivery of the ivory and the deed of transfer before payment was vexatious. The first defendant gave evidence of how the third defendant came to his office asking to get the title deed. This is not surprising given the fraudulent transfer of shares which they never paid for into their company's name. The conduct of the first defendant in his individual

capacity and in his capacity as the representative of the fourth defendant was fraudulent and tainted by a clear conflict of interest. He pretended to be representing the plaintiffs when clearly he had taken sides with the second, third and fifth defendants. On account of the foregoing facts, the punitive order of costs is warranted. The conduct of the first, second, third, fourth and fifth defendants is reprehensible.

Disposition

In the result, IT IS ORDERED THAT:

1. Judgment in HC 1442/10, HC 2480/10 and HC 6520/10 be and is hereby granted in favour of the plaintiffs against the first, second, third, fourth, and fifth defendants as follows:
    1.1 The cancellation of the agreement of sale of the shares in the seventh defendant which is the owner of the immovable property known as Stand 16985 Harare Township of Stand 16969 Harare Township situate in the District of Salisbury, otherwise known as Stand 16985 Sande Crescent, Graniteside, Harare, be and is hereby confirmed.
    1.2 The second, third and fifth defendants and all persons claiming occupation through them be and are hereby ordered to forthwith vacate the immovable property referred to in paragraph 1.1 hereof failing which the Sheriff is directed and authorized to take all steps necessary to evict them and ensure that the plaintiffs receive vacant possession of the property.
    1.3 The second, third and fifth defendants shall surrender to the plaintiffs all movable property belonging to the seventh defendant failing which the Sheriff is directed and authorized to take all steps reasonably necessary to ensure that such property is returned to the custody of the seventh defendant as represented by the plaintiffs.
    1.4 The defendants' claim in reconvention filed in Case No. HC 2480/10 is dismissed.
    1.5 The Forms CR14 reflecting the first, second and third defendants or any one of them as directors of the seventh defendant are hereby set aside and the plaintiffs are hereby reinstated as the bona fide directors of the seventh defendant.
    1.6 All instruments signed transferring or purporting to transfer the shareholding in the seventh defendant from the plaintiffs to the fifth, third and second defendants or

any one of them, including CR2 Forms and share certificates, be and are declared unlawful and are set aside.

1.7 The plaintiffs' shareholding in the seventh defendant be and is hereby reinstated.

2. The first, second, third, fourth and fifth defendants shall pay the costs of suit in all the consolidated matters on the legal practitioner and client scale jointly and severally the one paying the others to be absolved.

Venturas and Samukange, plaintiffs' legal practitioners
Granger & Harvey, 1st & 4th defendants' legal practitioners
Hussein Ranchod & Company, 2nd, 3rd & 5th defendants' legal practitioners