

DUNELARK (PVT) LTD

And

DUMINSANI TENESI

And

THABO TENESI

Versus

SUNG SOO KIM

And

WANG SOON KIM

And

THE PRINCIPAL CHIEF IMMIGRATION OFFICER

IN THE HIGH COURT OF ZIMBABWE

BERE J

BULAWAYO 29 AUGUST & 6 SEPTEMBER 2007

S S Mazibisa for the applicants

J Ndlovu with Munjanja for the respondents

Point In limine

BERE J: What is clear from the papers filed by the applicants and respondents as augmented by the submissions made in chambers by their respective legal practitioners is that there is a material dispute of facts on many issues which this court is called upon to determine in this application. CR 14, which is annexure 'A' to respondents' notice of opposition clearly indicate that the first and second respondents have an interest in the first applicant in that they are given as co-directors of that company. There are six directors listed therein.

That they have vested interest in that company is further amplified by

annexure 'A' to the applicants' founding papers which states in very clear terms that when the lease agreement which is now central to the dispute between the parties was

signed, Dumisani Tenesi and Sung Soo Kim signed the lease agreement for and on behalf of first applicant.

Respondents have alleged the existence of a joint venture between themselves and the 2nd and 3rd applicants and have gone further to allege that their removal from the directorship of first applicant was fraudulently done and they are challenging that.

The alleged joint venture was supposed to be terminated in terms of section 8:01 of annexure 'B' to the respondents' notice of opposition and it is clear from the papers filed that the respondents allege that that section has not been complied with. In case number HC 1778/07 the respondents are challenging their removal from the directorship of the 1st applicant company and that case has yet to be resolved. It is still outstanding.

It is the court's firm view therefore that before the directorship of the 1st applicant company is determined one way or the other, the 1st applicant as a juristic entity cannot bring any action against the respondents and any company resolution that purports to unilaterally dismiss the other co-directors remains invalid or defective. This is particularly so if only two directors out of six purport to sign a authorising initiation of proceedings against the other co-directors. Such a resolution remains defective.

It is for this reason that the court finds persuasion in the point raised *in limine* by the respondents and consequently the urgent application is dismissed with costs.

Jabulani Ndlovu & Associates c/o Munjanja & Associates, 1st and 2nd respondents
legal practitioners

Messrs Cheda & Partners, applicant's legal practitioners