AZIM DHANANI
versus
PICCOBELLO (PVT) LTD
and
TIMOTHY JOHN WOTTON
and
ANA MOMCILOVIC
and
JOVAN ILIC
and
THE DEPUTY SHERIFF –HARARE

HIGH COURT OF ZIMBABWE
KUDYA J
HARARE 16 January2012 and 5-8 February and 25 March and 3 July 2013

CIVIL TRIAL

*H Zhou*and *R Goba,* for the plaintiff
E Samukange, for the first, second, third and fourth defendants

KUDYA J: The plaintiff issued summons on 5 January 2011 against the first four defendants seeking the transfer of 51 shares in the first defendant held by the second defendant purportedly on his behalf in terms of an agreement entered into between the third and fourth defendants and him and costs of suit on the attorney and client scale. The action was contested by the first four defendants.

The plaintiff testified and called the evidence of Vijay Kumar Patel (Patel) with whom he struck a friendship for the first time on the golf course in September 2007 and later gave a special power of attorney, exh 1, on 24 June 2010 with the power of substitution to be his general attorney and agent to act on his behalf to manage, attend meetings, receive dividends due and otherwise do all things necessary in respect of his 60% interest in the first defendant. In addition he called the evidence of Gabriel Chipara, a purported accountant and expert in business engineering. He also produced a 58 paged bundle of documents as exh 2. The third and fourth defendants are siblings and Serbian nationals who testified on their own behalf. The second defendant was in default throughout the trial.

Most of the evidence was common cause. The plaintiff is a 59 year old Belgian national. He was the husband of the Deputy Ambassador of the United States of America to Zimbabwe. He came to Zimbabwe in September 2007 as an accompanying spouse. His wife's tour of duty ended at the end of June 2010. She was posted to Hyderabad, India. He left Zimbabwe and went with his wife to her new station. The third defendant came to Zimbabwe as a dependent of her husband in 1998. He opened Biser Computers and Components (Pvt) Ltd and obtained a residence permit on 2 September 1998 and permanent residence in 2000. He died on 14 November 2002. She assumed his residence status and became the sole shareholder in the computer company. The fourth defendant, her brother, qualified as a civil engineer in Serbia and moved to Zimbabwe in 2005 and has stayed with her ever since. He was granted a two year work permit in 2006. During the meltdown of the Zimbabwean economy in 2007, the two siblings decided to operate a restaurant specialising in European and Indian cuisine. They identified the residence of the second defendant, 47 Glenara Avenue Harare as a suitable place to operate from. The third defendant, representing Civavale Investments, entered into a lease agreement on pp 48-58 of exh 2 with the second defendant's wife, representing Tim Wotton Auctioneers (Pvt) Ltd and paid a deposit of US$750.00 on the lease.

The siblings required between US$50 000.00 and US$55 000.00 to renovate the residence and run the envisaged project. Local banks failed to advance them the required capital. They drew a general proposal to solicit funds from individuals but were unsuccessful. Their fortunes changed for the better when the fourth defendant met the plaintiff at Chapman Golf Course in Harare in March 2008. He had failed to secure commitment from three other prospective financiers. He explained to him their idea, plan, location and dream for the restaurant that was hampered by lack of finance. Thereafter the plaintiff met the siblings and the second defendant at the Royal Harare Golf Club on 2 April 2008. At his request, in May 2008, they supplied him with the written proposal for the restaurant on pp 43-45 of exh 2. The proposal contemplated, amongst other things, the allotment of 60% of the shareholding in the future company to the financier and the remaining 40% in equal proportion to the siblings. On his return from Canada where he had visited his mother, he discussed the proposal with the siblings at his Greendale residence. He subsequently invited the siblings back to his residence to discuss the proposal in the presence of Patel. In the meeting the plaintiff invited Patel to subscribe to a 30% shareholding in the future company. He declined. The plaintiff agreed to take up the 60% shareholding for his account.

The first defendant, with a capital of ZW$100 000.00 divided into 100 000 shares of one dollar each was formed on 25 April (p 26-42of exh 2, CR 14, articles and memorandum of association) and registered on 8 May 2008 (certificate of incorporation on p 47 of exh 2).In terms of the CR14 on pp26-27 the directors of the company were the plaintiff and the second, third and fourth defendants. The memorandum of association on pp 29-34 sets out the objects of the company. The four directors subscribed to a total of 100 shares. The plaintiff subscribed to 9 shares, the second defendant to 51 shares, and the third and fourth defendants to 20 shares each. In the letter of 2 November 2010 on p 15 of exh 2, the second defendant stated that the plaintiff deliberately subscribed to 9% shares in order to keep a low profile as he knew that he was infringing the code of conduct pertaining to spouses of United States of America diplomats in Zimbabwe who were not permitted to engage in business. The two siblings were executive directors while the plaintiff and the second defendant were non-executive directors. The company secretary and accountant was Clarkson Gweshe.

The company opened a bank account in its name on registration. The plaintiff transferred United States dollars into the third defendant's foreign currency account in several tranches between 20 May and 14 November 2008 in the total sum of US$74 400.00 as set out on p 23 of exh 2. The record of payment certifies that the plaintiff "performed below stated payments as the investments to *Piccobello (Pvt) Ltd*" and was signed by the siblings and plaintiff. The amounts included direct payments of US$1 500.00 for rentals for two months to the second defendant, US$7 400.00 to *Heinz Taube (Pvt) Ltd* for the purchase of a generator, and US$10 000.00, as a buyout, to Yolanda Richards, a tenant who had been leasing the property and operating a bottle store. The balance was all paid to third defendant. It was common cause that on 14 November 2008, on the payment of the last instalment towards his capital contribution, the parties agreed that the total capital contribution made by the plaintiff would be paid back to him before dividends were declared and distributed. The plaintiff and Patel often visited the premises during the renovations of the house into a restaurant and according to the third defendant gave them permission to do what was best for the company.

The restaurant opened its doors on 14 November 2008. The date was set by the plaintiff and the two siblings. In the period of 8 months, between 23 December 2008 and 31 August 2009, the plaintiff received from the company a total of US$78 373.00, in lieu of his capital contributions. Thereafter, between 2 October 2009 and 28 February 2010 he also received an additional six payments totallingUS$37 500.00 and acknowledged receipt of these sums by appending his signature on p 25 of exh 2. He also received a further four payments totalling US$27 000.00 between 1 March and 31 May 2010. During the same period, the siblings received an aggregate salary of US$29 000.00. On the dates that the plaintiff received the additional ten payments of US$64 500.00, the siblings received an equal aggregate amount. They acknowledged receipt of the sum of US$29 000.00 on p 24 of exh 2 and the aggregate amount of US$64 500.00 in their oral testimonies.

The dispute over the plaintiff's shareholding in the company surfaced according to Patel in April/May 2010. He was present in a meeting held at second defendant's Milton Park premises between the plaintiff and the second defendant in which the former demanded the 51 shares from the latter. The second defendant refused to transfer the shares without the consent of the two siblings. It was common cause that the fourth defendant was invited to a similar meeting at the same venue and he categorically refused to sanction the transfer. The third defendant averred under cross examination by Mr *Goba,* for the plaintiff, that the plaintiff did not assert his alleged rights over the 51 shares between 8 May 2008 and 25 June 2010. In the course of cross examination, she was to alter her response. She stated that as early as January 2010, the siblings had approached the plaintiff to discuss the distribution of the 51 shares held in trust by the second defendant and he had indicated that the second defendant was his nominee. She further stated that the plaintiff had declined the three options that the siblings had tabled and which they later forwarded to his erstwhile legal practitioners on 8 November 2010.

The plaintiff caused his erstwhile legal practitioners to write the letter dated 12 July 2010 on pp20-22 of exh 2 to the directors of the company and the second defendant demanding, amongst other things, the transfer of the 51 shares to him. On 15 July 2010, the second defendant responded to the letter on behalf of the company and attached the CR 14 form, as proof of the claim to the shares and corrected the erstwhile legal practitioners that any resident of Zimbabwe, irrespective of his nationality could legally hold any percentage of shareholding in any Zimbabwean company. The third defendant received the letter of 12 July. She had sight of the response of the second defendant for she wrote by hand at the bottom of the letter that the repayment documents of the investment and dividends to the plaintiff were attached.

The plaintiff's legal practitioners with Patel and the second, third and fourth defendants met on 28 October 2010 to resolve the dispute. On 2 November 2010, the second defendant wrote a detailed 12 point letter on pp 15-16 of exh 2 to the plaintiff's legal practitioners setting out the past and present position of the company. In turn, as a follow up to the meeting of 28 October, the siblings wrote on 8 November a joint three option proposal for the resolution of the dispute over the 51 shares. Both letters were responded to on 23 November 2010. The parties failed to resolve the dispute. The plaintiff issued summons on 5 January 2011. He had relocated to Hyderabad with his wife and was ordered at the pre-trial conference held on 13 June 2011 to furnish security for costs in the sum of US$10 000.00 by 20 June, which he duly did on 14 June 2011.

The sole issue referred to trial was whether the first, second, third and fourth defendants should be ordered to transfer to plaintiff 51% shareholding of first defendant currently held by second defendant. The onus is on the plaintiff to prove on a balance of probabilities that he is entitled to the transfer of the 51 shares in issue. In *Zesa* v *Dera* 1998 (1) ZLR 500 (S) at 503E McNALLY JA with concurrence of EBRAHIM JA and KORSAH AJA, as he then was, stated that:

> "It is a startling, and in my view, an entirely novel proposition, that in a civil case the standard of proof should be anything other than proof on a balance of probabilities."

See also *Matiza* v *Pswarayi* 1999 (1) ZLR 140(S) at 143C.

The plaintiff based his entitlement on the four page proposal document, on which his acceptance was founded. The proposal sets out the suggested name of the restaurant, its prime location, its capacity, the envisaged renovations and required equipment and furniture, the operational details, the type of financier envisaged and the estimated capital outlay. Specifically, the plaintiff relies on three paragraphs in the proposal. The first, on p 43 of exh 2 reads:

> "Our idea to invite you as a partner is based on few factors. First of all, there is the financial aspect, which means we are not in a position to open the restaurant alone, so we would either opt for a loan or go for a partner. The first option is a bit of a problem, because we cannot get a loan in this country, and to go back to Serbia and try to arrange it is a very long and uncertain process. That is why we decided to go for the second option which is to find a partner. Of course, every partnership is different and every partner has different ideas, but, we think that this is actually an advantage. We are of the opinion that you will bring to this project not only the money but also some ideas which can benefit all of us. We also think that with you as a partner, we can target a much wider population as the future clientele which is excellent for our project."

The second and third are on page 45 of exh 2. They read:

> "As you can see from the proposal, we think that the whole investment in this project will not exceed 50-55 000 US$. We are of the opinion that money invested into this project, is money well spent".

And

> "Since you are coming into this project as an investor, we will be on the managerial side of business; we are proposing that you take 60% of the shares in our future company. We think that this will suit you but also give you the reason to play an even bigger role in our project. Regarding the legal issue, we are of the opinion that we should form a new company that will run the business, but if you have other ideas, we can consider them as well. There is also the possibility of the use of our existing company, since we are licenced to every possible kind of trading."

The plaintiff stated that he accepted the proposal. He accepted the advice of the second, third and fourth defendants that as a foreigner, a Belgian national, he could not hold the majority shareholding in a local company in view of the provisions of the newly enacted and topical Indigenisation and Economic Empowerment Act [*Cap 14:33*]. He orally agreed with the defendants to appoint the second defendant, a Zimbabwean, as his nominee for the 51 majority shares in the company, hence the shareholding structure crystallized in the CR 14 form in which he was registered as a 9% shareholder. He averred that he stipulated that he would be paid his initial investment before dividends were paid out and the siblings' agreed. He further relied on the payment of dividends by the company to him in equal amounts to the siblings to the complete exclusion of the second defendant after he had redeemed his capital as proof of his majority shareholding. He also relied on some of the contents of the twelve point letter written by the second defendant to his legal practitioner.

The third and fourth defendants conceded that the plaintiff considered the proposal and endorsed it. In their joint plea, in response to the averments in para 8 of the declaration that the plaintiff was invited to become an investment partner and financier in exchange for 60 % shareholding in the company to be formed, the siblings denied that he was an investment partner, and a shareholder. Rather they averred that he provided a loan to the company. The plea categorically refuted the plaintiff's shareholding in the company. In both their testimonies the siblings, however, conceded that the plaintiff was a 9% shareholder. The third defendant was adamant that he did not invest US$74 400.00 in the company but provided a loan in that amount to her for use by the company. Her brother stated that the plaintiff initially invested but divested himself of his investment when he redeemed the capital he had injected into the company. The siblings were at pains to dispute that the payments made after the redemption of capital were dividends. This was in spite of the sister having endorsed them as such in her own handwriting in the response from second defendant of 15 July 2010.

I found that the plaintiff gave his evidence clearly and truthfully. He was not shaken in cross-examination. Patel corroborated his testimony on the events that happened in his presence. The siblings were not truthful witnesses. The denial in the plea of the plaintiff's shareholding in the company was not consistent with CR14 form and their oral evidence. The sister's testimony was coloured by fear of losing the source of her livelihood in the event that the plaintiff was held the majority shareholder as she believed that he would sell the company to the highest bidder. The failure by the second defendant to avail himself from the United Kingdom where he has relocated to testify left the versions of the plaintiff and Patel that he confessed to them that he held the shares in trust for the plaintiff, uncontroverted. The probabilities favour the plaintiff in regards to adoption of the suggestions in the proposal concerning the shareholding structure. He was in a stronger bargaining position at the time the agreement was reached and the siblings were prepared to eat from his hands to access the required capital.

In resolving the factual dispute on whether the parties concluded an agreement based on the acceptance of the proposal by the plaintiff I am guided by case law from both South Africa and Zimbabwe. The approach to follow was persuasively set out in *Cinema City* v *Morgenstern Family Estates (Pvt) Ltd and Others*1980 (1) SA 796 (AD) at 803G-Hwhere JANSEN JA stated that:

> "The matter is essentially one of interpretation. At the risk of stressing the obvious, it must be pointed out that the first step in interpreting a written contract is to read it. This entails attaching to each word that ordinary meaning (of the several which the word undoubtedly will bear) which the context seems to require and applying the common rules of grammar (including syntax). Thus we may arrive at a *prima facie* meaning of each word, phrase and sentence. The document must, however, be read and considered as a whole and in so doing it may be found necessary to modify certain of the *prima facie* meanings so as to harmonize the parts with each other and with that whole. Moreover, it may be necessary to modify further the meanings thus arrived at so as to conform to the apparent intention of the parties."

Again in *Chikoma* v *Mukweza* 1998 (1) ZLR 542(S) at 543D-E: GUBBAY CJ stated that:

> "Against this scenario, the approach to be adopted to the issue of vagueness must be that expressed by PRICE J in *Hoffmann & Carvalho* v *Minister of Agriculture* 1947 (2) SA 855 (T) at 860, namely:
>
> > "Where parties intend to conclude a contract, think they have concluded a contract, and proceed to act as if the contract were binding and complete, I think the court ought rather to try to help the parties towards what they both intended rather than obstruct them by legal subtleties and assist one of the

> parties to escape the consequences of all that he has done and all that he has intended ... "

Not to be overlooked, as well, are the wise words of LORD WRIGHT in *Hillas & Co Ltd* v *Arcos Ltd*(1932) All ER Rep 494 (HL) at 503I; (1932) 147 LT 503 (HL) at 514:

> "Businessmen often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly, the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, *verba ita sunt intelligenda ut res magis valeat quam pereat*."

See also *Burroughs Machines Ltd* v *Chenille Corp of SA (Pvt) Ltd* 1964 (1) SA 669 (W) at 670G-H."

The siblings invited the plaintiff to consider their proposal. The plaintiff read and accepted the proposal. The acceptance of the proposal perfected the agreement to invest in a future company in which the plaintiff would hold 60% against 20% for each sibling in the shareholding of that company. He proceeded to disburse funds to fulfil his part of the bargain. He gave the siblings authority to renovate the house in the best interest of the company. When the siblings desired a salary raise, they sought his permission and when he declined to sanction it, they deferred to his word. According to the third defendant, dividends were paid at the plaintiff's dictatorial behest. He received a dividend far beyond his 9% shareholding. It was common cause that the second defendant did not participate in the declaration and receipt of dividends. The conduct of the plaintiff and the acquiescence of the siblings in that conduct confirmed his averment that he was the majority shareholder in the company.

It was the clear evidence of the siblings under cross examination that the 51% shareholding did not belong to either of them. The sister suggested that it was held by the second defendant in trust for the company. The brother suggested that the three minority shareholders were entitled to the disputed shares. The proposal envisaged the allocation of those shares to the plaintiff. A proper reading of the second defendant's 12 point letter of 2 November 2010 demonstrates that the 51 shares belonged to the plaintiff. The letter sets out three positions. The first position being the invitation to the plaintiff into the project as an investor, which invitation he accepted. The second was an explanation of how 51% of the shareholding was housed in trust in his name and the third was his belief that after the redemption of his capital, the plaintiff was no longer entitled to the 51 shares.

The appointment of the second defendant as a nominee for the plaintiff was based on two factors. The first was the fear that the plaintiff had of the future implications to his majority shareholding in the company *vis a vis* the Indigenisation and Economic Empowerment Act. To protect his investment of US$74 400.00 he sought and obtained the insertion of clause 32 in the lease agreement increasing its tenure from one to five years to guarantee his return on investment, against early termination of the lease, which exposure would decrease to zero at the end of the lease period. The second was his desire to circumvent any possible infringement of diplomatic conduct for spouses of serving diplomats in Zimbabwe agreed to between the Government of Zimbabwe and United States of America. The fifth and sixth points in the letter read:

> "My position in the company was to hold the majority shareholding. This was requested and understood by all shareholders. My 51% shareholding was to guarantee the legality of the company's registration to comply with the laws of Zimbabwe. It was on trust that I was allocated 51% of the shares, in that I would not jeopardize the *other minor shareholders*, and it is for this reason that I have no intention of abusing or misusing my authority…
>
> Subsequent to the company's formation Mr D expressed his wish that I should relinquish my 51% shareholding to himself. The advice that I was given told me that both Mr D and myself would be violating the diplomatic laws of the USA and of the Zimbabwe Ministry of Foreign Affairs. Hence I did nothing."

Reference to the other minority shareholders in my view is to the siblings. The plausible meaning of the two points is that the 51% shareholding was held in trust for the plaintiff to allay his fear of the indigenisation law. When the time to transfer came, he was impotent to act for fear of breaching what he believed were restrictive diplomatic rules of conduct. There was no evidence led on the law governing the diplomatic conduct of spouses between the USA and Zimbabwe. The testimony of the plaintiff that there was no such prohibition was not controverted. The law of indigenisation did not prohibit majority shareholding by a foreigner in a Zimbabwean company at the time. In fact the second defendant held 100 per cent capital in Biser Computers. The suggestion that the plaintiff required the approval of the Zimbabwe Investment Authority to invest a sum less than US$100 000.00 was not borne out by s 13 of the Zimbabwe Investment Authority Act [*Cap 14:30*], which reposes discretion in the investor.

It is for these reasons that I hold that the second defendant held the 51 shares in the company as a nominee of the plaintiff.

I am, however, unable to grant the plaintiff the relief he seeks for two reasons. The first is based on the submission by Mr *Samukange*, for the defendants, that the transfer of shares registered in Zimbabwe to a foreigner, without exchange control authority, is prohibited by s 13 (1) of the Exchange Control Regulations SI 110/96. It reads:

> "**13. Transfer of Zimbabwean-registered securities and coupons**
> (1) Subject to section 17, unless otherwise authorised by an exchange control authority, no person shall transfer any security which is registered in Zimbabwe unless—
> *(a)* he or the person, if any, for whom he is a nominee is a Zimbabwean resident; and
> *(b)* the transferee or the person, if any, for whom he is to be a nominee is a Zimbabwean resident; and
> *(c)* he delivers to the transferee, at or before the time of transfer, a declaration in the form set out in the First Schedule as to his residence or his nominee's residence, as the case may be.

S 17 reads:

> "**17. Special provisions for securities listed on Zimbabwe Stock Exchange.**
> Subject to such terms and conditions as may be prescribed, a listed security may be issued or transferred to a foreign resident or his nominee."

The transfer can only take place under the authority of the exchange control authority. At the time the summons was issued on 5 January 2011 and the time of *litis contestatio* when pleadings were closed and issues crystalized and the time of judgment, the plaintiff was a foreign resident. The uncontroverted evidence of the third defendant was that the 73 year old second defendant had relocated to the United Kingdom to be near his children and grandchildren. He was unable to leave the United Kingdom to come and testify. He appears to be a foreign resident. Neither the second defendant nor the plaintiff is a local resident. The transferee, in this instance the plaintiff is not a Zimbabwean resident and as the second defendant is not in Zimbabwe, he is unlikely to deliver the declaration form set out in the First Schedule as to his residence within the seven day period sought in the prayer.

It is correct that s13of the Exchange Control Regulations SI 110/96 precludes me from granting the order sought.

The second is based on the legal impossibility of remaining as a shareholder in a company after one has redeemed his capital as the plaintiff did on 31 August 2009. The plaintiff called Chipara in a bid to demonstrate that it was modern practice for a shareholder to take out his capital from the company and remain a shareholder without any further reinvestment. Chipara purported to be an expert witness on capital redemption by shareholders. The plaintiff missed the mark in calling him to testify on what is purely a legal and not an accounting issue. The witness failed to prove his qualifications that were put in issue during cross examination. Even if he had proved his qualifications, he failed to establish his expertise. He did not lead any evidence to show the companies, local or foreign, in which initial shareholders later redeemed all their capital investment and still remained shareholders. I found myself in agreement with Mr *Samukange*, for the defendants, that he merely came to confirm the legality of the plaintiff's actions without setting out the legal basis thereof based on any case studies that he participated in. He did not exercise any due diligence on the affairs of the company. He did not request or examine the accounts of the company. In fact he was blissfully unaware of the provisions on capital redemption set out in ss 76, 77 and 83 of the Companies Act [*Cap 24:03*].

The Companies Act permits any company to authorise the redemption of any class of shares in its articles of association. In terms of s 76(1), the power to redeem the shares is exercised by the company or concerned fully paid-up shareholder in the manner stated in the articles of association. In terms of s 77(4), the redeemed shares are cancelled on redemption and the share capital of the company is diminished by the nominal value of those shares while the authorised share capital of the company remains intact. The amount by which the company's issued share capital is diminished on cancellation of the shares concerned must in terms of s 83(1) be transferred to "the capital redemption reserve." The purported expert witness was unaware of the impact and effect of these provisions on the plaintiff's shareholding in the company. I am satisfied that he not an expert at all.

I would not have granted the order even if s 13 of the Exchange Control regulations did not preclude me from doing so. It was common cause that the plaintiff redeemed his capital. The redemption of capital strikes at the very root of a joint stock company. The capital in a joint stock company constitutes the very essence of the company. As was stated by BOSHOFF J in *Cohen v Segal* 1970 (3) SA 702 (W) at 705H-706A:

> "Whatever has been paid by a member cannot be returned to him and no part of the *corpus* of the company can be returned to a member so as to take away from the fund to which creditors have a right to look as that out of which they are to be paid. The capital may be spent or lost in carrying on the business of the company, but it cannot be reduced except in the manner and with the safeguards provided by statute. As will appear from secs 44 to 50 of the Companies Act it is against the policy of the Act that any portion of the capital should be returned to the shareholders without the statutory conditions being complied with."

Without capital, the company ceases to exist. In the present matter, the withdrawal of capital did not follow the provisions laid out in the Companies Act. It was not contained in or authorised by the articles of association. The reality that exists from the evidence adduced before me is that the plaintiff redeemed his capital albeit outside the law. The in *pari delicto* principle set out in *Dube* v *Khumalo* 1986(2) ZLR 103(S) at 109E-H, however, authorises me to delve into the matter on the grounds of fairness and equity.

The capital constitutes the fruit tree and the dividends constitute the fruits of a joint stock company. The withdrawal of capital is akin to uprooting the fruit tree. Once the fruit tree is uprooted, no fruits can be harvested from it. The capital that remained in the company was the one that was injected by the siblings. After he redeemed his capital, a new shareholding structure should have been implemented to cater for the new realities. The siblings remained as the only shareholders in the company.

Once the plaintiff withdrew his investment from the company, he in law ceased to be a shareholder notwithstanding that the CR 14 was not amended to reflect this position. He was no longer entitled to a dividend. It is arguable whether in the absence of agreement he was entitled to interest at the prevailing prescribed rate in the Supreme Court of the United States at the time. The issue of whether he was entitled to interest was not argued before me. I accordingly leave it open. He was however paid US$78 383.00 instead of his capital contribution of US$74 400.00. In addition he received dividends that he was not entitled to in the sum of US$64 500.00.

It is apparent to me that he is not entitled to the order he seeks. Accordingly, it is ordered that the plaintiff's claim be and is hereby dismissed, as prayed for, with costs on the scale of legal practitioner and client.

Kantor and Immerman, the plaintiff's legal practitioners
Venturas and Samukange, the first, second, third and fourth defendants' legal practitioners