REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

WINDING UP CAUSE 49 OF 1998

IN THE MATTER OF THE COMPANIES ACT CAP 486

AND

IN THE MATTER OF NU-TREAS TYRES LTD

RULING.

On 11th of November, 1988 pursuant to a Chamber Summons filed under a Certificate of Urgency the Applicant / Petitioner Parminder Singh Bedi was heard ex-parte in accordance with Rule 3(1) (2) (3) as substituted by L.N. No 16/18 of Order 39 which states.

> "3 (1) Where the court is satisfied for reasons to be recorded that the object of granting the Injunction would be defeated by the delay, it may hear the applicant ex-parte.
>
> (2) No Injunction may be granted ex-parte for longer than is shown to be necessary and in no case shall it be for more than 14 days.
>
> (3) In all other cases notice of application shall be given to the opposite party."

After hearing the applicant's Counsel, the court was satisfied that he had made a case and the following order was made:-

> "Upon perusing the Petition, affidavit in support of the Chamber Summons and all other annextures to the application and the undertaking given in par. 11 of the affidavit I herby grant a Temporary Injunction restraining the Respondent from holding the Extra-Ordinary General Meeting scheduled for the 14th November, 1988. This Chamber Summons and all other documents to be served on the Defendant / Respondents and this matter to be heard inter-parties on the 20th November, 1988."

This order is still subsisting the matter having been very seriously argued in an iner-parties hearing before me.

It is obviously a waste of time to try and discuss whether or not the application should have been brought under a Certificate of Urgency and wi the Respondents being served. Mr Nowrojee's argument was that the N---------- the Meeting was served and received way back on 19th October, 1985. The applicant didn't have to wait till a few days to the meeting before to court. As I have indicated the court then did consider the matter very carefully and granted the ex-parte application under the provision of Rule (3) (1). I am not inclined to dismiss the application on the ground that the applicant acted in bad faith by rushing to court the very last minute and by so doing obtained an ex-parte order of Interim Injunction. The merits and demerits have been argued at length. The court will therefore decide the application on these basis

other than what should have been done or not done prior to the interim order being obtained.

The Chamber Summons has been brought under Section 224 of the Companies Act Rule 203 of the Companies Winding-up Rule and order 39 Rule (3). It was grounded on the affidavit of the applicant. I can do no better than reproduce the contents of the applicant's affidavit which contains all the fact that he relies on in his demand for an order restraining the Respondents from dismiss him as Managing Director of Nu-Tread Tyres Limited till the Winding Up petition is disposed off.

> "2. I am a director and also the managing and sole executive director of the above company NU-TREAD TYRES LIMITED as also I am a member of the company holding 40% fully paid shares in the company, entitling me to present this petition to this Hon Court.
>
> 3. For apparently no credible or tenable reasons or grounds, other than sheer acting in concert and against me, my co-directors and co-members, namely Tarlochan Singh Chana (Chana and Kulwant Singh Deogan (Deogan) have all of a sudden served me a notice to remove me as the Managing Director of the company.
>
> 4. I annexe hereto an exhibit marked PSB.1 being a true photocopy of the notice of the proposed resolutions to be passed on 14th November, 1988 to remove me as managing director.
>
> 5. Despite two letters dated 24/10/88 and 4/11/88 addressed by my advocate, Mr Lila Vadgama, to M/S Chana and Deogan aforesaid they have refused or neglected to state in writing the grounds or reasons to substantiate the very serious allegations leveled against me, of which allegations no notification whatsoever has ever been given to me.
>
> 6. The allegations are malicious, and pulled out of the air, and the said notice and the intended resolution of removal are of a drastic nature, and if allowed to be passed, will do irreparable detriment to my employment as managing director, my 40% investment in the company, and I will be virtually thrown out in the streets.
>
> 7. This is a sheer case of misuse of the majority powers against me, and I am convinced that this improper move against me has been kept from me.
>
> 8. Furthermore the threatened removal is not done in the interest or welfare of the company, or its benefit, but instead is an extreme exercise wholly lacking bona fides on the part of the said co-members, not according to their fiduciary duties or obligations and is an abuse of powers by them. Neither of the two said gentlemen have ever indicated any desire to become the managing director for the past 20 years, but now, after such inordinate space of time, seeing that I have turned the Company into a very viable and profitable enterprise, they want to grab it and exclude me from management.
>
> 9. I crave leave to bring it to the notice of this Court the fact that during the last 20 years, neither Mr Chana nor Mr Deogan have ever utter a single word of complaint against my management of the affairs and operating of the Company.
>
> 10. I am advised by my advocate, and verily believe, that the said intended meeting is ill-conceived, also, misconceived in law. If the same is not restrained it ill cause me irreparable and irreversible damage.
>
> 11. I hereby give the requisite undertaking in damages, or such other undertaking as may be ordered, for the granting of an ex parte injunction in the first instance.
>
> 12. I crave leave to refer and relay on the petition filed herein."

The applicant annexes three documents Exh. PSB (i) being the Notice referred to which read:-

"NU-TREAD TYRES LTD

NOTICE OF AN EXTRA-ORDINARY MEETING OF THE ABOVE COMPANY TO BE HELD AT THE REGISTERED OFFICE OF THE COMPANY AT CHEPKERIO ROAD ON MONDAY 14TH NOVEMBER, 1988 AT 2.30 p.m

TAKE NOTICE that to pass the following resolutions:-

(1) To remove Parminder Singh Bedi as the Managing Director of the Company on the grounds inter alia that he has conducted himself on the last past several months in a manner detrimental and prejudicial to the affairs of the Company.

(2) To appoint Mr K.S. Deogan as the Managing Director of the Company.

(3) Any Other Business".

The Notice is then signed by K.S. Deaogan and T.S. Chana and dated the 19th October, 1988. Following the above notice it would appear that there were some correspondent between Counsel – Exh. PSB(2) was written by the applicant's Counsel demanding amongst other things "Clear particulars either documentary proof or other plausible evidence of the very serious allegation of:-

"Conducted himself over the past several months in a manner detrimental and prejudicial to the affairs of the Company."

The other annexed letter Rxh PSB 3 dated the 4th of November was a further complaint from Counsel that his demands in the above referred letter had not been met and that the above meeting could not proceed till the particulars had been provided.

The substantive suit from which the application arises is a Petition by the applicant for the company Nu-Tread Limited to be wound up by the court under the provisions of the Companies Act Cap 486 or in the alternative other orders be made under Section 211 of the Companies Act. Before the winding up an order be made by the court restraining the two Respondents from removing the Petitioner as a Managing Director of the company. The basis upon which the Petitioner as a Managing Director of the company. The basis upon which the Petitioner craves for the above orders being laid out in par 10 of his Petition, in that the said co-members being the Respondents are in majorit holding 60% shares as against the Petitioner's 40%. Should the two Respondent go ahead and remove him as the Managing Director this would result in "irreparable or irreversible damage to your Petitioner." In that there is nothing to prevent the Petition being removed as the Managing Director thereby depriving him of his livelihood, he is 54 years old and his salary from the company is 15,000/-. Taken singly he is in majority and his investment in the company representing 40% shareholding interest runs into millions of shillings which will be jeopardized. He says this on the ground none of his co-members have any technical, sales or marketing experience of the business. Consequently the company will suffer if Mr Deogan is appointed as Managing Director. Furthermore there is no confidence, trust or probity left between him, the Petitioner, and the other two on the other side.

No grounds and reasons whatsoever have been given by his co-members for the proposed removal which according to the Petitioner is a mere act of ganging up against him by his co-members and lacks any bona fides and is being carried out contrary to the interest of the company.

It is on this basis that the Petitioner has come to the conclusion that his co-members have embarked on a campaign to oppress him as a minority shareholder and want to completely exclude him from the Management of the affairs of the company. In his view therefore it would be just and equitable for the company to be wound up. Otherwise from the Financial Statistics he himself provides in par (8) of the Petition, the company's performance as from its inception in 1969 has been very commendable. He estimated the 1988 turn-over to be about 20,000,000/-.

I have no intention whatsoever to examine and rule conclusively on all the issues of law or fact raised in several affidavits field in this matter. This is an exercise that rightly will be gone into during the Hearing of the substantive suit being the winding up Petition. Nevertheless this does not prevent this court from laying out the grounds upon which each party relies on. The Respondents have straneously objected to both the applications and have indicated that they will very straneously object and contest the winding-up petition. I will briefly therefore look at the affidavit sworn on behalf of the Respondents and the company by T.S. Chana in his capacity as a shareholder contributor and one of the director of the company.

The relevant part of the affidavit begin at par (5). He depones that the company Nu-Tread Limited is fully solvent, flourishing and on going enterprises. If the same is wound-up it would render a team of about 30 people jobless. For the last twenty or so years there had been no misunderstanding or friction between the applicant and the Respondent. Friction only arose when the Respondents discovered that the applicant had through his two sons set up a rival company "Tyremaster Kenya Ltd." The company is wholly owned by the applicant's sons. It operates exactly similar business as Nu-Tread Tyres Limited. From his own knowledge the two sons are novices in the tyre business which is the main business of Nu-Tread Tyres Limited.

As to the issue of incorporation of the company contrary to what the applicant states, he was only one of the several persons who formed the company and helped to develop it. At the time of inception the applicant and the deponent had 12% shareholding while Deogan then held 25%. AS some of the original and subsequent shareholders left the company their shares were purchased. The applicant ended up having more shares because he made the other members believe that it would encourage him to effectively participate in the running of the company as the Managing Director. This was the only basis upon which he Mr Chana and Mr Deogan agreed to the unequal share increase. In fact to the contrary Mr Deogan would sometime purchase the shares and then let the applicant pay for them by way of instalment at the same price. Exh TSC 1 is a schedule of the applicant's shareholding when they were purchased and from who. The only time he ever paid more than 4000/- per share was when he paid 13,375/- per share to his brother Ranjeet Singh Bedi to give him extra funds to immigrate to the United Kingdom.

This is why they were apprehensive when on or about the 10/6/88 they received a letter of offer from the applicant for sell of his 40% shareholding to them for a sum of 38,100/- per share. This figure had not been fixed by auditors as had been the case with the previous sales.

Letter TSC 2 from Mr Vadgama, Counsel for the applicant and addressed to both Mr Chana and Mr Deogan reads:-

> RE: NU-TREAD TYRES
>
> I act for Mr P S Bedi. Mr Bedi instructs me to write to you on without prejudice basis and with a view to inquiring whether you would be willing to purchase his shares or sell your in the above named company of which you are his co-members and directors. Please note that this letter does not constitute an offer to sell, purchase or "Transfer Note." Under the articles of the company, particularly articles 10,11 and 12 but is meeting an intention for the said purpose, but my client has serious intention to sell his shares, at a price of 38,100/- each which he considers reasonable, or to acquire your, shares likewise. Since under the said regulations of the company also in fairness to you You 3 gentlemen have a prior right to acquire such shares it is only fair to make an approach to you first."

In this particular proposed sell by applicant the price for the share was not fixed by the company auditors and in accordance with the articles of the company as had been in the previous transactions. The Respondents therefore ha the company auditors value the shares for Shs 5,795/20 per share and his valuation report has been annexed to the affidavit. So he and Mr Deogan declined to purchase the shares at the applicant's price. As a result of this the applicant began neglecting the management of the affairs of the company.

Second cause for concern surfaced when the Respondent experienced businessman began an investigation in the books of the company. He was being helped by some employees of the company. Several substantive malpractises and misappropriation of the company funds came to light. Pars 16, 17, 18, 19, 20 and 21 are some of the numerous accounting incidences whereby the applicant was misappropriating the company funds. Several documents are annexed to the affidavit in respect of the above alleged practices.

All this in addition to the fact that the applicant had not found it necessary to utilize premises acquired in 1983-1984 at a grand expense of 3.5 million shillings for the use and expansion of the company. The deponent and Mr Deogan came to the conclusion that the applicant lacked interest in the development of the company. In their view this continued managed of the company affairs had clearly become detrimental to the company. In the light of all the above incidents the defendant and Mr Deogan made efforts to have the applicant step down voluntarily without any success. When they saw no way out of this predicament the co-members decided to hold an extraordinary general meeting fixed for 14/11/88.

Contrary to what the applicant's Counsel has stated in his letter, the applicant as well aware of the reason as to why the other members wishes to hold a meeting to relieve him of his duty as managing director. It was therefore not correct to allege as he does in his affidavit that the Notice was served on him all over sudden. There was no need to categorically state the allegation they were making against the applicant. He was previously aware of all of them. They had been discussed at length in various meetings between them and the applicant had all the chances to reply to the allegations.

As to the issue of the applicant being "virtually thrown into the street' the applicant had other investment apart from his 40% shareholding in the company. He was a shareholder and partner in Khalsa Investment Limited and Messrs Janners Mechanical Engineer. He also has interest in many other properties including his residential property in Lavington. He cannot therefore truthfully say that he will be left without a livelihood.

It was therefore not true that the two Respondents were misusing their majority shareholders powers against the applicant. They have valid grounds as stated above to have the applicant dismissed from his position was managing director in the Extra Ordinary General Meeting.

Finally "40. Both Mr Deogon and myself as the other shareholders and directors consider that the affairs of the company should be run in accordance with sound commercial principles and good accounting practices. This the applicant is not doing. Due regard must be paid to the companies Act and to the Memorandum of Articles of the company … the applicant has failed to do this. There is a clear procedure laid down for the sale of shares. This is applicant is seeking to bypass and to improperly invoke the Winding up provision. The continued management of the company by him is clearly detrimental tot eh company as well as to the interest of the shareholders and will lead to the running down of the company and its operation towards unprofitability."

It is on this basis that they wish to have ex-parte order of Injunction dismissed.

In reply to the allegations made against the applicant in the aboeve affidavit, supplementary affidavits were filed to disprove some of the allegations. On the issue of the alleged dubious fraudulent dealings in purchases and accounting in the company the applicant filed two affidavits sworn by employees of the company. One Sunul Sachdeva and Avtar Singh Bedi. Mr Sachdeva's affidavit supports the applicant's story that the alleged misappropriation were merely normal company procedures used since inception and an acceptable way of purchasing and payments carried out by the company. The only problem as far as the applicant was concerned being that the other two directors had no clue whatsoever how the business of the company were carried out.

Avtar Singh Bedi's affidavit on the other hand supports the applicant's contention that he had nothing to do with Tyremaster Limited which was not company in existence. Even if the company was in existence, himself and his brothers were adults and different entities from their father who had nothing to do with their company. Secondly there are other numerous companies around Nu-Tread Limited which deal in the same business. The implication here being that why should the Respondents single-out their company to

support their allegation that the company Tyremaster Limited is not in existence. The deponent Bedi, Secondly there are other numerous companies around Nu-Tread Limited which deal in the same business. The implication here being that why should the Respondents single-out their company to support their allegation that the company Tyremaster Limited is not in existence. The deponent Bedi, has annexed to his affidavit Exh PSB 1 a letter from the Ministry of Commerce and Industry dated the 6th October, 1988 addressed to M/S Tyremaster Limited of P.O. Box 17923, Nairobi:-

> "Dear Sirs
>
> RE: TRADE LICENCE
>
> Reference is made to your application for Trade Licence undated.
>
> I regret to inform you that after careful consideration your application has been rejected."

The application has at length then dealt with the difficulties that have arisen in the running and management of the company since he brought these proceedings to court. He deponed and conceded that there is no confidence between them left. The Respondents contrary to the usual practice had refused to sign cheques to enable him to be paid his salary plus payment of his other benefits amounting to seventeen items e.g. water, servants, electricity, mechanics, driver, cash of 8000/-, car traveling allowance etc. These are matters which strictly have no bearing to the present application and the applicants has, I can see from the record taken out contempt proceeding against the Respondents on the basis of a consent they had entered into that these things would be paid to him. I am not satisfied that these are issues that have any bearing on whether the applicant should be granted an injunction or not.

There is no way this court at this stage and in this application could deal with the numerous accusations and counter-accusations that have been brought by parties herein against each other. These accusations are in my mind matters that shall be dealt with in details in the substantive proceedings. However they to a big extent do confirm the fact that the management of the company has run into a lot of problems. The applicant on one hand maintain that he has run the company single handed for the last twenty years except for the occasional visit of the two other directors to the factory. He has my 'prescripiton' acquired a right not to be interfered with now as the sole Managing Director. Hence his contention that the other two directors must be restrained from meeting to dismiss him. Mr Vadgama has not brought to my attention the basis on which he contends that the applicant has acquired any legal right to remain a life managing director by "prescription"

The Respondent's contention is simply this. They have never diversified their powers to the applicant. They have all along been included in the management of the company. They have lost faith in the applicant and want to hold the meeting they have requested for to remove him as the managing director as is provided for in the company Act and the Memorandum of Association Articles of the company/

I have endeavoured to consider all the material facts as deponed to in the various affidavits by both parties. The issue now is, has the applicant made out a case for this court to permanently restrain the Respondents.

'by themselves and/ or their agents and proxies…from holding the proposed extraordinary general meeting, or any other meetings as members or directors on the 14th of November, 1988 to remove the applicant …. Bedi as executive or managing director f the company."

The principles in respect of whether I should or should not grant the injunction so sought have since been repeated so many times in other cases since they were laid down in the case of AMIELLO GIELO VS CASSAM BROWN & CO LTD[1973] E.A. 358

According to Mr Nowrojee, Counsel for the Respondent the applicant does not meet the three principles in that he has not made out a prima facie case with a probability of succeeding in the substantive case, namely his Winding up Petition. Secondly even if he has proved that he will be greatly injured if the order

he seeks for is not granted, in otherwords if the two Respondents are not restrained and they go ahead and hold a meeting and dismiss him as the managing director, the injury he will suffer cannot be held to be irreparable. It is an injury that can be sufficiently compensated for in monetary terms. Lastly that on the balance of convenience the company stands to loose more by the order restraining the Respondents from holding the statutory meeting they are entitled to hold. The balance of convenience leans more on the Respondents side than that of the applicant. I should therefore discharge the ex-parte order that I previously made.

To consider the 1st principle, has the applicant shown a prima facie case with a probability of succeeding in the main suit? The main suit from which the present application emanates is a Winding-up Petition brought by the applicant under the provision of the companies Act. Section 221 (1) empowers the applicant so to do. He is coming to this court in his capacity as a contributor with a 40% shareholding in the company as against the Respondent's 60%. His contention therefore in the Winding-up case is that he has a right to wind-up the company as a shareholder and contributor on the grounds that the other two have ganged up against him and they are using their majority shareholders powers wrongly against him. Whether these allegations are true or not will be a matter of evidence to be decided at the hearing of the winding up petition. Otherwise the company as of to-day is in healthy and sound financial state.

The present application is brought under the provision of Order 39(3). The simple question is that – what is the right that the applicant want to preserve till the winding-up order is made? He does not seek to preserve any property of the company which stands to be wasted by the Respondents before the main winding-up suit is heard. What the applicant clearly wants to preserve is his personal position in the company as the sole managing director. This is a fact that has been made very clear through this proceedings. Mr Vadgama does not deny this either. The whole of these proceedings have been to the effect that the applicant's position as the sole managing director has to be preserved. He has held this position since the inception of the company. The company has thrived through his leadership. The other directors have been sleeping directors all throughout. They have diversified their powers. These are numerous facts that the applicant has relied on.

It is therefore clear that the applicant's right which he wishes to preserve is that of his personal position or employment in the company as the sole managing director a position that he was appointed to as can be seen in Exhibit TSC-12(a) – Minutes of the first meeting of the directors held on 28th August, 1968:

> "(5) Managing Director
>
> Mr Perminder Singh Bedi was appointed Managing-Director of the Company."

There is nowhere the applicant has shown that the proposed meeting was going to affect his right as a shareholder or a contributor in the company. The notice for the meeting clearly indicated that the Respondent was only to remove the applicant as a Managing Director and not a director. Nor is there any indication that Article 23 of the company Articles of Association is about to be infringed.

I agree with Mr Nowrojee that the application for injunction is not properly founded. It is clearly seeking to only preserve Mr Bedi's personal position in the company as that of managing director and has nothing whatsoever to do with his position as a shareholder, director or contributor. If Mr Bedi's employment with the company is threatened he can proceed against the company in another suit brought in his capacity as an employee of the company. As he stands in these application there is no relationship between his injury in the application as the managing director and his position as a contributor in the main suit. I agree with Mr Nowrojee that what Mr Bedi wishes to preserve by way of injunction is merely a personal right as an employee completely divorced from his right as a contributor being the capacity in which he has petitioned to wind-up the company. I find that the application as it stands is misconceived. Applying the first principle therefore Mr Bedi has not made out a prima facie case as a contributor a right he wishes this court to preserve till the final hearing of the petition. Secondly the applicant has argued that if the Respondents are not restrained he is going to suffer irreparable loss and injury that cannot be compensated for in damages. In this application Mr Bedi has maintained that he is the sole managing director of the company. This has not been denied. His agreement for employment as such is contained in

the Minutes of the 1st meeting of the Board. He has since 1968 worked for the company, nursed it and brought it to the present financial position. The Respondent now do wish to throw him out for no reason whatsoever. If he is thrown out of the company at the age 54 he stands to loose a lot.

There is no doubt in the courts mind that Mr Bedi has previously done a good job. Both sides admit that in the past there has been no friction in the running of the company. The main issue now, put very simply, should this court interfere with the internal running of this company and restrain the Board of Directors from dismissing the Managing Director if they so wish and have grounds upon which to do so, simply because the applicant has been managing the company for a long time and wants to continue being the sole Chief Executive?

The answer here is no. Whatever injury that Mr Bedi stands to suffer is the ordinary injury that is suffered by any other employee upon dismissal from his job and this can be very sufficiently compensated for in monetary terms. Whatever Mr Bedi was entitled is very clearly laid out in his affidavit. In addition to his 15,000/- salary, "8000.- cash", servants, house, rent, water, medical etc. These are things that can be very easily quantified in monetary terms and therefore capable of being paid out to Mr Bedi.

Mr Bedi has argued that the Respondents cannot interfere with the position he holds having been a sole Managing Director for the last 20 years without the Respondents interfering. Even if found upon hearing of the matter on evidence and in the substantive suit that the company was wrong in dismissing him as held in: Ibrahim V Sheikh Bros Investment Ltd [1973] E.A. 118

The learned Judge in this case found that there was uncontradicted allegation of breach of contract but this could be compensated for by damages.

In this case the Respondents have made certain allegations against the applicant. Whether they are true or not is not an issue that can be conclusivel proved in this application. They are matters that would be dealt with in the meeting that the applicant wishes to prevent from taking place. But on the face of the evidence before me now, it is no small matter that immediately after the applicant had proposed to sell his shares in the company at what appears an exhobitant price, the other two directors should find out that this two sons intend to set-up a company running similar business next door. Although the applicant's case that the company was refused a licence to work. The receipts produced by the Respondents indicates that the Respondent's allegation is not completely from the air. The applicant's conduct on the face of the evidence before me does justify the Respondent's denial for the meeting.

In the circumstances I am unable to find that the applicant's dismissal from his employment as Managing Director would cause him irreparable injury that cannot be compensated for by way of damages.

Although I am in no doubt on the face of the evidence before me, that the applicant / Petitioner has not shown a prima facie case with a possibility of success in the substantive suit and that whatever injury he might suffer is capable of being compensated for damages, if I had to go further and decide the application on the final principle, that is the balance of convenience, my finding would still be the same. The applicant is a minority shareholder. The ex-parte order that was granted to him against the two Respondents has from the record made the running of the affairs of this company very difficult. It cannot be said that it is in the interest of the company to prevent the majority shareholders from holding meeting and running the company for the benefit of one person. The situation is even more unfavourable when it becomes clear that the applicant to whom the ex-parte order was granted is merely wishing to preserve a personal right of employment. His right as a shareholder and a director not having been threatened or interfered with in any way. The balance of convenience leans more to the Respondents side than the applicants. To bring the operations of the company to a halt simply because an employee has to protect his employment would in the view of this court cause more damages to the company than letting the Respondents hold whatever statutory meeting they wish to hold. I have failed to see or appreciate how the applicant's interest in the company would be threatened by the mere fact that he is not actually managing the company. He will still sit on the Board as a director and still hold his shares in the company.

Confidence has broken down amongst the members. There is no proof that the Respondents are

fraudulently or misusing their majority shareholder's powers and want to exclude the applicant from the actual management of the company. In my view the company stands to loose more by this court granting the order the applicant is praying for.

Having carefully considered the application both on law and fact and reached the conclusion that the applicant / petitioner's case as it stands now does not show a prima facie case with a probability of success in the substantive suit or petition. Secondly that whatever injury that the applicant may suffer by this court not granting him the order he wants can and is capable of being compensated for in monetary terms AND lastly that on the balance of convenience restraining the two Respondents from holding a meeting they are so empowered to do by the Statute would result in more damage to the company than not giving the injunction order to the applicant. I hereby therefore set aside the ex-parte order I made on the 11th November, 1988 and dismiss this application with costs to the Respondents.

Dated and delivered at Nairobi this 5th day of July , 1989.

OWUOR

JUDGE