



**IN THE SUPREME COURT OF ESWATINI**

**JUDGMENT**

**Case No. 69/2020**

**HELD AT MBABANE**

In the matter between

**BAMBANANI BALIMI FARMERS LTD**

**Appellant**

And

**RICHARD DUMISANI NGWENYA**

**Respondent**

*Neutral Citation: Bambanani Balimi Farmers Ltd vs Richard Dumisani Ngwenya  
(69/2020) [2021] SZSC ...06.(04 JUNE, 2021)*

**Coram MJ Dlamini JA; RJ Cloete JA; NJ Hlophe JA**

**Heard : 4 May, 2021.**

**Delivered: 4 June, 2021**

**Summary: Civil law and procedure Respondent a shareholder in Appellant company - Respondent purportedly dismissed and dividends not paid - Rules of Appellant not followed in termination of membership - Respondent to be paid his dividends as per rules of the Appellant.**

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## JUDGMENT

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**MJ Dlamini JA**

[1] This appeal arises from an application which was granted in a four page judgment by her Ladyship Q.M. Mabuza PJ in the Court *a quo*. In that application the respondent (as applicant) had sought dividends in the amount of E26,500-00 due and payable including an order for payment of future dividends and costs of suit from the applicant (as respondent).

[2] The appellant is a company duly registered in terms of the company laws of eSwatini with its principal place of business at eHlane area in the Lubombo Region. The respondent is or was a member and shareholder of the appellant until sometime in 2016 when he was not paid his dividends by the executive of the appellant on the allegation that his membership had been terminated. Whilst accepting termination, the appellant however denied that it terminated respondent's membership. In the result, appellant disputes the respondent's entitlement to the dividends.

[3] In his founding affidavit, the respondent explained that he was told he would not get his dividends in December 2017 because after a screening process he was found not to belong to the Chief in whose territorial jurisdiction the farming business was conducted. Up until then respondent said he had been regularly getting his dividends like the other members of the appellant company. That the respondent would not obtain his dividends was communicated to respondent by members of appellant's executive council. The appellant still denied having terminated respondent's membership even as they continued

not to deliver the expected dividends. From the pleadings it is clear that the only reason respondent was denied his dividends was that he had changed from the earlier Chiefdom to which he belonged when he joined the company to another Chiefdom.

[4] The appellant tried to explain why dividends of respondent were stopped and said that respondent became disqualified and disentitled to obtain said dividends because he no longer belonged to the Chiefdom on whose land the sugar-cane farming operation was conducted. The respondent did not accept the explanation and pointed out - which was not denied - that he had paid for his membership to be entitled to the dividends. He could not therefore be shown the door without much ado. Whilst this Court cannot insist that respondent's membership of appellant should not be terminated, this Court has the necessary jurisdiction to insist that respondent be paid his dividends until his membership is duly terminated. In this regard, the appellant company or another qualifying member may purchase the shares of the respondent.

[5] The appellant raised a couple of points of law such as that the High Court had no jurisdiction in the matter because the dispute fell to be dealt with under traditional dispute resolution mechanisms. Appellant also objected that the traditional council (by its headman) of the land used for the appellants sugar-cane farming operations had not been joined even though it was known to have a direct and substantial interest in the matter. In paragraph 6 of its answer the appellant averred:

*"6.1. I wish to aver that the Applicant after the screening process of the membership of the Respondent, sanctioned .....through the eHlane Royal Council, he was removed as a member of the Respondent and the matter was dealt with and all concerned advised of same. If the Applicant is still not satisfied with the directive, he should approach the relevant structures to question or complain about same. He cannot come to this Honourable Court and claim to be a member when such is disputed even by the authorities".*

[6] A disturbing aspect of appellant's answer is that it makes no reference to the rules of the appellant-company having been used in dealing with the matter at the domestic level.

[7] The big question which the appellant's deponent did not answer was whether a member who is a shareholder of a duly registered company like the appellant could lawfully be removed from membership in the manner alleged in this matter. When all else was said and done, the foregoing was the central issue to which the appellant could offer no satisfactory explanation. This leaves one with the impression that corporate management is not a matter of serious concern with the company and its tradition-oriented executive. The response, under the quoted paragraph 6(1), is to the effect that the matter is none of the appellant's concern, the respondent should go elsewhere outside the company confines to be paid his dividends, if any. That cannot be right corporate procedure.

[8] In fairness to the appellant, the deponent tried to explain that although the appellant is a company it is not managed entirely as a company. This is due to the fact that as a farming entity it operates on Swazi nation land controlled by traditional (royal) structures such as Chiefs and their councils. In the result, the traditional councils tend to exercise supervisory authority over the companies so situated because of their control over the means of production (the land). The unfortunate aspect of this symbiotic relationship is that adherence to corporate management is relaxed to the prejudice of members (shareholders) and the company in the long run. The end result are perpetual squabbles between members and management. Overall, instead of a win-win the company experiences persistent financial loss thwarting the members' further economic development - which is what the members want for themselves and their children when they pool their farming wherewithal behind the company.

[9] The appellants also argued that the *"appellant company is a hybrid company and does not conform to the requirements of the Companies Act..."* Reference was then made to the case of **Luzaluzile Farmers Association**<sup>1</sup> in which Justice JS Magagula AJA (as

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<sup>1</sup> **Luzaluzile Farmers Association v The Registrar of Companies & Two Others**, Civ. App No.10/2016

he then was) in part, commented as follows, under paragraph 16: "*.... Also in the same clause relating to capital, the appellant is described as an association. This creates confusion since the appellant is supposed to be a public company, hence its registration under the Companies Act. Clearly a lot is wrong regarding the incorporation of this company and it definitely does not meet the requirements of the laws for incorporation*". The substance of appellant's argument is that they are an association which was "*only converted to a company in order to secure credit facilities*" and that is what they mean by the company being 'hybrid' and as such "*cannot be detached from traditional structures*". To that end, in paragraph 9, appellant further stated: "*The appellant company does not conform to such as it is under Swazi nation land. . . .*"

[10] I must further comment on the foregoing argument which tells claimants against the company (or association) to approach the traditional structures because the company is in fact not a company even as so registered. This argument is often resorted to by such farming companies when they have no better response to a member's claim for unfair treatment. The argument is asserted with the full knowledge of the predicament the claimant is likely to encounter in the endeavour to deal with these traditional structures. In the first place, and, indeed, most of the time, the proper role of the traditional structure in the affairs of the company is not clearly articulated. Even where the role is articulated due adherence to that role may very well be a challenge to the traditional structure and its mainly rural members resulting in the break-down of proper organisational management with issues taking years to resolve. Business-minded companies or associations wherever they may be operating or having their business, eagerly looking forward to "2022" and beyond, can hardly tolerate the alleged *hybrid* management style where a shareholder is sent from pillar to post.

[11] The impression painted of these traditional structures is a negative one. Yet I have no doubt in my mind that it is the enduring wish of His Majesty, the Ngwenyama and the traditional councils managing Swazi nation land for companies and associations granted use of such land to prosper and become rich and in time the members to leave such farming

for greener pastures. Unless it is basic subsistence farming, commercial and progressive farmers should not be stuck on farming for the rest of their lives. They should outgrow farming and become masters of their own destiny in the emerging global community. This is their Majesties' wish for all citizens of this country but in particular those citizens frequently found struggling as subsistence farmers. Indeed, to this end, some farms *held in trust* have been advertised for lease to persons and companies to take them over for greater agricultural farming and productivity. That is how serious the issue of rural development concerns the Ngwenyama. Be it made clear, however, that the way forward for groups of persons, associations or companies is adherence to rules and regulations. Without rules and compliance to those rules only chaos and stagnation can result, where man descends into a state of 'war of all against all', the classic, hypothetical, state of nature.

[12] I may have detoured somewhat from the judgment in this matter but I trust that the reason is clear and generally acceptable. The traditional councils who make the land available for the farming enterprises are important stakeholders. They cannot just avail the land and then disappear from site. But it is important that they understand just like the members and their executives, that every serious enterprise involving more than one person must have rules to guide it in whatever it seeks to achieve; and importantly in how it will resolve disputes and differences within the membership. The importance of having and abiding to the rules for operating the business (the constitution) is to assist, among other things, in ensuring that disputes are resolved earliest. Unresolved issues are like cancer in the body of the business. This is undesirable as it can only be a financial drain to the business.

[13] When all is said and done and, as I have already tried to explain, rules must be followed and decisions must be reached fairly in light of the rights of persons affected. Obeying the rules may appear to some persons as a challenge to their authority. However, that should not be so. It is for the good of all since everyone concerned wants to see progress. In the present matter, whatever the respondent did or did not do, the appellant could not show that the claim of the respondent is baseless. The respondent cannot lose

his shareholding in the appellant without the rules of the appellant and relevant common law procedures being followed. So long as the membership of the respondent in the appellant has not been legally terminated, respondent must be paid his dividends. If respondent's membership is terminated this must follow rules of the company and respondent must be given a fair opportunity to defend himself. Those involved ought to be advised that even God gave Adam the opportunity to defend himself before Adam was removed from the Garden of Eden.

[14] None of the points of law and argument raised by the appellant persuades me to see sense in the respondent not being paid his dividends in terms of the rules of the appellant. I agree with the judgment of the learned Principal Judge. I would dismiss the appeal with costs. It is so ordered.

I Agree

I Agree

For Appellant

For Respondent

ML Sithole

BXaba



**M.J. Dlamini JA.**



**R.J. Cloete JA**



**NJ Hlophe JA**