Didon v Albert & Ors
(2001) SLR 184

Francis CHANG-SAM for the Applicant
Anthony JULIETTE for the First and Second Respondents
Frank ELIZABETH for the Third Respondent

Judgment delivered on 29 August 2001 by:

JUDDOO J: The amended petition, made under Section 20 he Companies Act 1972 (hereinafter referred as 'the Act'), essentially challen the holding of an extraordinary general meeting of the Company, El's Products hereinafter referred as the company), held on 10 April 1999, the resolutions ma erein to resign the petitioner as director and to issue new shares, the resulting e and allocation of these new shares and the conflict of interest by the First and ond Respondent in being involved in the affairs of the company and Albert Inves ts(Proprietary) Ltd. El's Products Ltd is a non-proprietary company.

The petitioner is a shareholder of the company incorporated or April 1995 then with a share capital of 100 ordinary shares of R100 each, subscribed held as follows:

(1) Petitioner 30 shares or 30% holding
(2) First Respondent 30 shares or 30% holding
(3) Second Respondent 40 shares or 40% holding.

The First and Second Respondents, husband and wife, were wit petitioner the three directors of the company before the resolutions passed at the ordinary meeting of 10th April 1999. In addition, the First Respondent, Eugene Alber acted as company secretary at all material times.

Following the above-mentioned meeting, on 6 May 1999, a retu allotment of shares issued in the company was filed, exhibit P6. It states that 575 n ares of R450 each have been issued by the company out of which 260 we otted to the First Respondent and 315 to the Second Respondent for a sum of 000 and R141,750 respectively. On the same day a further return of particular directors was filed, exhibit P5, stating that the petitioner had 'resigned' as directo the Company, with effect from 10 April 1999, and that one Brian Dubignon was a ed in replacement. In the minutes of meeting, exhibit P3, the said Mr. Brian Dubi is said "to hold no executive powers however." This new issue of shares and a ent, made thereof, reduced the percentage holding of the petitioner in the company 40% to 4.4%.

The petitioner, Mr. Maurice Didon, gave evidence that the Com was set up with the Respondents as they were all friends. He was appointed direc nd was responsible for the marketing and sale of the products as well as the coll n of proceeds from clients. He was dissatisfied with the manner in which the daily nces and figures of

the company's operations were not revealed to him. However, the petitioner agreed that he had been regularly informed of the yearly report which he duly signed.

Mr. Maurice Didon agreed that he had received a notice to attend the meeting of 10 April 1999 and deputed his brother, Noellin Didon, as his proxy. He also agreed to have received a copy of the minutes of the meeting a few days later but denied that the meeting was properly held. The petitioner further denied having resigned in his capacity as director of the Company and added that he was agreeable to the increase of the share capital for which he had always been ready and willing to pay the issue price and had even called at the office of the company to do so.

As for Albert Investments (Proprietary) Ltd, the petitioner has produced a copy of its Memorandum of Association, exhibit P7. The objects of the said company are identical to that of El's Products Ltd. The petitioner agreed that El's Products Ltd. had started its operations in the premises which was owned and rented from the First and Second Respondents but stated that the business having grown since then, it would had been better for the company to invest in a building of its own instead of renting from a building from Albert Investment (Proprietary) Ltd which was owned by the First Respondent and his son. The petitioner agreed that he had attended a meeting at the company's office on 1 November 1999 when this matter was considered.

The petitioner's brother, Noellin Didon, testified that he was appointed as proxy to represent the petitioner at the meeting held on 10th April 1999. When the meeting started, he raised objection that it could not proceed since the procedure had not been complied with in the absence of a requisition from a member. An argument followed and in his own words " I say that it is not properly convened then we raised this point of argument and then seeing that they are not prepared to compromise. They are not prepared to convene the meeting as required by the Companies' Act and they are not going to change their minds so I walked out". The witness added that he requested to be shown the requisition from any member and was only shown the agenda of the meeting.

The First Respondent, Eugene Albert, gave material evidence on behalf of all three Respondents. He testified that prior to 1999 the company has been having problems with the conduct of the petitioner. The later was acting as salesman and was inclined to abusing alcohol whilst discharging his duties and even once left a truckload of meat products on the road and he was "fired" in January 1999. This led the First and Second Respondents to request a shareholders meeting, as per exhibit D1. Thereupon, the First Respondent prepared an agenda inserted it into a notice, exhibit P4, which was circulated to all the members. A few days later he received [illegible]unication from the petitioner that the latter had appointed his brother, Mr Noel[illegible]don, to attend the meeting in his stead as proxy. On the day of the meeting the [illegible]y came and raised objection to the meeting being held and left. The meeting [illegible]eded and the two resolutions were passed. A few days after the meeting a copy o[illegible]minutes was drawn and sent to the petitioner by registered mail. After a period of [illegible]eeks the petitioner came and informed him that the meeting was "illegal" and that [illegible]as not interested in

the minutes. One week later the petitioner came again and sa at he was ready to contribute towards the new shares issue whereby the First R dent informed him that "it's too late, it is after 21 days".

As for Albert Investments (Pty) Ltd, the First Respondent testifi at the shareholders are his son and himself and added that the said company gaged in “property development”. He explained that El's Products Ltd had st its manufacturing process in the kitchen of the First and Second Respondents bu l to move to bigger premises in line with the growth that it had encountered ov e years. Both the petitioner and himself searched for appropriate premises for on a half year without success and at the same time he had called upon the petitione ome up with some form of security, presumably for any building project, but the lat d not come up with any reply. Finally, a bank loan was taken by Albert Investments) Ltd to construct a building and he guaranteed the loan with his personal asset. Th tioner added that a meeting was held in November 1999 to consider the rental of ground floor by the company from Albert Investments (Pty) Ltd. At the said mee the petitioner was present and was satisfied with the rental arrangements.

The amended petition is brought under section 201(1) of the which provides as follows:

> Any shareholder of a company who complains that ffairs of the company are being conducted in a manner which is opp e or unfairly prejudicial to some part of the shareholders ... may make pplication by way of petition to the Court for an order under this sectio

There is little doubt, as submitted by learned counsel for the p ner, that although s 201 followed the reciprocal provision under s 210 of the Comp Act (UK) 1948, yet the said provision was modified and adapted to the recommen s made after 1948 and is more in line with the approach that follows under s 451(the Companies Act 1985 (UK). Accordingly, the operation of Section 201 is no ted to winding up remedies and instead the Court is possessed with wide discre nd powers under s 201(2) of the Act; - vide: *Pennington's Company Law*, 5th Editio apter 17, p 743 and *Minority Shareholder's Rights*, Sweet & Maxwell 1990 Edition, P ington, p45.

It is not disputed that the petitioner received a notice, exhibit P rming him "that an Extraordinary meeting of El's Product will be held at the comp egistered office on Saturday 10 April 1999 at 4.30pm". The said notice, dated 24 n 1999, was stated to be made "By order of the board" and was signed by the any secretary. The purpose of the meeting was:

> To adopt the following ordinary resolutions:
>
> a. To resign Mr Maurice Didon as director and ap Mr. Bryan Dubignon in his stead.

b. To increase the share capital of the company to R303,750 by the creation of 575 ordinary shares of R450 each.

In his submissions, learned Counsel for the petitioner disputes the convocation to the meeting on the ground that there were no requisition by any member for the said meeting and no such requisition or request has been determined by the board. It has not been pleaded under paragraph 8 of the amended petition that there were no requisition in existence. What has been pleaded is that "From the minutes of meeting there is no record of such a requisition having been deposited." On behalf of the Respondents, a requisition letter was produced, exhibit D1, and the First Respondent testified that he had acted upon that letter to issue the convocation for the extraordinary meeting with notice of the agenda. There has been no objection raised to the production of the requisition letter nor has the genuineness of the document been put into cause under the cross-examination of the First Respondent as revealed by the following:

Q: Exhibit P4 is a notice of meeting?
A: Yes.
Q: You say there was a requisition?
A: Yes.

.....

Q: Section 120 of the Companies Act says the directors shall call a meeting. <u>This notice was properly done but you did not follow the procedure, you did not call a prior meeting.</u>

A: Me and my wife were directors and we held a meeting... we used to do it like that I discuss it with my wife...

It is certain that the issue canvassed both in the pleadings and in the cross-examination of the First Respondent was that there were no board meeting to sanction the calling of the extraordinary general meeting which had been convened.

Before turning to the 'sanctioning' of the meeting convened, it is necessary to spell out briefly the powers to convene an extraordinary general meeting. The company has no 'Articles of Association' regulating the conduct of its affairs. Being a non-proprietary company, the regulations under the First Schedule, Part II are applicable by virtue of Section 8 of the Act. Under regulation 23, thereof, "the directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary meeting shall <u>also</u> be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by s 120(2) of the Act..." A meeting convened through requisition under S 120 of the Act is an extraordinary general meeting to be held at the request of the shareholders of the company holding not less than one tenth of the issued share capital. Such a requisition must be deposited at the registered office of the company and must state the "intended business of the meeting to which it relates and must be signed by the requisitionist."-vide Section 120(5) of the Act. It is to be noted that the power of the directors to convene an extraordinary general assembly, under

regulation independently of the power of the required number of shareholders to require the directors to convene such a meeting.

In addition to the above general power of the directors or the re ons, to convene or require to convene an extraordinary general meeting, Secti 8 of the Act is a specific piece of legislation which enables a company in a gen neeting by ordinary resolution, requiring special notice, to remove a director from . Such a meeting may be called by "the directors, the Registrar or any other pe or by order of the Court and notice of such a proposed resolution 'may be inclu n the notice of the meeting at the instance of the directors or any other person." 'A her person', in that respect, can only be taken to mean any other person entitled t uire that a meeting be convened. Special notice is required under Section 168 f the Act by "the directors or the other person who calls the general meeting" to Written notice of the proposal to the director whose removal is proposed. Thereupo der Section 168(3) of the Act, the director whose removal is proposed is en to make Written representations in respect of the proposal to the company and r sts their notification to other members and is entitled to address the meeting e issue. The vital importance of the statutory provision under Section 168 is that errides anything to the contrary in the memorandum or Articles and any agreemen ween the company and its director.

In the absence of Articles of Association, the manner of proc gs of the board of directors is found under regulation 65 of Schedule I, Part II of Act which provides that "The directors may meet together for the dispatch of ess, adjourn, and otherwise regulate their meeting, as they think fit. Questions aris t any meeting shall be decided by a majority of votes, the chairman shall have a s l or casting vote..." or by a resolution in writing signed by all the directors entitled ceive notice under regulation 73 thereof.

No Written record has been produced that a board meeting of company has been convened or held to sanction the calling of the extraordinary al held on 10 April 1999. In *Palmers Company Law*, 21st Edition, p468, the author c es that:

> When the directors wish or are bound to call a general ng they will normally do so by resolution passed at a duly convene constituted meeting of the board ... Notice of a general meeti ven by the secretary without the sanction of the directors or other p authority is invalid – vide: Re Haycraft Gold Reduction Co (1900) 2 C) – but such a notice may be ratified by the directors before the meeti

and in *Pennington*, supra, p651, the author states that:-

> ... But if all the directors agree informally on a certain matter without a board resolution being held, their unanimity is equivalent to a resolution passed at a board meeting and is binding on the company: Re: *Bonelli's Telegraph Co. Collie's Claim* (1871) LR 12 Eq 246.

In the instant case, one has to take into account that the company had ***only*** three shareholders. All three shareholders were directors and were also engaged in the day to day running of the company. There is evidence that sometime in January 1999, the petitioner's employment in the company, presumably as a salesperson, was brought to an end. Both the First and Second Respondents had agreed and acquiesced to the calling of the extraordinary meeting with the proposed resolutions. I find truth in the testimony of the First Respondent, as confirmed in the minutes of meeting exhibit P3, that he had discussed the matter with the petitioner who had agreed to send his brother as proxy to attend the meeting.

The petitioner admitted having duly received the notice to attend the extraordinary general meeting to be held on 10th April 1999. He acted thereupon and informed the company that his brother Noellin Didon will attend the meeting in his stead as his proxy. The petitioner raised no objection whatsoever to the proposed agenda of the meeting. He did not call any meeting of the board, as he then was a still director, to reconsider the proposed agenda and made no attempt, whatsoever, to prevent the meeting from taking place. After the meeting the petitioner raised no objection to the statement in the minutes of meeting communicated to him that "the meeting was discussed with Mr. Maurice Didon." Moreover, I find truth in the testimony of the First Respondent that the conduct of the petitioner had, by the time the meeting was called, given rise to concern to his holding his post as director of the Company and it had been seen earlier that the petitioner's employment as salesperson had already been brought to an end at an earlier date in January 1999. This state of affairs was known to the petitioner. Accordingly, I find, in the circumstances of the present case, that the petitioner had informally agreed and acquiesced to the holding of the extraordinary meeting in his conduct and capacity as a director and was duly informed of the holding of the said meeting and its proposed agenda in his capacity as a member.

Under Section 128(1) of the Act a proxy who may attend and vote instead of a member has the same right as the member to speak at the meeting. Accordingly, Mr Noellin Didon when he attended the meeting as proxy was entitled to raise any objection which the member may have raised. In that respect the Chairman of the meeting was entitled to rule on the objection and the meeting to proceed in the presence of a quorum. In essence, the Chairman ruled that the meeting could proceed. His decision on the issue cannot be faulted given that there were agreement on behalf of the First and Second Respondents and acquisance on behalf of the petitioner, to the said meeting and its agenda and all members were duly notified and present either personally or by proxy.

In as far as the resolution to 'resign' the petitioner as director, there is little doubt that the petitioner understood that what was canvassed at the meeting was his removal as director. He knew that resignation was a self-imposed act whereas removal was an act imposed by others. What was evident from his testimony and he feared most was the exercise of the vote against him on this resolution by the majority members. In his own words,

> ... you cannot resign a director unless he or she Writes a notice that he wants to resign ... what were we going to discuss in a meeting when you get an agenda they want to resign you. Not to forget my friend and his wife. Is there something for you to discuss if you were in my place...?

It is also certain that what was convened and held on 10th April 1999 was an extraordinary meeting of the shareholders despite the irregularities in the minutes of the meeting making reference to the First and Second Respondents as directors as well as members and despite the Chairman's incomplete reference that "he" acted under Section 168 of the Act. The undisputed fact remains that the meeting was a shareholder's meeting which was conveyed with proper notice to all shareholders of the two proposed resolutions on the agenda. This was also clearly understood by the petitioner to be a shareholder's meeting when he duly deputed his proxy to attend in his stead. Having acted as director, he was well aware that one does not depute a proxy to attend a director's meeting and he was not mistaken when he deputed his brother to attend the said shareholder's meeting.

It has not been pleaded that the company is a small private company formed as a quasi-partnership in which the joint venturers expect to share in the business by reason of their continued employment therein or that the petitioner could not be removed unless a fair offer was made to him for the purchase of his shares. Such an offer of purchase has indeed not been made part of the remedy claimed by the petitioner. In the circumstances, I find that there was no unfair prejudice or oppression which was made to bear upon the petitioner by way of the fact that a proper board meeting was not convened to sanction the calling of the extraordinary meeting and its agenda. Accordingly, I do not find cause, under the present application to intervene with the said resolution that was 'passed at the extraordinary meeting held on 10th April 1999 except for necessary rectification that the petitioner has been "removed" as director of the company and has not "resigned". The form and manner that this rectification will take will be considered in the final stage.

In so far as the resolution to increase the capital of the company is concerned, there is agreement from all sides that the resolution was in the interest of the company. There was no ambiguity in the proposed resolution "to increase the share capital of the company to R303,750 by a creation of 575 ordinary shares of R450 each." Although it is not clearly spelt out in the minutes of meeting that the vote was taken in favour of the said resolution, such is not made an issue in this case by virtue of the pleadings. Under paragraph 9 of the amended petition what is pleaded is that the "meeting acted outside the scope of the intended business for which the meeting was requisitioned by further resolving to increase the share capital of the company..." It has been found that despite the incomplete reference to Section 168 of the Act, the meeting was duly held, with proper notice of its agenda, including both 'resolutions. The minutes of the meeting reveals that the petitioner had not raised any objection to this resolution being on the agenda of the meeting but had instead "requested for a physical stock take, the banking transactions of the company and the company's up to date account..." There being no

challenge to the voting process itself, or to the inaccurate record thereof, I find that the said resolution had been carried through by the meeting on 10 April 1999.

The next determination is whether in the process that followed the resolution to increase the share capital of the company, the petitioner was unfairly prejudiced or oppressed. It is claimed under paragraph 10 of the amended petition, that

> ... Eugene Albert (First Respondent), Julina Albert (Second Respondent) and Brian Dubignon acted contrary to the resolution which provided for the shares to be alloted pro-rata when they alloted these shares solely to Eugene Albert (First Respondent) and Julina Albert (Second Respondent)... and by so doing the said directors diluted the overall percentage shareholding of the petitioner in the company from 30% to 4.4% with the result that the petitioner's control over the company was correspondingly reduced and so was his further participation in the distributable profit of the company...

In reply thereto, it is averred on behalf of the Respondents that:

> ... The minutes was sent to the petitioner by registered post and the petitioner did not respond, nor come up with the money for his share of the increased share capital. Thereafter, the First and Second Respondents paid the money and alloted the shares to themselves and then properly lodge a return of allotment under Section 51 of the Companies Act... The Plaintiff did not come up with the money within a reasonable time as prescribed by the Companies Act ... the Directors alloted the shares in proportion of cash injected into the company as the petitioner failed to come up with the cash as required under the relevant provisions of the Companies Act...

In his testimony, the petitioner stated that he understood if new shares are to be issued they are to be on a pro-rata basis as stated in the minutes of the meeting. He disputes the allotment of the new shares made which has diluted his shareholding in a company which he has spent so much of his time and strength to create. He added that:

> ... on 27th April 1999 I came to discuss because all throughout I was happy for share capital to take place. I came with my cheque and all and every time even though the annual report came no discussion at all until in the end on 1st November 1999 that we had a meeting and we discussed and all the shares had been allocated ... On the 27th April I went to the office to discuss and all I came with my cheque to pay for whatever my shares should be. They are here they can answer and all throughout they said they were busy...

On the other hand, in reply to the above, the First Respondent testified that after the meeting he prepared the minutes and”

> ... registered a copy to Mr. Didon (the petitioner). Two weeks later he came and said the meeting was illegal and he was not interested in the minutes. Another week later he came and said I am ready to contribute. I said it is too late now, it is after 21 days...

There is evidence that the minutes of the meeting were prepared by the First Respondent subsequent to the meeting and that on 14 April 1999 it was forwarded by registered mail to the petitioner. Although the First Respondent mentions that a `letter of offer' of shares to be issued was also communicated to the petitioner, such has not been produced. In that respect, it is also noted that in their reply under paragraph 6(a) there is only mention of the minutes being sent to the petitioner. Accordingly the purported notice of registration of a letter forwarded to the petitioner on 14 April 1999, exhibit D2, could equally relate to the minutes of the meeting. The end result is that the existence of such a letter of offer is a non sequitur. However, in essence, the version of the First Respondent remains that he granted the petitioner an opportunity to subscribe and pay for the shares within a period of 21 days from the date the meeting was held.

There is no dispute that what was resolved at the extraordinary meeting was that "the share capital is increased to R303,750 by the creation of 575 ordinary shares of R450 each to be allotted pro-rata." It is important to notice, at this juncture, that the further request in the requisition letter, exhibit D1, to the effect that "(the) capital is to be injected not later than 15th April 1999..." had been expressly withdrawn from the notice of convocation to the meeting, exhibit P4, and had thus received no further consideration at the meeting.

The duties of the directors when issuing shares which have been sanctioned by a general meeting are found under Section 173(1) of the Act which provides:

> Before issuing shares ... the directors shall offer the shares ... for subscription to the existing shareholders of the Company in proportion to the respective nominal values of their shareholders and the directors may allot shares ... in some other manner only to the extent that they are not subscribed for pursuant to the said offer...

Commenting upon the general procedure which governs, in *Palmer's Company Law*, supra p146, the author states:

> ... In the case of a rights issue, the existing shareholders are given the right to apply for the new shares ... in a fixed proportion...
>
> The normal method of making a rights issue is for the company to send an explanatory letter to each member, accompanied by a provisional allotment letter in respect of the shares to which each member is entitled to apply. The provisional allotment letter would have "attached a form of acceptance and a form of renunciation, so that the member is in a

> position to exercise his rights to the shares or he can renounce his right to apply for the shares...
>
> In due course and on or before a given date, the original member, or if he has renounced his shares, the renounces, will complete the form of acceptance and application and lodge it with the company together with a charge covering the amount payable on the application for the shares. Failure to return the document duly completed by the given date will mean that the right to apply for the shares in question lapses.

In the light of the above, it is certain that the directors of the company have faulted in their approach to the allotment and issue of the new shares as per the resolution taken at the meeting held. The meeting, itself, imposed no conditions to the allotment except for the issue of the new shares on a pro-rata basis. Under Section 173(1) the directors were bound to offer, in no ambiguous or uncertain terms, the new shares for subscription to the existing shareholders, including the petitioner, pro rata. In the present case, the mere communication of the minutes of meeting, without more, is both insufficient and inadequate. The petitioner had a right to accept or renounce to his new issue of shares in the company within the reasonable time limit and upon the conditions which should have been expressly made known to him by the directors.

Furthermore, I find truth in the version of the petitioner that he had been ready and willing to subscribe for the new shares to be issued. In the circumstances, I find that the irregularities committed in the allotment to bear serious and unfair prejudice to the standing of the petitioner in the company and justify this Court to intervene under Section 201 of the Act to give redress to the aggrieved party on this issue. The relevant form of remedy will be considered later.

The third aspect of this petition which calls for examination is the conflict of interest issue. In essence, under paragraph 11 of the amended petition, it is claimed that the First and Second Respondents used their position in the company for their own profit in that they caused El's Products Ltd. to rent premises from Albert Investment (Proprietary) Ltd. It is further averred neither the decision to rent nor the value of the rent was submitted to the approval of the shareholders. In reply, thereof, it is averred on behalf of the Respondents that El's Products Ltd. had always been renting the premises of the First and Second Respondents for its operation prior to renting to building from Albert Investment (Proprietary) Ltd. The lease for rental agreement was made known to the petitioner at the Annual General meeting which was held on the 1st November 1999 at the company's head office and to which he did not object.

Under Section 171(f) of the Act:

> it shall be the duty of a director not to compete with the company or become a director or officer of a competing company, unless a general meeting by ordinary resolution authorises the director concerned to do so in any specific case.

And under Section 171 (g) of the Act;

> If directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the company, to disclose each of their respective interests to the meeting of the directors...

In addition, under Regulation 52(1) and (2) of Part II, Schedule 1 of the Act, a director shall declare his interest in a contract or proposed contract and shall not vote in respect of such in the director's meeting.

Although the First Respondent made mention of a meeting held in November 1999 at which the petitioner was present and the lease of the premises from Albert (Proprietary) Ltd. discussed he could not clarify further. No minutes of the Annual General meeting, as averred in reply, has been produced nor has there been evidence of a board meeting to sanction or ratify the lease.

On the other hand, there has been no evidence that the rental value of the lease is merely speculative nor that the location of the building and fixtures provided in there by Albert Investments (Proprietary) Ltd. to be wholly unsuitable for the operation of El's Product Ltd. or even that there was available similar premises, with similar advantages, which the company could have leased. The decision of the First Respondent to pledge his property for the intention of a loan by Albert Investment (Proprietary) Ltd. may well be explained by the fact he did so where he finds more security by virtue of his holding 95% of the shares in that company. Additionally, the decision of Albert Investments (Proprietary) Ltd. to build a "meat processing factory including a butchery and shop" and the fact that the two companies have identical objects in their memorandum does not by themselves, constitute unfair prejudice as envisaged under 201 of the Act. As stated in *Minority Shareholder's Rights*, Sweet & Maxwell, 1990 Edition, R Hollington, supra, at p 65:

> … It is clear that the deliberate diversion of the company's business by those in control of the company to another business owned by them is capable of amounting to unfair prejudice of the shareholders who have no interest in the new business...

In the present case, I find that the above acts complained of fall short of establishing that there has been a deliberate diversion "of the company's business" to another company. The has been no proof of the diversion of the existing business of El's Products Ltd. to Albert Investments (Property) Ltd. so as to unfairly prejudice the interest of the petitioner. Although the Court under Section 201 of the Act has power to regulate the conduct of the company's affairs prospectively, I do not find justification for any such intervention on the facts of the present case. However, would the situation arise in the future those aggrieved will be entitled to seek appropriate remedy.

In the end result and for reasons given and in the areas highlighted above, the Court finds justification to intervene. Where this is so under Section 201 of the Act, the Court has to fashion the remedy to suit the circumstances of the case and grant the aggrieved party appropriate redress including as award of damages. (vide: *pennington*, supra, p.751) Before I do so, I wish to remind the parties that they should seek to put the interest and concern of the company above the intestinal differences that riddle their friendly relationship.

Taking into account the above, I grant the following orders:

(i) The petitioner is to be treated, for all intents and purposes, as having been "revoked" as director of the company as from date. This is to ensure his right, if any, to compensation or legal benefits, by virtue of his revocation otherwise than under the statutory provision under which this petition has been brought. The petitioner is also entitled to all salaries and benefits in his capacity as director until his present revocation. Nevertheless, all acts of the board of directors done between 10 April 1999 and as of date remains valid as well as the appointment of Mr. Brian Dubignon as director.

(ii) (a) The First and Second Respondents are to relinquish their rights to the shares issued to them which were in addition to their pro-rata entitlement at the date the resolution to issue new shares was passed (i.e. 10 April 1999). The said relinquished shares are, hereby offered to the petitioner at the issue price of R450 per share. The petitioner is granted a period of 14 days (fourteen) from date to effect payment of the whole amount at the registered office of the company (or with the Court in case of inability to effect payment to the company). Upon payment the company is directed to register the shares in the name of the petitioner. Failure of the petitioner to effect payment within a period of 14 days will amount to renunciation of his entitlement and the shares shall revert back to the First and Second Respondents.

(b) Upon registration of the shares in the petitioner's name the First and Second Respondents are entitled to a refund of the amount they have paid towards the purchase value of the shares. Upon registration of the shares in the petitioner's name, any dividend to be declared for the intervening period April 1999 until date shall be shared equally between petitioner and the First or Second Respondent, as the case may be.

(iii) The First Respondent is to forward a Written statement to the Board disclosing his interest in Albert Investments (Proprietary) Ltd. The lease agreement with Albert Investments (Proprietary) Ltd. is to be submitted to the next Annual General Assembly for approval.

(iv) Taking account of the inconvenience and unfair prejudice caused to the petitioner, I award damages in the sum of R10,000 against the First and Second

Respondents.

To the extent determined above, the petition is allowed with costs against all three Respondents in equal shares. The company is ordered to rectify its records in accordance with the above orders made.

Record: Civil Side No 475 of 1999