

**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM SUB-REGISTRY)**

**AT DAR ES SALAAM**

**MISC CIVIL APPLICATION NO11164 OF 2024**

**IN THE MATTER OF THE COMPANIES ACT, CAP 212 R.E 2002**

**AND**

**IN THE MATTER IS AFRICAN DEM ADVENTURE COMPANY LIMITED**

**AND**

**IN THE MATER SO PETITION FOR UNFAIR PREJUDICE UNDER SECTION**

**233(1), (2), (3) OF CAP 212 [R.E 2002]**

**ERROL LLOYDE BAILLEY .....1<sup>ST</sup> APPLICANT**

**PHILIPPA SMITH .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**EMANUEL PHILP KUTTA .....1<sup>ST</sup> RESPONDENT**

**AFRICAN DEM ADVENTURE COMPANY LIMITED.....2<sup>ND</sup> RESPONDENT**

## **RULING**

*21<sup>st</sup> & 23<sup>d</sup> May 2024*

**MWANGA, J.**

The prayer before me is for the grant of interim injunctive orders to temporarily restrain the 1<sup>st</sup> Respondent, his agents, representatives, group of persons acting under the instructions of the 1<sup>st</sup> Respondent and/or any other persons acting on that behalf from taking part in the management of the affairs of the Company or acting in any manner whatsoever; preventing and prohibiting them from continuing using, alienating, possessing, annoying, disturbing, and occupying Company premises; including possessing in any manner whatsoever Company properties including Motor Vehicle, Registration number T 440 DFA Land Rover Defender, and surrender the ignition keys to the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners, and preventing them from exploiting, applying, making, offering for sale, selling and/or using any methodology and process to use the Company's properties for any commercial purposes or gain, and from making advertisements in any social media platforms including booking.com and Instagram and in respect of the Company's business within the jurisdiction of the United Republic of Tanzania, or elsewhere pending the hearing application inter-parties.

The application is brought under section 68(e), 95 and Order XXXVII Rule 2(1) and Rule 4 of the CPC and it is accompanied with the affidavit affirmed By Saidi Hassan Kivuyo, advocate of the Applicants.

The facts deposed in the affidavit and submission during the hearing suggest that the conduct of the 1<sup>st</sup> respondent has been unfairly prejudicial to the members of the company i.e. the applicants and the 2<sup>nd</sup> respondent. Henceforth, urgent intervention by the court is of utmost urgency and necessary before hearing of the party's inter parties. Before considering the materials placed before the court, let the fact speak for itself.

The above-named applicants and the 1<sup>st</sup> respondent are the shareholders of the 2<sup>nd</sup> Respondent, **African Man Dem Adventure Company Limited** which was incorporated in Tanzania on the 16<sup>th</sup> Day of December 2020 and issued with Certificate of Incorporation number 147251017, Tax Identification Number [TIN] 147-251-017. The company was granted a license to carry on the business of Tourism- Class A license No. 006534 and a Business license No. 20000014644.

In the said company, the 1<sup>st</sup> respondent, **Emmanuel Philip Kutta** a Tanzanian citizen is prearranged with 450 Ordinary Shares and stands as majority shareholder, Company Secretary, and Director at the formation of

the Company, whereas, the 1<sup>st</sup> applicant, **Errol Lloyd Bailey** a British citizen is prearranged with 200 Ordinary Shares and stands as a Director and Chief Executive Officer and the 2<sup>nd</sup> applicant, **Philippa Smith** also a British citizen is prearranged with 200 Ordinary Shares and stands as a Director and Chief Finance Officer for African Man Dem Adventure Company Limited.

By way of the said affidavit, the applicants first entered into the jurisdiction of the United Republic of Tanzania on the 19<sup>th</sup> of October 2020 and were granted Tourist Visas for three months. It was during this time they met with the 1<sup>st</sup> Respondent herein one **Emmanuel Philip Kutta** after being recommended as a driver by one Sultan Iqbal Ibrahim from Mjimwema Kigamboni. Consequently, on the 25<sup>th</sup> Day of October 2020, an initial Agreement for Investment between the 1<sup>st</sup> Applicant on one part, and the 1<sup>st</sup> Respondent on the other part was signed between the parties. The agreement was based on the idea of transporting tourists in Tanzania to hotels, airports, and places of interest such as Bagamoyo, Zanzibar, Mafia, and Mtwara to provide an affordable and friendly service to help and encourage Tanzanian economic development.

As pointed out in the affidavit, this agreement witnessed initial payments, thus the 1<sup>st</sup> Applicant, initially gave one thousand (£1000/=) Sterling Pounds to the 1<sup>st</sup> Respondent for him to have his seven (7) seater taxi customized for tourist safety with the hope to invest more funds and form a viable business proposition with the 1<sup>st</sup> Respondent shortly.

According to the applicants, as the business endures, the 1<sup>st</sup> Respondent who is the majority shareholder and who is responsible for the day-to-day activities of the Company has been conducting the affairs of the Company in a manner that is unfairly prejudicial to the interests of its members and henceforth, the Company found itself in misunderstandings among Directors and Shareholders and as a result the objectives of the Company became inoperative. The particulars of unfair prejudices are;

- i. From the diverse dates of February 2022 onwards the 1<sup>st</sup> respondent bought many bad bargains against the Company's interests and the Applicants' instructions; the Applicants had strongly considered, suggested, and opted to buy new brand items with warranties and guarantees instead, the 1<sup>st</sup> Respondent herein, mostly purchased refurbished and 2<sup>nd</sup> hand items for the Company with no receipts and warranties.

- ii. The applicants have noticed missing receipts for company items and properties as hereby appearing: -
- (a). Missing receipt in respect of the sale of a 3-wheel diesel dump Truck, allegedly for 6/7million, together with its Contract for Sale;
  - (b). Missing receipt in respect for the Sale of brick machine reportedly for 10 million, together with its Contract for Sale; the said machine was bought for Thirty-Three Million Tshs [33], but sold without the applicant's knowledge or consent, the facts which he confessed but there was no accountability for the said amount;
  - (c). There have been missing items and receipts in respect of the T-shirts.250,000/= deposit paid for the second (2<sup>nd</sup>) Sugar Cane machine, July 2023;
  - (d). There is a missing correct receipt for a new Refrigerator for 2,800,000/=; a missing receipt in respect of four (4) house fans, a missing receipt in respect of the swimming pool tester kit reportedly for 280,000/= and a missing receipt in respect of the old refrigerator repair, reportedly for 200,000/=,

(h). Missing receipt in respect of repairs to Toyota Rav 4 (Jeep) for reportedly 4,500,000/=, missing receipt and accessories in respect of Vacuum Cleaner, reportedly purchased for 450,000/=; missing receipts in respect of shisha pipes, missing receipts in respect of worker's child hospital cancer insurance for reportedly 250,000/=, paid to the wife of Sijanoa; missing receipts for generator repairs, chicken feed machine, mattress, most building materials bought, most labor paid for,

iii. The 1<sup>st</sup> respondent has moved the premises to unknown and undisclosed locations to the Applicants and only knows to himself, this was done without the 1<sup>st</sup> and 2<sup>nd</sup> Applicants' consultations. It is asserted that the following are missing (off-site) assets that belong to the Company after being taken by the 1<sup>st</sup> Respondent together with his allies from the Company's premises without explanation, namely;

a) Cement Mixer,

b) Compressor,

c) 5 kilowatts Generator,

d) Egg incubator,

e) Solar panels from Banda roofs

f) Seven (7) seater taxi with Registration number T 337 BPU which was intended to be registered under the Company's name and reportedly paid for repair in 2020, has never been on site to date,

g) 20 liters of honey and 20 liters of oil reportedly ordered from Singida for approximately 300,000/= never arrived,

h) Managing Director, Emmanuel Kutta took (30 pairs of shoes) from Mr. Errol Lloyd Bailey, to date, the same has never been returned or reimbursed.

iv. The 1<sup>st</sup> respondent's dishonesty conduct has been persistent, with extreme aggression towards the applicants, refusing to grant the Applicants herein access to the Stamp of the Company, Visitors Book, Main Gate, Stores, Bar, Cottages, Fridge, and the Company's motor vehicle Land Rover Defender 110 make with Registration Number T 440 DFA, registered in the Company's name and which recently has been used for his activities without approval or consultations from the and with a



Tourism License which expired on the 31<sup>st</sup> December 2021, never renewed.

- v. The Respondent has been frustrating the Applicant's access to the basic needs of every human being, specifically running water and power. The water Infrastructure is poorly installed, and the farm of crops, chicken breeding, dog breeding, and visitors coming, has all collapsed.
- vi. The 1<sup>st</sup> Respondent is mistreating the Applicants with extreme aggression and subjecting them to torture, mistreatment, inhuman and degrading their dignity by refusing them access to water, sabotaging the storage water tanks and refusing funding access to check the pump machine and electricity; he is refusing the Applicants access into the credit machine which is used to insert electricity credits paid. The Respondent is denying the Applicants access to BRELA Company's account, particularly, the password and the username, which is known to himself, further, the Respondent is also denying the Applicants herein access and the use of the kitchen, store, and use of

fridge, as an alternative the Applicants are now using their living room area for preparation and cooking of food.

- vii. The 1<sup>st</sup> Respondent has been using abusive language against the Applicants; the Applicant's friends have been aggressively threatened and/or denied access to the Company's premises. Applicants' personal items and Company items, have disappeared or got lost unceremoniously; these include a 5kw generator, 5 mosquito lights bought for 45,000 each, the compressor machine, shoes, and an egg incubator among others.
- viii. The Applicants herein has on the 05<sup>th</sup> of January 2023, opted to report a series of criminal elements which were conducted in times by the 1<sup>st</sup> Respondent against the Applicants herein at Kigamboni Police Station, and was issued with a Police Case File reference number |KGM|CID|PE|03|2024|; since then the Respondent has been threatening the Applicants verbally and sending text messages through his personal WhatsApp Application account number +255 652 527 268, registered in his name.

- ix. The Respondent, who is a Director, Shareholder, and Company Secretary neglected the Applicants' requests in times without number for a Director's Meeting, Extraordinary Meeting, or Annual General Meeting from the Respondent and by the Company's Memorandum and Articles of Associations together with the provisions of the law and many requests have been ignored by the Respondent.

On an overall consideration of all facts deposed, I must state this is a fit case that requires a quick and urgent intervention of the court to ensure peace and harmony for the members of the company. The law is settled. An interim injunctive order is sought to preserve the status quo. See the case of **Deoshirima Fred Kagwa Hilal Hamed Rashid Versus Scandinavian Express Services Limited**, Civil Application No. 34 2008(CAT-Unreported) where the court has held that;

***"We are aware that the object of an interim injunctive order is to preserve the status quo pending the determination of the proceedings in question so that the relief(s) being sought would not be rendered infructuous".***

Given the above the court should be cautious that the order sought if granted should not be in breach of the rules of natural justice and immediately adversely affect the party who has not been heard. In other words, it should not affect determining the application to its finality.

Thus, in light of the above, and considering the serious nature of the alleged materials placed before me, at best this court can intervene by maintaining the status quo between the parties pending the determination of the main application inter parties. For clarity and certainty, this court orders the following;

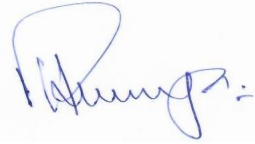
1. The 1<sup>st</sup> Respondent is ordered to involve the applicants in the management of the affairs of the Company and ensure the company's affairs are conducted and decisions are reached as per the memorandum and articles of Association of the company pending the determination of the application for temporary injunction inter-parties.
2. The 1<sup>st</sup> Respondent, his agents, assignees, workmen, or any other person acting on his behalf shall not operate and deal with the Company properties including Motor Vehicle, Registration number T 440 DFA Land Rover Defender without the consultation and

consent of the applicants **ERROL LLOYD BAILEY and PHILIPPA SMITH** pending the hearing of the application for temporary injunction inter-parties.

3. The 1<sup>st</sup> Respondent, his agents, assignees, workmen, or any other person acting on his behalf are prevented from exploiting, applying, making, offering for sale, selling, and/or using any methodology and process to use the Company's properties for any commercial purposes or gain, and from making advertisements in any social media platforms including booking.com and Instagram and in respect of the Company's business within the jurisdiction of the United Republic of Tanzania, or elsewhere pending the Application Inter-parties.

After the above, the application is fixed for hearing inter parties on 6<sup>th</sup> June 2024 at 12:30 am. Summon is to be re-issued to the 1<sup>st</sup> respondent for him to appear.

It is so ordered accordingly.



**H. R. MWANGA**  
**JUDGE**  
**23/05/2024**

**COURT:** Ruling delivered in the presence of Advocate Hassan Said Kivuyo for the applicants and absence of the 1<sup>st</sup> Respondent.



**H. R. MWANGA**  
**JUDGE**  
**23/05/2024**

