

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction

Civil Case No: 48 of 2018

BETWEEN: SELSON MOLEA & LESLEY MOLEA - **First Claimant**
AND: DIDAO DEVELOPMENT CORPORATION LTD -**First Defendant**
AND: TOATA MOLEA -**Second Defendant**
AND: HELLEN MOLEA -**Third Defendant**

Date of Hearing: 5th July 2022

Date of Judgment: 9th August 2022

Mr. Kwaiga L for the Claimants

Mr. Taupongi for the 1st, 2nd and 3rd Defendants

JUDGMENT

KOUHOTA PJ:

Back ground facts

On 25th January 2021 the Court gave Judgment for the Applicants and order that the First, Second and Third Defendants pay the shares of the Applicant at a value to be determine by an expert valuer. Following the said order, the parties engaged Morris and Sojnocki Accountant Firm to conduct the assessment of the value of the Applicant's shares. The valuation was completed on 21st June 2021 and the valuer's report was sent to the parties solicitors. The Applicant's shares were valued at a sum of \$3,481,081.00. The Defendants are yet to pay the Applicants shares as ordered by the Court. The Claimant's amended application now before the Court seek the following relief.

1. A Judgment order that the Claimants' shares held in the First Defendant in the sum of \$3,481,080.00 shall be paid by the Second and Third Defendants to the Claimants within 14 days from the date of the order.
2. An order that in the event the Second and Third Defendant fail to comply with Order (1), the Claimants/Applicant shall be empowered to sell their shares to the Public or any interested purchaser(s)
3. Consequent to order (2), an order that the Claimants shares shall be transferred to the purchaser(s) whose name shall be entered on the register by the Register of Companies.

4. An order for interest at a rate of 5% against the First, Second and Third Defendants as accrued from the date of Judgment up to the date of payment is paid in full.
5. An order for cost against the First, Second and Third Defendants
6. Any other orders the Court deems fit.

The background facts leading to this application are as follows;

The Court in its Judgment concluded as follows, “the authorised expert’s determination of the value of shares shall be final and the 1st, 2nd and 3rd Defendants shall purchase the shares of the First and the Second named Claimants in the company at the price determine by the expert”.

The Applicants raised two issues to be determine by the Court, they are;

- (1) Whether an order requiring the Defendant to purchase the Claimants shares within 30 days’ period is justifiable or whether the Defendants are entitled to purchase the shares on their own terms.
- (2) In the event where the Defendant do not or unable to purchase the Claimants’ shares within 30 days’ period and in the event where they are not entitle to make the purchase on their own term, whether the Claimants can sell their shares to the public.

In determining the issues, I think Court should start by considering Court’s orders at the end of the Judgment which reads as follows, “the authorised expert’s determination of the value of the shares shall be final and the 1st, 2nd and 3rd Defendants shall purchase the shares of the First and the Second named Claimant’s in the company at the price determine by the expert”.

The order does not in any way stop the Claimants selling their shares to any other person. The Judgment in my view anticipate that the parties will comply with the statutory requirements of the Companies Act relating to sell of shares by a shareholder and ensures that the parties comply with the statutory requirements when dealing with the sale and payment of the shares.

Section 19 of the Company Act 2009 states- “*A share in a company is a personal property.*”

1. *Schedule 2 Division 3- pre-emptive rights; rule (1) A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell to other holders of shares of the same class in accordance with Procedures set out in clause 13 to 20, unless all other shareholders agree otherwise...*
2. *Rule 13: A shareholder who wishes to dispose of some or all of his or her shares (selling the shareholder) must give written notice to the company of (a) the number of shares to be sold, and (b) the price at which the selling shareholder is willing to sell the shares.*
3. *Rule 14. The company must ,within 10 working days, give a copy of the written notice referred to in clause 13 to each shareholder; together with a notice advising each holder of shares of the same class— (a) that shareholder is entitled to purchase a promotional number of the shares that the selling shareholder wishes to sell (rounded in an appropriate manner determined by the director); and (b) that ,if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.*

4. *Schedule 2, rule 18-if no shareholder wishes to purchase the selling shareholder's shares at the specified price , the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder , sell some or all of those shares to any other person at a price not less than the specified price.*

These provisions were summarised by Counsel for the Defendants Mr Taupongi at paragraph 5.3 of his written submission filed on 27th July 2022 as follows;

1. If a shareholder wishes to sell his shares, he must give written notice of his intention to the company (usually the secretary). The notice must state the number of shares to be sold and the purchase price.
2. Within 10 working days of receiving that notice, the company must give written notice of the offer to other existing shareholders in equal proportions.
3. Any shareholder who accepts the offer to him must notify the company of his acceptance.
4. If a shareholder does not accept the proportion of offer made to him, he must give notice to the company and the company must offer such proportion to shareholders who did accept the first offer, in equal proportions.
5. If the seller's offer is wholly accepted by all or some of the existing shareholders (after 3 and 4 above) those who accepted the offer must pay the purchase price to the seller and the company will enter the transfer of shares accordingly.
6. If the offer is not accepted by any of the existing shareholders, the seller may offer the same shares to any person (other than the other shareholder) within 12 months at the same price that was offered to the other shareholders.

Counsel Taupongi for the Defendant submit that any order allowing the Claimants to sell their shares to the public would be contrary to original order of the Court that Defendants buy the Claimants shares. As alluded to earlier, the Judgment and orders anticipated that the parties will comply with statutory requirement when they conduct the transaction. It does not preclude the Claimants selling their shares to any other person. As long as they comply with statutory requirement they can sell their shares to anyone. The Court Order for the Defendant to buy the Claimants shares can not over right the statutory provision of the Company Act. So Mr Taupongi's submission that the Claimant cannot sell their shares to the public is misconceived.

The Claimants had complied with the statutory provisions by giving notice to the company and offering their shares to shareholders, the Second and Third Defendants. That is a valid offer but the Defendants decline to accept the offer as notify by the company secretary in her letter dated 13/6/22 to Mr Olofia, Counsel for the Claimants. The Defendant's refusal or inability to purchase the Claimants shares has freed the Claimants to sell their shares in the First Defendant to the public by virtue of Schedule 2, Rule 18- which states "*if no shareholder wishes to purchase the selling shareholder's shares at the specified price , the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder , sell some or all of those shares to any other person at a price not less than the specified price*".

The original Judgment or order of the Court does not preclude the Claimants selling their shares to the public, it only ensures that the Claimants comply with provisions of the Company Act when

selling their shares. After the Claimant had given notice of their wish to sell their shares to other shareholders and if no shareholder is willing to pay the shares they are free to sell their shares to the public pursuant to Schedule 2, Rule 18 of the Company Rules and the Defendant does not have any right to stop them. The shares are the Claimant's personal property and they can disposed of them as they wish, provided they comply with Company Rules.

The Judgment of this Court was delivered on 25th January 2021. Assessment of the value of the shares was done on 21st June 2021. I think from the date of judgment and the assessment of the value of the Claimant's shares until now is enough time for the Defendants to make arrangement if they wish to buy the shares. From date of Judgment it is now 19 months and from the date of assessment of the value of the share is about 14 months. I cannot understand why the Defendant is asking for more time and blaming the Claimants for their failure to make arrangement for them to get a loan to buy the shares when they earlier decline the Claimants offer to buy the shares. When the Court in its Judgment does not specify time for payment, this means payment should be forthwith. Taking into account that it is now 19 months from the date of Judgment and the Defendant's previous refusal to purchases the Claimant's shares. I will answer the Claimants question as follows;

1. The order requiring the Defendants to purchase the Claimants shares within 30 days' period is justifiable. The Defendants are not entitled to purchase the shares on their own terms.
2. In the event where the Defendants do not or unable to purchase the Claimants' shares within 30 days' period, the Claimants can sell their shares to the public.

The Orders sought by the Claimants are granted with cost against the Defendants to be taxed if not agreed.



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Hon. Justice Emmanuel. Kouhota
Puisne Judge.