

REPUBLIC OF ZAMBIA
WRIT OF SUMMONS

IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2020/HPC/ 0732

BETWEEN:

ELISHA TSINDIKIDZO

PLAINTIFF

AND

OMG HOLDINGS LIMITED

1ST DEFENDANT

OLYMPIC MILLING COMPANY LIMITED

2ND DEFENDANT

SAVVAS SAMARAS

3RD DEFENDANT

JOHN STEPHANOS SAMARAS

4TH DEFENDANT

GEORGE STEPHANOS SAMARAS

5TH DEFENDANT

EFSTRATIOS JOHN SAMARAS

6TH DEFENDANT

LUNZUA POWER AUTHORITY LIMITED

7TH DEFENDANT

TO: the 1st Defendant, **OMG HOLDINGS LIMITED**, of 26 Kanyanta Avenue, Parklands, Kitwe, Zambia, the 2nd Defendant, **OLYMPIC MILLING COMPANY LIMITED**, of Plot No. 1807, Stand No. 11 Francis Mukuka Road Kamuchanga Heavy Industrial Area, Mufulira, Zambia, the 3rd Defendant, **SAVVAS SAMARAS**, also of 26 Kanyanta Avenue, Parklands, Kitwe, Zambia, the 4th Defendant **JOHN STEPHANOS SAMARAS**, of House No. 3, Harrow Crescent, Parklands, Kitwe, the 5th Defendant **GEORGE STEPHANOS SAMARAS**, of House No. 92, Maina Soko Avenue, Fairview, Mufulira, the 6th Defendant **EFSTRATIOS JOHN SAMARAS**, of House No. 6, Kumasi Avenue, Fairview, Mufulira and the 7th Defendant, **LUNZUA POWER AUTHORITY LIMITED**, of Stand No. 2386, Longolongo Road, Light Industrial Area, Lusaka, Zambia.

You are commanded in the President's name that within 21 days after the service of this writ on you, exclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of **ELISHA TSINDIKIDZO** and take notice that in default of your so doing the Plaintiff may proceed herein, judgment may be given in your absence.

WITNESS The Honourable **IREEN MAMBILIMA** Chief Justice of Zambia the day of _____ in the year of our Lord Two Thousand and Twenty.

Memorandum to be subscribed on the writ

- (b) The 3rd to 6th Defendants be restrained from calling or causing to be called any meeting of the directors in the 7th Defendant Company; and
- (c) The 3rd to 6th Defendants be restrained from holding out, acting or doing anything purporting to act as directors in the 7th Defendant Company, including the removal of the Plaintiff as the Chief Executive Officer of the 7th Defendant Company.
- (vii) An order directing that the affairs of the 7th Defendant Company be conducted in a manner that is not unfairly prejudicial to the interests of the Plaintiff as a minority shareholder, but in accordance with the provisions of the Articles of Association, Shareholders' Agreement and the Companies Act;
- (viii) Costs; and
- (ix) Any other relief the Court shall deem fit.



This writ was issued by **Mulenga Mundashi Legal Practitioners of 1st Floor, Zimbabwe House, Haile Selassie Avenue, Longacres, Lusaka** whose address for service is as above and whose postal address for service is at **P.O. Box 34972, Lusaka** and whose telephone number is +260-211-242248/50 and email address is info@mmco.co.zm, advocates of the said Plaintiff whose registered and postal address is House No. 5185, Pungwa Crescent, Kitwe and email address for the Plaintiff is etsindi@gmail.com

Endorsement to be made within THREE days after service

This writ was served by me at _____ on the _____ day _____ on
 the Defendants _____
 Of _____ 2020

Endorsed the _____ day of _____ 2020
 (Signed)
 (Address)

IN THE HIGH COURT FOR ZAMBIA
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ELISHA TSINDIKIDZO

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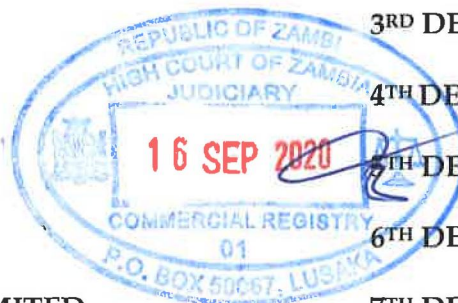
5TH DEFENDANT

EFSTRATIOS JOHN SAMARAS

6TH DEFENDANT

LUNZUA POWER AUTHORITY LIMITED

7TH DEFENDANT



STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a Director, Chief Executive Officer and a minority shareholder in the 7th Defendant Company herein, holding 1,500 ordinary shares of 7th Defendant Company's total authorised shares.
2. The 1st Defendant is and was at all material times a private limited company duly incorporated in the Republic of Zambia pursuant to the Companies Act No. 10 of 2017 and a shareholder in the 7th Defendant Company herein, holding 17,000 ordinary shares of the 7th Defendant Company's total authorised shares.
3. The 2nd Defendant is and was at all material times a private limited company duly incorporated in the Republic of Zambia pursuant to the Companies Act No. 10 of 2017 and also a shareholder in the 7th Defendant Company herein, holding 8,499 ordinary shares of the 7th Defendant Company's total authorised shares.
4. The 3rd Defendant is and was at all material times a director of the 7th Defendant Company.
5. The 4th, 5th and 6th Defendants were allegedly appointed as directors of the 7th Defendant Company at a meeting on 11th August 2020.
6. The 7th Defendant Company is and was at all material times a special purpose vehicle ("SPV") that was incorporated in the Republic of Zambia pursuant to the Companies

Act No. 10 of 2017, on 17th October 2006, to bid for the right to finance, develop, construct and operate two (2) run-of-river hydroelectric power schemes at Kabwelume Falls (96 MW) and Kundabwika Falls (151 MW) on the Kalungwishi River and the associated transmission and interconnection facilities in the Luapula and Northern Provinces of Zambia ("**Kalungwishi Project**" or "**the Project**"). The Project costs were estimated at US\$650 million and the estimated construction period is 4 years.

7. Further to the contents of paragraph 6 above, the Plaintiff, 2nd, 3rd and 7th Defendants entered into a shareholders agreement (the "**Shareholders Agreement**") dated 20th December 2006, with the view that the Shareholders Agreement regulates their relationship as shareholders and the affairs of the 7th Defendant Company including aspects on the appointment and removal of directors in the 7th Defendant Company.
8. The Plaintiff will further aver that, the 7th Defendant Company subsequently entered into an implementation agreement (the "**Implementation Agreement**") dated 22nd August 2011, with the Government of the Republic of Zambia ("**GRZ**"), acting through the Ministry of Energy and Water Development, which agreement gave full rights to the 7th Defendant Company to develop and implement the Project, which has subsequently been breached by the GRZ and the 7th Defendant Company is currently pursuing the matter through arbitration.
9. In light of the provisions of the Shareholders Agreement and the desire to implement the Project, the 7th Defendant Company undertook a shareholding restructuring exercise which resulted into the current shareholding structure as follows:
 - (a) the Plaintiff holds 1,500 ordinary shares;
 - (b) the 1st Defendant holds 17,000 ordinary shares;
 - (c) the 2nd Defendant holds 8,499 ordinary shares; and
 - (d) Transafrica Investments Holdings SA holds 3,000 ordinary shares.
10. The Plaintiff will aver that he was engaged as the Chief Executive Officer of the 7th Defendant Company pursuant to the Shareholders Agreement and the Service Agreement between the Plaintiff and the 7th Defendant dated 2013.
11. The Plaintiff will also aver that the 1st, 2nd, 3rd and 4th Defendants have allegedly conducted themselves in a manner that can be considered to be as bad faith and unfairly prejudicial to the Plaintiff, a breach of the Shareholders Agreement and the provisions of the Companies Act. The particulars of the said allegations are as follows: -

PARTICULARS

- (a) On the 2nd August 2019, the 1st Defendant under the hand of the 3rd Defendant offered to sell its equity held by both the 1st Defendant and the 2nd Defendant allegedly equivalent to 85% of the 7th Defendant Company authorised share capital.

- (b) Further to offer letter in paragraph 11(a) above, on 28th August 2019, the Plaintiff responded by offering to buy the shares of the 1st Defendant and 2nd Defendant as offered.
- (c) Subsequently and without responding to the Plaintiff's offer in paragraph 11(b) above, on 10th June 2020, the 1st Defendant issued what is purported to be a notice of intention to move a resolution to remove certain directors in the 7th Defendant Company, including the Plaintiff, to the former Company Secretary of the 7th Defendant Company, KPMG Zambia Limited, which notice is contrary to:
 - (i) the mandatory requirements under section 98(2) of the Companies Act as read with Regulation 25 of the Companies (Prescribed Forms) Regulations, 2018 which prescribes the manner and form to be issued for a notice of removal of a director in a company in Zambia; and
 - (ii) clause 2.9 of the Shareholders Agreement, which restricts the appointment and removal of directors in the 7th Defendant Company to a particular appointing shareholder.
- (d) On 19th June 2020, the 1st Defendant under the hand of 4th Defendant issued what allegedly is the notice for the repayment of loans and demanded that the loans owed by the 7th Defendant Company to the 1st Defendant group of companies be paid within seven (7) days from the date of the said letter.
- (e) On 10th July 2020, the 3rd Defendant, in his capacity as Director in the 7th Defendant Company, issued a Notice for an Extraordinary Meeting of the Shareholders of the 7th Defendant Company which, under agenda item number 5, makes reference to the discussion and moving of a resolution for the removal of directors in the 7th Defendant.
- (f) On becoming aware of the conduct of the 1st, 2nd, 3rd and 4th Defendants' intentions, the Plaintiff objected to the alleged Notice of Intention and the Notice for an Extraordinary Meeting by a letter dated 7th August 2020, on grounds of the irregularities already outlined in paragraph 11(c) above. Further, the Plaintiff, through the former Company Secretary of the 7th Defendant Company, by a letter dated 10th August 2020, requested that the meetings be rescheduled to 18th August 2020 and 22nd August 2020, for the board meeting and Annual General Meeting, respectively.
- (g) On 11th August 2020, contrary to the Plaintiff's request and objection in paragraph 11(e) above, the 1st, 2nd, 3rd and 4th Defendants proceeded with the alleged shareholders meeting of the 7th Defendant Company and allegedly resolved that the Plaintiff be removed as a director of the 7th Defendant Company and purportedly appointed four (4) new directors in the 7th Defendant Company.
- (h) On 28th August 2020, 4th Defendant proceeded to file what he purports to be the Notices of Change of Directors or Secretary and Particulars at the Patents and Companies Registration Agency in an attempt to remove the Plaintiff as director in 7th Defendant Company and allegedly confirming the appointment of the four new directors.

- (i) On 4th September 2020, in an attempt to resolve the matter amicably, the Plaintiff wrote to the 1st to 6th Defendants demanding that their alleged resolutions be reversed and that the records of the 7th Defendant Company at the Patents and Companies Registration Agency be rectified but as at the date of these proceedings, there has not been any substantiated response to the Plaintiff's letter.
- 12. Plaintiff will aver that despite the Plaintiff's best efforts to resolve this matter amicably, the 1st, 2nd, 3rd and 4th Defendants decided to go ahead with the Extraordinary General Meeting on 11th August 2020, and allegedly attempted to remove the Plaintiff as a director, in spite of the provisions of the Shareholders Agreement and the Plaintiff's Notice objecting to the said meeting and providing alternative dates for the same.
- 13. The Plaintiff will further aver that the conduct of the 3rd Defendant in proceeding with the meeting on 11th August 2020, and executing the purported Notices of Change of Director and Secretary amounts to a breach of directors' duties and an illegal act that warrants a claim by the Plaintiff in terms of sections 134, 138 and 335 of the Companies Act.
- 14. The Plaintiff will further show at trial that the conduct of the 1st and 2nd Defendants amounts to oppressive conduct that is prejudicial and unfair towards the Plaintiff.
- 15. The Plaintiff will say that in light of the breach of the duties placed on directors under the Companies Act and breaches of the provisions of the Articles of Association and the Shareholders Agreement, and despite repeated requests by the Plaintiff to resolve the matter amicably, the 1st to 6th Defendants have failed, refused and/or neglected to act in a manner permitted by the law and the agreements regulating the relationship between the parties.

THE PLAINTIFF THEREFORE CLAIMS:

- (j) A declaration that the alleged Notice of Intention to move a resolution for the removal of directors (including the Plaintiff) in the 7th Defendant Company by a letter dated 10th June 2020, under the hand of the 4th Defendant was incompetent and a violation of the provisions of the Companies Act, No. 10 of 2017 and as such, rendering the alleged subsequent removal of the Plaintiff from the board of the 7th Defendant Company on the 11th August 2020, a nullity;
- (ii) A declaration that the affairs of the 7th Defendant Company by virtue of the 1st, 2nd, 3rd, 4th and 5th Defendants' which led to the alleged removal of the Plaintiff as director of the 7th Defendant Company have been carried out in a manner that is unfairly prejudicial to the Plaintiff's interest as a minority shareholder in the 7th Defendant Company;
- (iii) An order cancelling the alleged resolution of the 11th August 2020, removing the Plaintiff from the board of the 7th Defendant Company;
- (iv) A declaration that the alleged removal of the Plaintiff from the board of the 7th Defendant Company by the 1st, 2nd, 3rd, 4th and 5th Defendants on the 11th August 2020, constitutes a breach of the Shareholders Agreement dated 20th December 2006, between *inter alia* the Plaintiff, 2nd, 3rd and 7th Defendant.

- (v) An order directing the Defendants to reinstate the Plaintiff as director in the 7th Company and ensure that the records of the 7th Defendant Company at the Patents and Companies Registration Agency are rectified to reflect that correct information that the Plaintiff is a *bona fide* director and Chief Executive Officer of the 7th Defendant Company;
- (vi) An order of injunction that:
 - (a) The 1st and 2nd Defendant Companies be prohibited and restrained from removing the Plaintiff as director of the 7th Defendant Company;
 - (b) The 3rd to 6th Defendants be restrained from calling or causing to be called any meeting of the directors in the 7th Defendant Company; and
 - (c) The 3rd to 6th Defendants be restrained from holding out, acting or doing anything purporting to act as directors in the 7th Defendant Company, including the removal of the Plaintiff as the Chief Executive Officer of the 7th Defendant Company.
- (vii) An order directing that the affairs of the 7th Defendant Company be conducted in a manner that is not unfairly prejudicial to the interests of the Plaintiff as a minority shareholder, but in accordance with the provisions of the Articles of Association, Shareholders' Agreement and the Companies Act;
- (viii) Costs; and
- (ix) Any other relief the Court shall deem fit.

Dated the.....day of.....2020

Drawn by:-


.....
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Advocates for the Plaintiff

To: **The 1st Defendant**
OMG Holdings Limited,
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Parklands,
Kitwe

To: The 2nd Defendant
Olympic Milling Company Limited,
26 Kanyanta Avenue,
Parklands,
Kitwe

To: The 3rd Defendant
Savvas Samaras,
26 Kanyanta Avenue,
Parklands,
Kitwe

To: The 4th Defendant
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Harrow Crescent,
Parklands,
Kitwe.

To: The 5th Defendant
George Stephanos Samaras
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Maina Soko Avenue,
Fairview,
Mufulira.

To: The 6th Defendant
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To: The 7th Defendant
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