

When a company falls out with its CEO: lessons from South Africa's Old Mutual

By [Rehana Cassim](#)

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A legal battle between Old Mutual, the South African-based pan-African investment, savings and insurance group, and its chief executive officer Peter Moyo has dominated news headlines in the country for the past eight months.



The dismissal of a chief executive is seldom given such publicity as has happened in the case of Old Mutual. Shutterstock

The drama has involved vitriolic public attacks, numerous court cases and claims and counter claims from both parties. It is seldom that such extensive publicity is given to the dismissal of a chief executive of a listed company and to the inner conflicts in a company. These matters are usually resolved internally.

The publicity given to the Moyo saga has brought to the fore some important lessons that should be noted by company directors. The first is about what it says about directors disclosing conflicts of interest. The second is about how tricky it is to reinstate a director once they have been dismissed. [In my research](#) I found a few [cases](#) where courts have indeed reinstated executive directors. But the process is complicated because relationships have invariably turned sour.

The other useful lesson is what the Old Mutual events tell us about the role of directors – even after they have been fired. [Based on my research findings](#) I argue that directors still owe certain duties to the company, such as loyalty, even after they are fired. And that sticking to company policies on engagement with the media is the wise thing to do.

How the saga unfolded

In the middle of last year Old Mutual dismissed Moyo as its CEO because of a breakdown of trust and [conflict of business interest](#). The action was taken because of questions around a dividend payment by an investment firm co-founded and partly owned by Moyo.

A month later a judge [ordered](#) Moyo to be temporarily reinstated. But Old Mutual refused to allow him access to his office pending its appeal of this decision. Moyo then launched an application to hold the Old Mutual board in [contempt of court](#).

Early this year a full bench of three judges [held](#) that Moyo had been properly dismissed.

The sorry saga isn't over yet. Moyo is insisting on his reinstatement and is [appealing the judgment](#). He is also continuing with an application for contractual and reputational damages, a contempt of court application and an application to [declare the entire Old Mutual board delinquent](#).

The lessons

The Moyo saga highlights the importance of a director's duty to disclose any conflicts of interests. The Companies Act sets out [the rules](#) relating to the disclosure of a director's personal financial interests in the company's business.

Directors stand in a fiduciary relationship to their company. This means that they must act with loyalty and in good faith. They must not put themselves in a position where their personal interests conflict with their duties to the company. If they have personal interests in a particular matter, they must disclose them to the board. And after disclosure they must not take part in board decisions relating to that matter.

Failure to comply could have serious consequences. For instance, it could render the entire transaction invalid.

Another lesson to be learned from the Moyo saga is that it's complicated to reinstate executive directors. I did find [cases in my research](#) where courts had indeed reinstated executive directors. But the close relationship between a board and an executive director makes it tricky.

The position of a chief executive of a company requires a special relationship of trust and confidence. Old Mutual said that it has lost trust and confidence in Moyo because of his conflict of interest. Moyo in turn said that he lost trust and confidence in the chairman and the directors. He said publicly that he was taking action to have the entire [Old Mutual board declared delinquent](#).

Because of the clear breakdown in trust and confidence, the court said that there was no realistic prospect of Moyo ever being reinstated.

In [another case](#) the Constitutional Court also did not reinstate two directors who had been unlawfully dismissed by the Minister of Defence and Military Veterans because it found that their relationship had disintegrated beyond repair.

A court will not readily order the reinstatement of a director where the relationship with the board has broken down. If directors wish to be reinstated after leaving, they must demonstrate that their relationship with the company is still viable.

The dos and don'ts, even after leaving

The other reason Old Mutual cited for losing trust and confidence in Moyo was that he'd given public interviews to the media after his suspension in which he criticised Old Mutual. The company said these negative statements breached its media policy and harmed its reputation. It [also said](#) that Moyo acted against its interests and that he had not acted according to the standards expected of a chief executive, even though he had been suspended.

Negative publicity about a company can discredit it, and harm the directors' reputation. It can also affect the company's share price. The negative publicity suffered by Old Mutual caused its [share price to drop](#) by as much as 9,3%.

As fiduciaries, directors must act in good faith and in the best interests of the company. South Africa's corporate governance code – [King IV](#) – recommends that directors should act ethically, beyond mere legal compliance, and that directors should set the tone for an ethical organisational culture.

[As I found](#), even after a director leaves his company, he still owes certain fiduciary duties to the company, such as a duty of loyalty.

Directors should be careful not to breach their company's media policy – if there is one – even after they leave the company. They should exercise caution in the public statements they make about the company. Making negative statements can lead to the relationship breaking down even further, making their reinstatement impossible. It could also limit their chances of being appointed to other boards because of the fear that they may again harm the company's reputation.

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