

TANZANIA / JUDGMENT

stefano ciocca vs azure boutique resort limited 3 others 2023

tzhccomd 339 20 october 2023

COURT
TZHCCOMDDECIDED
20 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM MISC. COMMERCIAL CAUSE NO 58 OF 2022 IN THE MATTER OF THE OF THE
COMPANIES ACT NO. 12 OF 2002 AND IN THE MATTER OF AN APPLICATION MADE UNDER
SECTION 281(l)(a)(ii) OF THE COMPANIES ACT AND IN THE MATTER OF COMPULSORY
WINDING UP OF AZURE BOUTIQUE RESORT LIMITED AND IN THE MATTER OF PETITION FOR
UNFAIR PREJUDICE BY STEFANO CIOCCA..... PETITIONER VERSUS
AZURE BOUTIQUE RESORT LIMITED..... 1stRESPONDEN
MAXJUENTGEN.....2ndRESPONDEN 3rd RESPONDENT
AHM HOTEL MANAGEMENT..... ANATORIA MKARUTAZIA
ZACHARIA..... 4thRESPONDEN

RULING

Date of Last Order: 16/10/2023 Date of Delivery: 20/10/2023 MATUMA, J. The Petitioner herein Stefano Ciocca petitioned before this court for the compulsory winding up of Azure^Boutique Resort Limited a i company duly incorporated under the Companies Act No. 12 of 2002 on the 1st November 2018 with a certificate of incorporation no. 138047423. The Petitioner in this petition seeks the following Reliefs;

1. An order for the winding up of Azure Boutique Resort Limited.
2. An order appointing an official liquidator.
3. Costs of the petition.
4. Any other order or relief that this court may consider just, fit, and equitable to grant. The petition is made under sections 267(1), (a), (b) and 281(l)(a)(ii) of the Companies Act supra and supported by an affidavit as to Verification sworn by Shalom Samwel Msakyi dully authorized and instructed to act on behalf of the Petitioner. Briefly, the company sought to be wound up engaged in hotel and hospitality industry in Dar es Salaam, the petitioner being one of the contributors as well as one of the Directors of the said company. It is

pleaded in the Petition that sometime in 2020 after the outbreak of Covid 19, the Company undergone financial constraints which led to abandonment of its affairs by the 2nd and 3rd respondents leaving the Petitioner stranded and thus causing the breakdown of the working relationship between the investors and shareholder of the company. 2 It is further pleaded that the Petitioner being a minority shareholder poses a risk of liability due to the fact that statutory obligations or filings of the company as required by Law have not been met. When the matter was scheduled for hearing, the petitioner was represented by Mr. Shalom Msakyi learned advocate. The Respondents have always been absent and thus the Court ordered the hearing ex-parte against them. Submitting in support of the petition, Mr. Shalom Msakyi learned advocate argued that this petition is grounded on the fact that the other Directors have abandoned the Company's operations for the past two years. He further stated that the company has not been able to conduct meetings at all that time in the meaning that the company has not approved any Audit Financial Statement to be filed with the Revenue Authority. It was the learned advocate's argument that the company be wound up by a court order and Shalom Msakyi be appointed as an official liquidator of the said company. He cited the case of Ernest Andrew vs Francis Philip Tembe (1996) TLR 287m which the court held that if members of the company do not see eye to eye in managing the company, it is equitable that the company be wound up. He also cited the case of NHesh Ladwa vs Greenlight Auction Mart, Misc. Civil Cause 21 of 2020 which reiterated what was held in the case of Ernest Andrew (supra) to the effect that; if the conduct of the members and co-directors is unusual and hence threatens the company's life and its operation status or awaiting the company to be declared bankrupt, then it is just and equitable to declare that the company be wound up. Mr. Msakyi again submitted that the company has not been operational for a while from the date of filing this petition and there have not been activities by the management and the Respondents have failed to pay any attention to this court proceedings despite of being served. The learned advocate finally argued that the conducts of the Respondents attracts a liability to the petitioner since he cannot manage the company as a sole person due to statutory limitation that the company should be run by two or more persons. He thus prayed for the petition to be granted, an order for the winding up of the company (the 1st Respondent) and an appointment of a liquidator. After hearing the submissions of the learned advocate and going through the contents of the petition, I find that the issue to be determined for the purposes of this Petition is whether Azure Boutique Resort Limited the 1st Respondent herein qualifies to be wound up by the court under Section 279(1) (a-e) of The Companies Act supra provides for the conditions and circumstances under which the winding up of a company can be ordered. It reads; company may be wound up by the court if-

- (a) the company has by special resolution resolved that the company be wound up by the court,
- (b) the company does not commence its business within a year from its incorporation or suspends its business for a whole year,
- (c) the number of members falls below two,

- (d) the company is unable to pay its debts,
- (e) the court is of the opinion that it is just and equitable that the company should be wound up." In the instant petition, the pleaded facts and arguments of the Petitioner presupposes that the condition under paragraph (e) herein above befits the circumstances of this Petition because it would be just and equitable that the company be wound up. The Petitioner's advocate averred that other Directors have abandoned the Company's operations and that there have not been statutory filing or compliance done for the past two years. He also averred that the petitioner cannot manage the company as a sole person due to the limitations of the law that requires the company to be run by two or more persons. It is undisputed fact that there is no good atmosphere in the management of the affairs of the 1st Respondent's company for obvious reason that there is no communication among the Directors. Effective management of a company can only be achieved when there is effective communication between the Directors. In the case of *NHesh Ladwa* (supra) with similar facts to the instant one, the Court observed that under the circumstances in which the Directors are on unusual conducts, the Company should be wound up. Also, in the case of *Ernest Andrew* (supra), the court having been satisfied that the Directors of the Company were not in talking terms each accusing the other considered that such conduct was a sufficient ground to order that the Company be wound up. It is my firm finding that the circumstances in the instant Petition are similar to those of the two cited cases supra and thus there would not be any excuse to take a different route. The circumstances suffice for *Azure Boutique Resort Limited* to be wound up and consequently this Petition is hereby granted pursuant to the provisions of section 279(l)(e) of the Companies Act supra. That being done, I do hereby appoint Advocate Shalom Samwel Msakyi as an official liquidator of the 1st Respondent's company. He is given a period of six months within which he shall exercise all the powers by taking possession of the assets, properties, accounts, and records of the company and deal with them in accordance with law. 6 COURT: 7

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