

TANZANIA / JUDGMENT

godfrey herry mosha 2021

tzhccomd 3336 17 september 2021

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TZHCCOMDDECIDED
17 September 2021

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT PAR ES SALAAM MISC. COMMERCIAL CAUSE NO. 46 OF 2021 IN THE MATTER OF COMPANIES ACT, CAP 212 RE 2002 AND IN THE MATTER OF PETITION FOR AN ORDER TO CALL HOLD AND CONDUCT AN EXTRA ORDINARY GENERA MEETING BY GODFREY HERRY MOSHA..... PETITIONER Last order: 14/09/2021 date of Ruling: 17/09/2021

RULING

NANGELA, J: On the 3rd of September, 2021, the petitioner herein brought up this petition as matter of urgency and filed it under section 137(1) (2) and (3) of the companies Act, No 12 Cap 212 RE 2002. According to those provisions, this court is empowered to issue an order that a meeting of the company be convened, held and conducted in such a manner as the court think appropriate,. In this petition, the petitioner is seeking for orders that: i

1. A meeting may be called, held and conducted by the petitioner and that the presence in person or proxy may be deemed to constitute a quorum.
2. Such orders as the court may deemed fit to grant. Before proceeding further to the details, it behooves that I set out, albeit briefly, the facts of this petition. On the 20th day of January 1995, a company in the name of "M/s Principal Company Ltd" was incorporated. It was given a Certificate of Registration No. 26847. The Company had two directors who were running its affairs. The two directors, in the names of Godfrey Kerry Mosha (the Petitioner herein) were as well its shareholders. On the 19th day of December 2020, Ms. Elizabeth Godfrey Mosha passed away. This made the Company to be left with only one surviving director. According to the existing legal requirement one director cannot constitute quorum and, hence, cannot do transact the business of the Company. It is on that basis that the Petitioner has approached this Court with prayers enlisted earlier here above. Assisted by his advocate, Mr. Braysoni Shayo, the Petitioner has informed this Court of what befell the leadership of the Company and the rationale for the Petition. It was submitted, in particular, that, due to the death of one 2 of the Company's Directors, the petitioner is now seeking for an order of this Court which would make it possible for the remaining sole Director to convene a meeting in order to help the Company appoint another person as a Director, and thereby enable the

Company to carry out its affairs within the ambits of the law. I have looked at the Petition and its annexure and I have heard from the learned counsel for the Petitioner. In the circumstances of this Petition, I find it prudent that the orders sought be granted given that, the Company cannot run its affairs legally if its Board of Directors lacks sufficient quorum. In the upshot, and on the basis of the facts disclosed in the Petition and the annexures thereto, I am satisfied that, the petitioner has exhibited sufficient grounds for this Court to grant him the Orders sought. All said and done, this Court settles for the following orders, that:

1. As the sole surviving director, the petitioner is hereby ordered, within 60 days from the date of this ruling, to call and conduct a meeting of the Shareholders of the Company and, one of the agenda should be appointment of an additional Director of the Company following the demise of Ms Elizabeth Godfrey Mosha, who was a Co-Director. 3
2. That, the presence in person or proxy shall be deemed to constitute a quorum. It is so ordered. JUDGE, HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) 17th day of September, 2021 4

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Prepared on 13 October 2026 · Esheria