

TANZANIA / JUDGMENT

RAISA APPLICATION ruling FINAL

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21 March 2025

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA SUB-REGISTRY AT MBEYA MISCELANOUS APPLICATION NO. 5768 OF 2025 CASE REFERENCE NO. 202503131000005768 (Originating from Probate and Administration Cause No. 4928 of 2025) IN THE MATTER OF THE ESTATE OF THE LATE DANILBEK MAMKHEGOV AND IN THE MATTER OF AN APPLICATION FOR GRANT FOR COLLECTION AND PRESERVATION OF PROPERTY OF THE ESTATE OF THE LATE DANILBEK MAMKHEGOV BY RAISA MAMKHEGOVA.....APPLICANT

RULING

17th& 21st March 2025 NONGWA, J. This ruling comes upon Chamber application (ex parte) by RAISA MAMKHEGOVA the applicant, made under section 39 of the Probate and Administration of Estates Act and rule 14, 51(1) and proviso of rule 73 of the Probate Rules for the orders that; 1| Page

- i. The Court be pleased to dispense with General Citation and Order the letters of Administration applied for be granted forthwith. ii. The court be pleased to grant to the applicant, the said letters of administration limited the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate. iii. The upon grant, given the nature of part of the deceased estate, i.e. 90% shares in Risa Resources Limited, the applicant be allowed to collect by way of transferring the respective shares from the deceased to herself as administrator, so as to have power of preserving interest therein (other than distributing the same). The application has been brought under certificate of urgency and supported by the affidavit of Raisa Mamkhegova, and has enjoyed the services of Mr. James Kyando, learned counsel, When the matter came for hearing, Mr. James Kyando adopted the grounds for the urgency as contained in the certificate for the purpose of determining this matter under urgency and stated that the nature of the estate of the deceased which is in the form of shares, and the main estate for that matter is available in RISA RESOURCES LTD and the applicant 2|Page prays to be granted with letters of administration and be allowed to collect them by way of transferring those shares to her as administrator of the estate. The counsel cited section 74 of the Companies Act, Cap 212 to support his position. He said among the things the applicant wishes to do is collecting and preserving the estate, appointing and recruiting staffs for smooth operations of RISA

RESOURCES LTD, to have finance control money coming and money going out, and as a matter of preservation of the company, to be able to expand the business. The counsel insisted that according to article 18 of the Memorandum of the company, the applicant can only have the powers sought upon those shares being transferred. The counsel supported the submission with Shaheen Hassanali and Hassan Shivji Karim (deceased) Misc. Civil Application No. 355 Of 2021, HCT Dar es salaam where the court in the circumstances and prayers almost similar to the instant application granted the application as prayed and proceeded to bless the applicant with legal powers as administratrix with provisional powers to collect and preserve the deceased estate pending final determination of petition for Probate. Mr. Kyando concluded by submitting that given the nature of the petition already filed by the applicant, there is already the caveat by one 3|Page interested person, which its process may require enough time to be concluded hence it is important to preserve the deceased estate for best interest of the estate and that the grant shall not affect or prejudice the caveator by any way as the estate is not going to be distributed rather to be collected and be preserved. I have gone through Affidavit in support of the Application, and oral submission by Mr. Kyando for the Applicant. The only question is whether the application has merit. The law under rule 51 of the Probate Rules allows Grant letters of estate administration for collection preservation of property where an application for letters of administration under section 39 and of the Act has been made by a person who has already lodged in the Court a petition for a grant in respect of the same estate. In this court, there is a Probate and Administration Cause No. 4928 of 2025 pending for hearing and determination in respect of the same estate. Therefore, the application is properly before this court and being made under section 39 of the Probate and Administration of Estates Act, general citation has been dispensed with as per the dictate of the proviso of rule 74 of the Probate rules. It has been submitted that part of the deceased estate is 90% shares in RISA RESOURCES LTD, a company for that matter which is an independent legal person. However, there is no evidence that the deceased owned 90% 4|Page shares in the said company. No Memorandum and Articles of the company that has been annexed for the court to satisfy itself that the deceased owned the said 90% shares as deponed in the affidavit. Be it as it may, shares and other interests of any member of a company are movable properties subject of being transferred according to the provisions of the articles of the company. Section 74 of the Companies Act, 2002 Chapter 212 categorically provides; 'The shares or other interest of any member in a company shall be movable property transferable in manner provided by the articles of the company' From the application, the applicant has prayed among other powers, to be able to collect by way of transferring the respective shares from the deceased to herself as administrator, appointing and recruiting staffs for smooth operations of RISA RESOURCES LTD, to have finance control money coming and money going out, and as a matter of preservation of the company, to be able to expand the business. The counsel has referred article 18 of the Memorandum of the company that the applicant can only have the powers sought upon those shares being transferred, as stated before, there is no such Article that has been attached as evidence for the court to give 5|Page the said orders, even though, these powers can only be assumed through another

process and not under the probate proceedings. Thus, the representation of the deceased in the Company does not flow automatic upon grant of the probate or of the letters of administration. It requires a further step based on what the memorandum and articles of association provides on transmission of shares. In the premises the prayer for orders that applicant be allowed to collect by way of transferring the respective shares from the deceased to herself as administrator is refused. Coming to submission that the applicant be vested with powers of appointing and recruiting staffs for smooth operations of RISA RESOURCES LTD, to have finance control money coming and money going out, and as a matter of preservation of the company, to be able to expand the business. These are typically powers of directors of the company, section 181 of the Companies Act provide; 'Subject to any modifications, exceptions, or limitations contained in this Act or in the company's articles, the directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of a company.' 6|Page How one becomes a director of the company, it all depends with the qualification and restriction provided in the articles of association of a company. In short directorship is an employment which cannot be acquired by operation of the law. I seek inspiration from Gonzi, J. In Harpal Singh Virdee vs Rajinder Kaur Birdi & Banson Enterprises Ltd (Misc. Commercial Cause No. 42 of 2023) [2024] TZHCComD 313 (23 August 2024; TanzLII) at page 61 that; 'Directorship does not pass from one person to another by way of transmission. Directorship is a voted position determined by members of the company. Therefore, the process by which the Petitioner became a director and the process by which the petitioner became a shareholder are two unrelated processes in law.' With the above, the order that the applicant be allowed to recruit staffs and expand business are rejected. I have considered the appropriate reliefs in the circumstances of the present application and the alleged part of the deceased estate being shares in RISA RESOURCES LIMITED by taking into account the nature of the estate. The Applicant deserves to be granted the orders prayed in the application for the purpose of safeguarding the deceased's estate pending hearing and determination of Probate and Administration Cause No. 4928 of 7|Page 2025 pending before this court. The grant of the Application is supported by reasons stated by the Applicant in her affidavit, in particular for the first two prayers. In the event, the letters of administration of estate of the late DANILBEK MAMKHEGOV (deceased), who died at Chunya on the 2nd day of February 2025, is granted to RAISA MAMKHEGOVA and is limited for the purpose only of collecting, preserving the estate of the said deceased and giving discharges for debts due to deceased's estate other than distributing the same. The Application is granted subject to the provisions of Section 39 of the Probate and Administration of Deceased Estate Act Cap. 353 and Rule 51 (1) of the Probate and Administration of Deceased Estate Rules, GN No. 10 of 1963, only to the extent and specific purpose stated It is so ordered. V.M. NONGWA JUDGE 21/3/2025 8|Page Dated and Delivered through Virtual Court at Mbeya this 21st March 2025 in presence of the Applicant and Mr. James Kyando - learned counsel. V.M. NONGWA JUDGE 9|Page

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