

TANZANIA / JUDGMENT

Ruling Anna

COURT
TANZLII

DECIDED
25 October 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MWANZA SUB-REGISTRY AT MWANZA MISC. CIVIL CAUSE NO. 13215 of 2024 IN THE MATTER OF THE COMPANIES ACT NO. 12 OF 2002 AND IN THE MATTER OF AN APPLICATION FOR THE ORDERS OF THE HIGH COURT FOR THE RECTIFICATION OF THE REGISTER OF MEMBERS OF INDO-AFRICA ENTERPRISES LIMITED BETWEEN ANNA GEORGE MINJA (Administratrix of the estate of the late George Jacob Minja) PETITIONER AND INDO-AFRICA ENTERPRISES LIMITED 1ST RESPONDENT JAYESH P. GOKANI 2ND RESPONDENT

RULING

24th & 25th October 2024 CHUMA, J This matter by way of the petition is preferred under section 121(1)(a) & (b) (2), (3), and (4) of the Companies Act No.12 of 2002 where the petitioner via Mr. Williamu Muyumbu is seeking the indulgence of the court for the following reliefs; 1

1. That the petitioner be registered as a member of Indo-Africa Enterprises Limited and remove the name of George Jacob Minja from the registry of the Company.
2. An order for the petitioner to be registered as sole Director of the Company
3. An order directing the petitioner to give the registrar of companies a notice of rectification of the registry of Indo-Africa Enterprises Limited. This matter proceeded ex-parte against the second respondent whose whereabouts are untraceable despite being served via substituted service by publication on Mwananchi News Paper dated 24th September, 2024. In his submission, Mr. William Muyumbu advocate stated that the petitioner is an Administratrix of the estate of the late George Jacob Minja who passed away in November, 2022 and the petitioner was granted a letter of administration on 8th days of February, 2024 annexure AGM 1. The deceased formulated an incorporated Company known as Indo-Africa Enterprises Limited registered on 17th November, 1978 with registration No. 6650. The company was registered with two Directors one of them being the late George Jacob Minja, and the other one being Jayesh Gokani whose whereabouts are unknown. The two directors were the sole 2 shareholders of the said Company where by the late George owns 60 and Gokani 40 ordinary shares. All this information has been discovered by the petitioner after conducting a custom search from Brela annexure as AGM3. As it is shown that George

Jacob is dead and Jayes Gokani his whereabouts are unknown and since the two are not in existence and the company remains without directors, according to section 121 of the Companies Act the management of the company has to be run by the directors. A company is required to have at least two directors. As the directors of Indo-Africa Enterprises are no longer in existence, and since the company still operates Mr. Muyumbu prayed for the petitioner as Administratrix of the estate of George Jacob Minja to be registered as sole director and member of Indo-Africa by an order to rectify the company Registry to appoint another director to make the company management operate. The company still holds several assets that need to be administered. Mr. Muyumbu supported his submission by the case of Ashura Said Ndundu and Another Vs. Buyuni Company Limited Misc. Civil Cause No. 508 of 2020 on pages 8 to 9 and another persuasive case of Kings 3 Court Trust Limited and two others Vs. Lancashire Cleaning Services Limited [2017] EWHC 1094 (Ch) on page 4. This petition is before this court since the MEMAT is silent regarding the circumstance we have where both companies' directors do not exist. Since the company exists and operates and it still holds some assets that require a director's decision, he begged this court under section 121 of the Companies Act the sought prayer be allowed to avoid the petitioner and the company itself from losing the assets it owns. Having carefully considered the pleadings, submission by learned advocates for the petitioner, the law, and the cases cited altogether, the issue that calls for determination is whether the application is or not meritable. From the pleadings and submission by Mr. Muyumbu's advocate, it is an indisputable fact that George Jacob Minja is dead and that Mr. Jayes P. Gokani is untraceable. And that the company will register the petitioner subject to proof of a title by for instance submission of a grant of letter of administration and a court order. This signifies that a representation of the deceased in the company does not accrue automatically via a grant of the letters of administration as was stated in the two cases cited by Mr. Myumbu's advocate. 4 In this matter as earlier said the two directors do not exist hence the company is directionless with no officer capable of acting on its behalf to administer the company which according to Mr. Muyumbu's advocate holds some assets that require directors' decisions. In this circumstance, since the MEMAT is silent regarding the instant situation where both companies' directors do not exist, and now since the administrator of the estate of the late George Minja is already appointed it is only the court that can rectify the circumstance of the company via its order to rectify the register. In light of the foregoing, I am satisfied and found the application meritorious. On that note, I grant the petition as prayed with the following orders;

- i) That the petitioner be registered as a member of Indo-Africa Enterprises Limited and remove the name of George Jacob Minja from the registry of the Company. ii) I order the petitioner to be registered as the sole Director of the Company and. iii) An order directing the petitioner to give the registrar of companies a notice of rectification of the registry of Indo- Africa Enterprises Limited. 5 I so order. DATED at MWANZA this 25th day of October, 2024. W.M. CHUMA JUDGE 6 The ruling delivered in court virtually in attendance of Mr. William Muyumbu advocate for the petitioner and in the absence of the respondents this

25th day of October, 2024. W.M. CHUMA JUDGE 7

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