

TANZANIA / JUDGMENT

medardus lucas geho vs property matrix company limited others 2022 tzhccomd 291 16 september 2022

COURT
TZHCCOMDDECIDED
16 September 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF THE TANZANIA (COMMERCIAL DIVISION)
AT DAR-ES-SALAAM MISC. COMMERCIAL CAUSE NO. 26 OF 2022 IN THE MATTER OF
COMPANIES ACT NO.12 OF 2002 AND IN THE MATTER OF PROPERTY MATRIX LIMITED AND IN
THE MATTER OF AN APPLICATION FOR UNFAIR PREJUDICE BETWEEN MEDARDUS LUCAS
GEHO..... PETITIONER VERSUS PROPERTY MATRIX COMPANY
LIMITED.....1ST RESPONDENT ANATOLY KAHUNDI LIMUNA2ND RESPONDENT
RODGERS SONDAS SIGALA.....3RD RESPONDENT BABYLON ANDERSON
MWAKYAMBILE.....4TH RESPONDENT Last Order: 14/09/2022. Date of Ruling: 16/09/2022.
CONSENT DECISION NANGELA, J.: The Petitioner herein filed this a petition under section 233(1)
(2) and (3) of the Companies Act, Cap.212 R.E 2002, seeking for the following orders:

1. A declaration that the Respondents' acts, omissions and conduct in respect Page 1 of 9 of running of the day to day operations of the Company, executing Company Board Resolutions, allotting themselves Company shares and removing the Petitioner from directorship of the company are acts contrary and prejudicial to the interest of the Petitioner.
2. A declaration that the Respondents' acts of performing company duties and affairs without Petitioner's involvement is contrary to the Articles of Association of the Company and prejudicial to the interest of the Petitioner.
3. An Order authorizing the Petitioner to commence Civil Proceedings upon discoveries in his name as against the Respondents and any other person(s) as shall deem necessary in order to protect the interest of the Petitioner.
4. An order nullifying all acts, deeds and decisions made by the Respondents without the Petitioner's involvement.
5. An order for removal of the 3rd and 4th Respondents' directorship and shareholders of the 1st Respondent Company for want of legality.

6. An order for disclosure by exhibiting in Court all company books of accounts, bank statements previously issued to Page 2 of 9 date, cheque books, executed and ongoing projects, debtors and creditors, for smooth determination of the financial affairs of the company.
7. An order directing the Respondents to exhibit in Court the original Memorandum and Articles of Association which is kept in the 1st Respondent's offices by the Respondents.
8. An order for payment of monies arising out of the Company operations as dividends, directors' remuneration or any other such payments for all the period in question to the date of

judgment.

9. General damages amounting to Tanzanian Shillings One Billion (TZS 1,000,000,000/=) for losses and sufferings the Petitioner has suffered to date.
10. Costs of this Petition.
11. Any other reliefs or orders that the Honourable Court will deem just and equitable to grant to the Petitioner. The Respondents filed a joint answer to the petition and on the 9th of August 2022, the 2nd, 3rd, and 4th Respondents, citing various provision of the Company Act, filed a cross- petition which involved the Petitioner herein as the 1st Page 3 of 9 Respondent and WhiteKnights Real Estate Investment Analysts Co. Ltd as 2nd Respondent. They as well raised a point of law in objection to the petition. In their Cross-petition, the Respondents herein prayed for the granting of the following prayers:
 1. That, the 1st Respondent (Petitioner herein) be removed from being a shareholder of PROPERTY MATRIX COMPANY LIMITED.
 2. That, the Respondents be ordered to pay the Petitioner general damages amounting to TZS 1,000,000,000/=.
 3. Costs of the Cross-petition be paid by the Respondents.
 4. Any other reliefs or orders that the Honourable Court will deem just and equitable to grant. After three appearances before this Court (2/8/2022; 11/8/2022 and 24/8/2022, the parties appeared last before this Court on the 2nd September 2022. Ms Jaqueline Kulwa, learned advocate represented the Petitioner on the material date while Mr Willy Lusajo, also a learned advocate, appeared for the Respondents. Page 4 of 9 On the material date, the Court was informed that, the parties have had consultations out of Court and wish to settle their dispute. The learned counsel, therefore, sought for time within which the parties may engage and draft a Deed of Settlement. Their prayer was granted and the matter was set for orders on the 14th day of September 2022. On the 12th day of September 2022 the parties managed to file a Deed of Settlement in Court. On the appointed date when this petition was set for orders, Ms Kulwa and Mr Lusajo appeared in Court and jointly urged this Court to

register the Deed of Settlement as forming the Judgement and Decree of the Court, hence, marking the matter as settled at the instance of the parties' deed of settlement. The issue I am faced with now is whether the Deed of Settlement filed in this Court will entitle this Court to grant the orders jointly sought by the parties herein. This Court once stated, in the case of Jaffrey Indi. Sian Ltd vs. M/s Beijing Construction Engineering Group Ltd, Commercial Case No.38 of 2021, (unreported), that, whenever parties to a suit considers a mutual settlement of their dispute, Page 5 of 9 that route should be encouraged by Courts. This Court cited the decision of the United States Court of Appeals, Sixth Circuit, in the case of Goodyear Tire & Rubber Co. vs. Chiles Power Supply, Inc., 332 F.3d 976, 980 (6th Cir. 2003), where it was observed that: "settlement of a dispute is an important and a welcome process.... The ability to negotiate and settle a case ... fosters a more efficient, more cost-effective, and significantly less burdened judicial system." As I stated here above, the parties herein have filed a Deed of Settlement in this Court and have asked this Court to register it as forming judgement and decree of the Court. Before doing that, however, the Court must be satisfied as to the legality and enforceability of such a Deed of Settlement. The need to be satisfied is not farfetched since, in the Jaffrey Indi. Sian Ltd's case (supra), this Court, citing the persuasive decision of Mwayera J, in the Zimbabwean case of Farisai Nando vs. Godwills Masimirembwa, High Court of Zimbabwe Harare, 10 November, 2016, 23 February 2017, Page 6 of 9 held that, when considering the lawfulness of a Settlement Agreement (Deed) the Court has to be satisfied: "Firstly... that both parties to the agreement have freely and voluntarily concluded the agreement. Secondly, that there is meeting of minds of the contracting parties; in other words, that, the parties are ad idem with regards the terms of the Deed of Settlement. [Thirdly, that] ... the terms of the Deed of Settlement are capable of enforcement without recourse to further litigation. ... These factors in my view fall for consideration cumulatively." In the case of Karatta Ernest D.O and 6 Others vs. The Attorney General, Civil Appeal No.73 of 2014 (Unreported), the Court of Appeal did emphasize on the issue of ensuring with clarity that all parties are privy to the basis on which the Deed of Settlement filed in Court is anchored. The overall necessity for all that was also emphasized by this Court in the Jaffrey Indi. Sian Ltd's case (supra). In that case, this Court found inspiration from the decision of the South African Court of Appeal in Thutha vs. Thutha Page 7 of 9 2008 (3) SA 49 where the Court considered among other things the need to ensure that an order that results from the Court's act of registering the Deed of Settlement is enforceable. Citing Thutha' case (supra) this Court stated as follows, that: 'the purpose of a court order is not to [merely] record the terms of an agreement between the parties, but to give final effect to the judgment which brings the dispute to closure.' In view of the above consideration, this Court has taken the liberty of examining the Deed of Settlement filed by the parties herein and, taking into account the individuals who are shown to have duly signed the Deed of Settlement, it is my findings that, this Deed of Settlement meets the requirement of the law as all parties to the present Petition and the Cross- Petition are shown to have expressed their consent to be bound by its contents. It follows, therefore, that, this Petition (and Cross- Petition) No. 26 of 2022 is/are hereby wholly settled by the Deed of Settlement filed in this Court on 12th day of September, 2022. With that in mind, this

Court hereby proceeds and records the parties' Deed of Settlement and declares that, the present Page 8 of 9 Petition and the Cross Petition is/are hereby marked "settled at the consent of the Parties and on the basis of the terms contained in Paragraphs 1 to 20 of their duly signed Deed of Settlement". The parties' duly signed Deed of Settlement shall and does hereby constitute part and parcel of this judgment and a lawful "Decree of this Court". It is so ordered. DATED AT DAR-ES-SALAAM, THIS 16th DAY OF SEPTEMBER 2022 DEO JOHN NANGELA JUDGE Page 9 of 9

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