

TANZANIA / JUDGMENT

MUTATINA RULING LATEST

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9 April 2025

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA MISCELLANEOUS APPLICATION NO. 6796 OF 2025 (Originating from Civil Cause No. 10 of 2022) IN THE MATTER OF COMPANIES ACT, CAP 212 AND IN THE MATTER OF PETITION FOR WINDING UP OF RETRUS TANZANIA LIMITED BETWEEN KEVIN MUTATINA
APPLICANT/LIQUIDATOR AND EPHREM KUSEKWA MBOGOMA.....1ST
RESPONDENT LEE BURTON KWEKA.....2ND RESPONDENT RETRUS
TANZANIA LIMITED.....3RD RESPONDENT REGISTRAR OF
COMPANIES.....4TH RESPONDENT

RULING

4th & 9th April, 2025 KAMANA, J. This is an application for an extension of time to allow Kevin Mutatina to continue with his duties as an official liquidator of Retrus Company Limited. The application was made under sections 93 and 95 1 of the Civil Procedure Code, Cap. 33 [RE.2019] and section 14 of the Law of Limitation Act, Cap. 89 [RE.2019]. The applicant's affidavit supported the application. The matter proceeded unopposed as it was heard ex parte against the respondents. Facts gathered from the affidavit and the applicant's submission were that on 22nd April, 2023 this court, through Civil Cause No. 10 of 2022, appointed the applicant as an official liquidator of Retrus Company Limited. The applicant was ordered to finalize his duties within six months from the date of his appointment. However, the applicant failed to finalize the liquidation process as he failed to dispose of by way of selling the company's landed property located at plot number 160 Block A -Nyashishi Trading Centre with C.T number 54067"LR-Mwanza and motor vehicles. According to his affidavit, the sale is necessary as the proceeds are to be used to settle the government's dues, the creditors' debts and the shareholders' stakes. According to the affidavit, the applicant has managed to secure a potential customer for the said properties. Given that, he asked for an extension of time to finalize the selling, conveyance and other duties of the official liquidator as per the Companies Act. 2 It is trite law that under section 93 of the Civil Procedure Code, this court is vested with powers to extend the time granted for accomplishing any act prescribed or allowed by the Code, regardless of whether the time has expired or otherwise. The said section reads: 'Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.' Likewise, section 14 of the Law of Limitation Act reverberates the position stated in section 93 of

the Code. The section provides: 'Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.' Having keenly gone through the applicant's affidavit and submission, I am satisfied that the applicant was appointed by this court to liquidate Retrus Tanzania Ltd within six months from 22nd April, 2023. 3 I am further satisfied that the applicant failed to liquidate the company as some of the properties were not purchased within the prescribed time. This, in my opinion, as he rightly contended, is a sufficient reason that made the liquidation process lingers up to this moment. The matters relating to the liquidation of companies have economic impact as they relate to financial issues so far as the Government, creditors and shareholders are concerned. In view of that, the courts and liquidators must ensure that the liquidation processes end within the time granted unless there are exemptional circumstances. In this case, a delay in securing the potential customer is an exceptional circumstance warranting this court to extend the time prayed for by the applicant. I understand that the applicant, in his application, prayed for twelve months to accomplish his task as a liquidator. However, considering the significance of the liquidation process to the Government, creditors and shareholders of the company, the prayed time is on the high side. Given that, I grant the applicant an extension of time for six months from the date of this Ruling within which to continue acting as the Official Liquidator of Retrus Tanzania Ltd as appointed by this court and to file his report under section 307 of the Companies Act, Cap 212. 4 I make no order as to costs since the application was heard ex- parte. It is so ordered. DATED at MWANZA this 9th of April, 2025. KS KAMANA JUDGE 5

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