

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF TANGA)**

**AT TANGA**

**MISC. CIVIL APPLICATION NO. 5 OF 2021**

*[(C/f Misc. Civil Application No. 6 of 2019, arising from Misc. Civil Application No. 45 of 2018, Originating from the Petition for Winding Up in the High Court of Tanzania at Tanga, Petition No. 7 of 2021)]*

**IN THE MATTER OF COMPANIES ACT CAP 212 R.E 2002**

**AND**

**IN THE MATTER OF SHALOM FARMING AND PLANTATION (T)  
COMPANY LIMITED**

**AND**

**IN THE MATTER OF ORDINARY APPLICATION FOR TERMINATION OF  
APPOINTMENT OF INTERIM LIQUIDATOR**

**BETWEEN**

**PARSEKO VINCENT KONE.....APPLICANT**

***-VERSUS-***

**BASHIR IBRAHIM MALLYA** *as an Interim Liquidator of*

**SHALLOM FARMING AND PLANTATIONS (T) Ltd.....1<sup>st</sup> RESPONDENT**

**MIKE WILHELM KITWAKA** *(suing under the power*

*of Attorney of Floyd Vernon Hammer).....2<sup>nd</sup> RESPONDENT*

*Date of the Last Order: 06/09/2021*

*Date of Ruling: 05/10/2021.*

**RULING**

**AGATHO, J.:**

The applicant moved the court under the provisions of section 298(1) of the Companies Act, Cap 212 R.E. 2002 and Rule 117(1) of the Companies (Insolvency) Rules of 2005 where he filed his application by way of chamber summons supported by his affidavit. The respondents opposed the application by filing their counter affidavits.

Among the orders the applicant prayed for is that the court be pleased to terminate the appointment of Bashiri Ibrahim Mallya as an interim liquidator of Shallom Farming and Plantations Ltd (the Company) who was appointed by this Court on 13/12/2018 in Misc. Civil Application No. 45 of 2018.

When the application came for hearing the court directed the parties to file their written submissions to which they complied with.

To determine the application the court looked at the chamber summons, affidavit of the applicant, counter affidavits of respondents, their submissions, and the law. To draw the findings and to make an informed decision the court drew the following issues:

Whether application for the order to terminate the interim liquidator should be granted?

- (1) Whether the liquidator was appointed without involving other shareholders including one of majority shareholder Parseko Kone, the applicant.
- (2) Whether the interim Liquidator has failed to discharge his duties?
- (3) Whether the interim Liquidator has disobeyed Court order which appointed him?

Among the allegations pointing to disobedience to Court order are that he has not called any meeting, and he has failed to deposit or submit any quotations. This has been raised by the applicant in his affidavit [paragraphs 5-6]. This has also been admitted by the interim in liquidation himself [see paragraph 7 of his Counter Affidavit]. Surprisingly, he is shifting the blame to Parseko Kone (the applicant) that he has refused to hold a meeting with the interim Liquidator. But the Respondent is not saying whether this was reported to the Court.

It is strange that the Liquidator is raising this point now. Again, this is contrary to the obligations founder under page 3 of the Ruling in Misc. Civil Application No. 45 of 2018 HCT at Tanga which gave discretion to the provisional liquidator to apply for



court's directions and guidance on anything which has a bearing to the winding up petition as he deems fit.

Thus, since the above is evident, and in tandem with Section 298 (1) of the companies Act, Cap 212 R.E 2002, the Applicant has been able to show cause.

Another important question is, has the interim liquidator reported any problem to the Court which appointed him? In absence of such measure the interim liquidator is negligent, and he should be removed. Failure to observe Court order is unforgivable. Paragraph 5 of the 2<sup>nd</sup> Respondent Counter Affidavit the 1<sup>st</sup> respondent admitted having failed to submit to the Court the inventory of his duties and quotations which ought to have been submitted to the court in the presence of all parties for the decision within one month of his appointment for purpose of determination of his remuneration.

Whether there is still loggerhead or internal conflicts among the directors?

While the 2<sup>nd</sup> Respondent claim that the Applicant is merely claiming that he was not made part of the Applicant for appointment of interim Liquidator and Applicant for winding up of the Shallom Plantation Ltd as a found to remove the interim Liquidator (visible on paragraph 3-4 of the

affidavit) and submissions by applicant's counsel. This is not the only allegation. The most key allegation/ground is that of failure to adhere to Court order as submission of quotation.

The validity of reasons for appointment of the interim Liquidator such as existence of internal conflicts among the directors cannot be used an excuse for not implementing Court order of 2018 by Hon Judge Dr. Opiyo.

Indeed, the existence of internal conflicts cannot be remedied by sticking to the interim Liquidator who disobeyed Court Orders.

The **Re Highfield Commodities Ltd [1984] 3 ALL ER 84** is a good case on the Court's wide and unrestricted powers to appoint interim Liquidators. Such powers must serve legitimate interest for instance to protect assets that are likely to be wasted. But the wide powers that the Court has does not restrict the Court from removing the interim Liquidator who fails to execute his obligations and or Court order.

I agree with the 1<sup>st</sup> Respondent that the Rule 115 (1) of the Companies (Insolvency) Rules, 2005 set the appointments for the Applicant in the Liquidation cause to deposit such sum to cover the official receiver's remuneration and expenses. But this Liquidator applies where the Court

has decided to set such requirement. In absence of Court directive, such requirement is not mandatory.

Regarding the debts, for example, the Shallom Farming and Plantation owes to NARCO. These cannot be said to be frivolous and vexatious. As the 1<sup>st</sup> Respondent rightly put it, the debts were even before his appointment as interim Liquidator. The company is still indebted to NARCO about TSHS. 165,372,387.16.

Again, the company is indebted to TRA unknown amount of money as till today according to the current interim Liquidator the company has failed to get even its tax clearance because it does not filed tax returns BRELA. These are matters legal. The company must comply with these legal obligation).


The 1<sup>st</sup> Respondent claimed on 9<sup>th</sup> paragraph of his Counter Affidavit that this Court does not have no jurisdiction to entertain the Applicant. It is unfortunate the 1<sup>st</sup> Respondent has not stated why this Court lack jurisdiction. It is also confusing because when the Court appointed the 1<sup>st</sup> Respondent as interim Liquidator, the issue of jurisdiction was not raised. I find no merit in this warning. In my settled view this Court has jurisdiction.



I find the application to have merit on the solely ground that the 1<sup>st</sup> Respondent (interim Liquidator) has failed to implement Court order. This cannot be condoned. Failure to call a meeting with directors and failure of the 1<sup>st</sup> Respondent to inform the court about the problems amount to abdication of responsibilities of the interim Liquidator.

**Order:** The application is allowed, and the interim Liquidator is consequently terminated. The parties shall within 14 days apply for appointment of another interim liquidator pending winding up of the company. In the meantime, the removed interim liquidator shall continue with his duties until the lapse of 14 days when another interim liquidator is appointed. It is also ordered that such application be made jointly by the parties. Since the parties have joint interest, and for the interest of justice no ex parte application will be entertained. Considering the nature of this application, no order as to costs is given.

Date at **TANGA** this **5<sup>th</sup>** Day of **October, 2021.**

  
U. J. AGATHO  
**JUDGE**  
05/10/2021

Date: 05/10/2021

Coram: Hon. Dr. Agatho, J,


Applicant: Mjema Advocate for

Respondent: Majaliwa Advocate for

C/C: Zayumba

**Court:** Ruling delivered today 05/10/2021 in the presence of Advocate Mjema for the applicant, and Advocate Majaliwa for 2<sup>nd</sup> Respondent.



  
U. J. AGATHO  
**JUDGE**  
05/10/2021