

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 21 OF 2020

IN THE MATTER OF THE COMPANIES ACT, [CAP. 212 R.E 2002]

AND

**IN THE MATTER OF AN APPLICATION MADE UNDER SECTION 281(1)(II) OF
THE COMPANIES ACT**

AND

**IN THE MATTER OF COMPULSORY WINDING UP OF TWIGA INTERGRATED
SOLUTIONS LIMITED**

BY

NILESH LADWA.....PETITIONER

VERSUS

GREENLIGHT AUCTION MART.....OBJECTOR/CREDITOR

EX-PARTE RULING

06th June, 2022 & 01st July, 2022.

E.E. KAKOLAKI J.

The petitioner herein, Nilesh Ladwa petitioned before this Court for winding up of **TWIGA INTERGRATED SOLUTIONS LIMITED**, the Company duly incorporated under Companies Act, [Cap. 212 R.E 2002] on 20th October, 2018 with certificate of incorporation No. 137947927. The petition is

preferred under sections 267(1)(a), 279(1)(e) and 281(1)(a)(ii) of the Companies Act, [Cap. 212 R.E 2002]. Further to that in compliance with the law in terms of Rule 102(1) of the Companies (Insolvency) Rules, 2004, GN. No. 43 of 2005, the petitioner filed a Certificate of Compliance certifying that the petition was served by way of advertisement in the Daily Newspaper of 02/04/2020 and published the winding up notice in the Daily Newspaper of 26/02/2021.

It appears being aware of the filed petition through the published notice the above named creditor under Rule 104(1) and (2)(a),(b) and (c) of the Companies (Insolvency) Rules, 2004, GN. No. 43 of 2005, opposed the petition after lodging the Notice of Appearance on the ground that the Company sought to be wound up is indebted to her a sum of USD 25,000 for the brokerage and debt collection services rendered to it. Upon that contest the matter was set for hearing on 08/06/2022, following several adjournment that preceded that date. When the matter was called on for hearing the objector/creditor without notice defaulted appearance in court as a result hearing proceeded ex-parte against her as the petitioner who was present in person appeared represented by Mr. Shalom Msaki learned advocate.

Submitting in support of the petition Mr. Msaki sought leave of the Court to adopt the petition to form part of the submission. It was in his submission that, petitioner is the co-director, managing director and minority shareholder of the company shares owning 20% of the shares against 80% shares owned by co-director and majority shareholder one Shawn Rogers.

The Court was informed that, soon after incorporation of the company in February 2019, the two directors fell into bad interpersonal relationship as Mr. Rogers (Co-director) and majority shareholder gave him ultimatum to stop engaging himself into companies business or affairs and alienated him from companies decision making forum. And that, Mr. Rogers was unable to secure funds for an investment to the company the act that crippled the entire companies operation as a result since its incorporation the company has never called even a single general meeting nor submission of any accounts or recommendations to its members. It was his submission that since the relationship amongst the directors or members of the company has turned odd to the extent to crippling company's operation it is desirable and in the interest of justice the company be wound up and the Registrar of Companies be appointed as liquidator of the said company. To support his prayer the Court was referred to its own decisions in the cases of **Ernest**

Andrew Vs. Francis Philip Tembe (1996) TLR 287 and **Joelle Dahan Vs. Albero Italian Restaurant & Hotel Company Limited**, Misc. Civil Cause No. 3 of 2017 (HC-unreported).

I have had an ample time to peruse the petition and consider the petitioner's submission. It is true as submitted by Mr. Msaki, the submission which is uncontested that, the directors of the company are no longer in good terms and that the companies business operations have fallen in shamble or state of comer. This is manifested with the fact that since its incorporation the company has never conducted even a single meeting. It is further averred in paragraph 14 of the petition that, due to the misunderstanding between the directors the company has failed even to fully operate as up to the time of filing this petition the company was operating illegally without tax identification number and valid business licences. In my humble opinion a company operating under such state of affairs deserves to be wound up as its chances of survival is far from being assumed. This Court faced with a situation akin to the present one had the following to say:

"In my considered view, I think it would be just if this company is wound up because as remarked earlier on in my ruling the former directors are not in talking terms so to speak, each

director is accusing the other director of one of the other....In the final event this court in the exercise of its discretion under S. 167 (f) has find fit to wind up this company and appoints the Registrar of companies to act as the official receiver.

In this case like in **Ernest Andrew's** case cited above the petitioner's relationship with his co-director is unusual something that threatens the company's life as its operational status at the moment is in clandestine affairs for either being in comer state or awaiting to be declared bankrupt at any time, given the period of more than two years passed since the institution of this petition. In the circumstances I find the petition to be meritorious, therefore the prayers therein are hereby granted.

Consequently in terms of section 308(1) and (2) of the Companies Act, I declare **TWIGA INTERGRATED SOLUTIONS LIMITED**, officially wound up. I further appoint the Company Registrar as official receiver of the said company. As regard to the objector/creditor's claim of USD 25,000 against the Company for the services rendered to her the same is hereby dismissed for want of prosecution.

I make no order as costs.

It is so ordered

DATED at Dar es Salaam this 01st day of July, 2022.



E. E. KAKOLAKI

JUDGE

01/07/2022.

The Ruling has been delivered at Dar es Salaam today 01st day of July, 2022 in the presence of Mr. Simon Masinga advocate holding brief for advocate Shalom S. Msaki for the applicant and Ms. Asha Livanga, Court clerk and in absence of the objector/creditor.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

01/07/2022.