

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

WINDING UP CAUSE NO. 5 OF 2021

IN THE MATTER OF COMPANIES ACT, CAP 212, ACT NO. 12 OF 2002

AND

**IN THE MATTER OF THE PETITION FOR WINDING UP OF M/S KATANI
LIMITED**

BY

THE BOARD OF TRUSTEES OF NATIONAL SOCIAL SECURITY FUND

AS CREDITOR OF M/S KATANI LIMITED.....PETITIONER

PETITION FOR WINDING UP

**(Pursuant to Section 275, 279(1),(d) and (e), 280 and 281(1) of the
Companies Act (CAP 212 R.E. 2002 and Rules 95(1) and 100 of the
Companies (Insolvency) Rules 2005)**

RULING

Date of last order: 04/03/2022

Date of ruling: 30/03/2022

AGATHO, J.:

This ruling stems from the petition for winding up of Katani Ltd, brought by the Board of Trustees of NSSF as a creditor of Katani Ltd. The petition was brought under Section 275, 279(1)(d) and (e), Section 280, and 281(1) of the Companies Act [Cap 212 R.E. 2002] and Rules 95(1) and 100 of the Companies (Insolvency) Rules of 2004. Two interested parties namely TRA and ex-employees of

Katani Limited filed their notice of appearance as per Section 104(1) and (2)(a), (b) and (c) of the Companies (Insolvency) Rules, 2004 G.N. 43 published on 11th February 2005.

The petition was accompanied by the Affidavit of Gabriel John Silayo (Principal Officer of the Petitioner) verifying the petition pursuant to Rule 95(1) and 100(1) of G.N. 43 published on 11th February 2005. At the hearing of the petition, the counsel for the petitioner prayed to adopt the Affidavit verifying the petition as part of our submission.

It is crystal that Section 275 of the Companies Act [Cap 212 R.E. 2002], empowers the High Court with jurisdiction to grant an order of winding up of the company registered in Tanzania. According to annexure Katani -1 in para 3 of the petition, MS Katani Ltd is a company incorporated in Tanzania. The petitioner brought the petition as a creditor of MS Katani Ltd. Section 281 of the Companies Act [Cap 212 R.E. 2002] gives locus to the creditor to file petition for winding up. Further Section 279(1)(d) of the Act provides that a company may be wound up by the Court if it is unable to pay its debts. The inability to pay debts is defined under Section 280(b), (c) and (d) of the Companies Act [Cap 212 R.E. 2002]. In (b) one of the inabilities to debts is where there is execution of judgment that is returned unsatisfied in whole or in part. In the present petition, that

is substantiated by the annexure Katani – 9 in paragraph 18 of the petition whereby the consent judgment of this honourable Court in Civil Case No. 2 of 2020 between the petitioner and the Respondent, the petitioner's debt is to the tune of TSH. 14,919,681,854.77 was returned unsatisfied.

Consequently, the Court directed that the petitioner should seek any other legal remedies available to recover the debts. The petitioner's counsel rightly submitted that Section 280(c) of the Companies Act [Cap 212 R.E. 2002] provides for the other scenario of inability to pay debts. That is when the company is unable to pay debts when they fall due. That is substantiated by annexure Katani -5 in para 12 of the petition where several demand notices were unheeded to by the Respondent.

Included in the above demand notices is annexure Katani-10 in para 20 of the petition, which is a statutory demand to pay prior to filing of the petition for winding up as per Rule 94 (1)(a), (b) and (c) of (Company (Insolvency) Rules of 2004. Indeed, these demand notices were clear warning that failure to heed them will lead to the filing of winding up petition. But surprisingly the respondent turned a deaf ear and did not heed to any of the demand notices.

The law provides yet another scenario where a company may be wound. That is under Section 280(d) of the Companies Act [Cap 212 R.E. 2002] where the value of the assets of the company are lesser than its liabilities. In that case the company may be wound up. That scenario matches the present case and it is exhibited by annexure Katani – 8 in para 18 of the petition which is the valuation report by the chief government valuer. The latter's report was given literal interpretation in the annexure Katani – 9 which is a consent settlement order in Civil Case No. 2 of 2020 between the petitioner and the Respondent.

In the consent order it was apparent that the verified claim by the petitioner was TSH. 44, 444,733, 966.17 while the value of the Respondent's assets was TSH 24,542, 979,716.18. This figure clearly shows that the debts/liabilities of this company exceed the assets. It is no wonder the company has failed to pay back the petitioner's debts.

As required by Rule 96(3)(a) Companies Insolvency Rules of 2004 that the petition was served upon the director of Respondent company one Mr. Juma Shamte. Further, there is an Affidavit of proof of services filed before the Court on 22nd Dec. 2021 as per Rule 97 of the Companies Insolvency Rules of 2004.

What is more is that the petition of winding up was advertised as prescribed by Rule 99(2)(b) of Companies Insolvency Rules of 2004. The advertisement was done in the Daily News Paper with reference No. ISSN 0856 – 3812 Issue No. 12936 of Friday 24 Dec. 2021. It was also advertised in Swahili newspaper, Habari Leo, with reference No. ISSN 1821 – 570X issue No. 05274 of Friday 24th Dec. 2021. The advertisement was further made in the government gazette with reference No. ISSN 0856 – 0323 published on 7th January 2022. All these are in Court records. In terms of procedures, it is further evident that, the Certificate of Compliance was filed Rule 102 (1) and (2) of the Companies Insolvency Rules on 23rd February 2022 which was more than five days prior to this hearing date.

Following the advertisement of the petition for winding up, two notices of appearances were filed by the interested parties. The first was from Tanzania Revenue Authority (TRA) and the second was from the ex-employees of Katani Ltd.

It is pertinent to note that the aforesaid interested parties were not objecting the winding up petition. They supported it. However, they pray that the liquidator should take into consideration their claims. The TRA claims TSH. 33,217,175,115/=. As for ex-employees they claim terminal benefits which is to tune TSH. 954,520,742.15. The

learned counsel for the interested parties have appeared before this Court.

As for TRA, Magoma the learned S/A admitted that the TRA's claims have been correctly reflected in the submission of the petitioner's S/A. He however prayed that when the liquidator is appointed s/he take into consideration order of preference (preferential dates) debts be paid in order of priority as per Section 367(2)(1) of Companies Act [Cap 212 R.E. 2002] which stated that government taxes, local rates, customs and etc., shall be paid first or in priority over others. On this point he referred to Tax Administration Act Section 66(1) requiring the liquidator after his appointment to serve upon the TRA with notice informing the latter on his or her appointment. After that the TRA will respond by informing her on the amount of tax due to TRA.

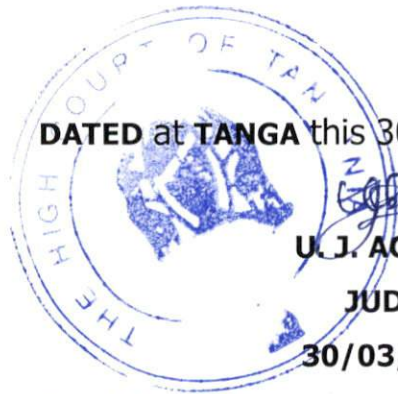
Regarding the ex-employees, they were represented by advocate Msaki. She was of the view that the petitioner's S/A explained well what the e-employees are claiming as reflected in their notice. It was her prayer to make that the ex-employees should be the first to be given priority because they were producers, and they are suffering as per 367(2)(c) of the Companies Act [Cap 212 R.E. 2002] dealing with wages.

From what has been submitted by the parties the Court concludes as follows, the petitioner for winding up is proper in law and the procedures were properly adhered to. And since the liabilities of the respondent company exceeds its assets, and because there were unheeded demand notices, and it is evident that the Court gave orders for the petitioner (creditor) to take other course to realize its debts against the respondent company which proved that the latter is incapable of meeting its liabilities, it is just and equitable to grant winding up order. In the circumstances the order for winding up is granted. The court therefore orders as follows:

- (1) That the Respondent company (Ms. Katani Ltd) be wound up as per Section 282 of the Companies Act [Cap 212 R.E. 2002].
- (2) Prof. Angelo Mapunda of FK Law Chambers is appointed as liquidator by virtue of Section 294 of the Companies Act [Cap 212 R.E. 2002].
- (3) The Deputy Registrar will provide the details on terms and conditions for the appointed liquidator.
- (4) The assets realized should be used to pay the debts of the Respondent company owed to TRA, the ex-employees and the petitioner as prescribed by the law(s).

It is so ordered.

DATED at TANGA this 30th Day of March 2022.



U. J. AGATHO

JUDGE

30/03/2022

Date: 30/03/2022

Coram: Hon. Agatho, J

Petitioner: Karim Rashid Senior State Attorney, Rashid Mohamed State Attorney, and Luciana Kikala State Attorney

Respondent: Absent

1st and 2nd Interested parties: Hassani Mavue (Tax Management Officer of TRA), and Advocate Deborah Msaki for ex-employees of Katani Limited.

B/C: Zayumba

Court: Ruling delivered on this 30th day of March, 2022 in the presence of Karim Rashid Senior State Attorney, Rashid Mohamed State Attorney and Luciana Kikala State Attorney for the petitioner, Hassani Mavue (Tax Management Officer of TRA for 1st interested party (TRA), Advocate Ms. Deborah Msaki for the ex-employees of Katani Ltd, and in the absence of the Respondent.



U. J. AGATHO

JUDGE

30/03/2022