

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY**

AT MOSHI

MISC. CIVIL CAUSE NO. 02 OF 2022

IN THE MATTER OF THE COMPANIES ACT NO. 12 OF 2002

AND

**IN THE MATTER OF AMALGAMATION OF MICHIRU LIMITED
INTO**

BONDENI FLOWERS LIMITED

BETWEEN

BONDENI FLOWERS LIMITED.....1ST APPLICANT

MICHIRU LIMITED.....2ND APPLICANT

AND

REGISTRAR OF COMPANIES..... RESPONDENT

RULING

11/8/2022 & 01/9/2022

SIMFUKWE, J.

This is a ruling of a Petition for amalgamation of Michiru Limited and Bondeni Flowers Limited (Applicants) into Bondeni Flowers Limited. The Petition has been preferred under **sections 229 and 231 of the Companies Act No. 12 of 2002, section 95 of the Civil Procedure Code, Cap 33 R.E 2019, section 14 of the Law of Limitation Act, Cap 89 R.E 2019** and any other enabling provisions of the law. In their chamber summons the applicants (Petitioners) prayed for the following orders:



- (a) That may this Honourable Court be pleased to grant an extension of time for an Application for Amalgamation of companies.*
- (b) That upon prayer (a) above being granted, may this Honourable Court be pleased to order that the second Applicant's assets, leaseholds and liabilities be transferred to the first Applicant by amalgamation and all the business affairs and undertakings of the 2nd Applicant be merged into those of 1st Applicant.*
- (c) That following amalgamation of the Applicants, the first Applicant continues to operate, and the second Applicant be dissolved without winding up.*
- (d) That the orders made be served upon the Respondent, Registrar of Companies for necessary action.*
- (e) Any other order this Honourable Court deems fit to grant.*

The application was supported by an affidavit of Mr. Adrianus Johannes Maria Van Roessel the Director of the 1st Applicant and an affidavit of Mr. Leon Willem Michael De Vries, the Director of the 2nd Applicant.

The application was drawn and filed by Mr. Paschal Kamala learned counsel for both applicants Mr. Lameck Samson learned State attorney appeared for the Respondent the Registrar of Companies.

On the first date of mention, Mr. Lameck Samson for the Respondent informed the court that they had not filed their counter affidavit because they do not intend to oppose the application as both companies have complied to the law.

In support of the application Mr. Adrianus Johannes Maria Van Roessel the Director of the 1st Applicant deposed inter alia that the application for extension of time is being sought on the reason that the process of



application, publication and obtaining clearance from Fair Competition Commission had taken more than the prescribed time in the law regulating limitation of actions within which to file any application including application for orders for amalgamation. Another reason for being out of time was stated to be family problems of office bearers of the 1st Applicant who had to stay in Netherlands for a long time which coincided with imposed Covid 19 travel restrictions.

It was also deponed that the 1st Applicant is empowered under **Clause 3 (x) of its Memorandum and Articles of Association** to acquire business and to do other things in conjunction with other companies which may include amalgamation with other companies with similar objects whether by sale, purchase of undertakings or by acquisition and transfer of all assets, leaseholds and liabilities of such other company as the transferee company may resolve to do. Copy of Memorandum and Articles of Association of Bondeni Flowers Limited was attached to the affidavit and marked BND-3 to form part of the application.

It was deponed further at paragraph 10 of the affidavit of the director of the 1st Applicant that, the 1st Applicant and the 2nd Applicant are sister companies with a common majority shareholder, We Flower B.V who holds 95.8% in the 1st Applicant and 99.6% shares in the 2nd Applicant. The copies of Annual returns and Search Reports for the year 2021/2022 of both Applicants from the office of the Respondent the Registrar of both companies was annexed to the affidavit of the director of the 1st Applicant to form part of the application.

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At paragraph 11, Mr. Adrianus deposed that the 1st Applicant held an Extraordinary General Meeting of the members on 10th February 2021 and discussed the best way to expand its business and strengthen its market access and so resolved to amalgamate with her sister company, the 2nd Applicant (Michiru Limited). To achieve the said aim, the 1st Applicant passed a Special Resolution with a proposal to take over all assets, leaseholds and liabilities of the 2nd Applicant to merge the business affairs and undertaking of the 2nd applicant into the 1st applicant and to have the said 2nd Applicant dissolved without winding up. Copy of Special Resolution for Amalgamation passed by the 1st Applicant was annexed to the affidavit of the director of the 1st Applicant to form part of this application.

That, it was further resolved by members of the 1st Applicant that the proposal for amalgamation be forwarded to the 2nd Applicant for consideration and approval by members of the 2nd Applicant pursuant to the requirements of the law and Articles of Association of both companies. The proposal was communicated to the 2nd Applicant on the same date.

Mr. Adrianus went on to depose that he had not received any information from the 2nd Applicant of any member dissenting to the resolution to amalgamate. Copy of the affidavit of one of the directors of the 2nd Applicant verifying the position was annexed to the affidavit of the director of the 1st Applicant to form part of this application.

It was deposed further that the arrangement is necessary to enable the companies to carry on business more economically and efficiently

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and be able to effectively compete in the market by eliminating unnecessary operational, marketing and distribution costs.

Pursuant to paragraph 16 of the affidavit of the director of the 1st Applicant, the proposed amalgamation was advertised in **the Daily News and Habari Leo newspaper of 13th September 2021** and was submitted to the Fair Competition Commission which passed the scrutiny and test of not being anti-competitive making the application free from creating adverse effect to the members and third parties and general public. Copy of the advertisement in the newspaper and copy of Approval by Fair Competition Commission were collectively attached to the affidavit of the director of the 1st Applicant to form part of this application.

The affidavit of Mr. Leon Willem Michael De Vries the director of the 2nd Applicant corroborated what was deposed by the director of the 1st Applicant.

Having considered the affidavits of the directors of the Applicants companies regarding their prayers for extension of time for an application for Amalgamation of companies and Amalgamation of the two companies (Applicants), the enabling provisions and the fact that the Respondent supported the application; I hereby grant the application and make the following orders:

- i) Extension of time for an application for Amalgamation of companies is granted.
- ii) **Bondeni Flowers Limited** has been amalgamated with **Michiru Limited**.



- iii) All assets, leaseholds and liabilities, business affairs and undertakings of **Michiru Limited** are transferred to **Bondeni Flowers Limited**.
- iv) **Michiru Limited** is dissolved without winding up the same.
- v) The Applicants should submit this amalgamation order to the Registrar of Companies for Registration in accordance with the law.
- vi) No order as to costs.

It is so ordered.

Dated and delivered at Moshi this 1st day of September 2022.

