

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

AT DAR ES SALAAM

CIVIL APPLICATION NO. 471 OF 2021

**IN THE MATTER OF SECTION 233 OF THE COMPANIES ACT,
CHAPTER 212 OF THE REVISED EDITION OF THE LAWS OF
TANZANIA, 2002**

AND

IN THE MATTER OF SKIPPER'S HAVEN COMPANY LIMITED

AND

**IN THE MATTER OF A PETITION FOR RELIEFS ON THE GROUND
THAT THE COMPANY'S AFFAIRS ARE PREJUDICIAL ARE BEING
OR HAVE BEEN CONDUCTED IN A MANNER WHICH, AND ITS
ACTUAL OMISSION IS, UNFAIRLY PREJUDICIAL TO THE
INTERESTS OF ITS MEMBERS GENERALLY, AND OF PART OF
ITS MEMBERS (INCLUDING THE PETITIONER) SPECIFICALLY**

BETWEEN

**KERSTIN ALEXANDRA GERMANN (as a legal personal
representative of the late Karianne Laursen)...THE PETITIONER**

AND

SKIPPER'S HAVEN COMPANY LIMITED.....1ST RESPONDENT

RASHID MSULUZYA KASWAKA.....2ND RESPONDENT

REGISTRAR OF COMPANIES.....3RD RESPONDENT

RULING

13/12/2021 and 16/9/2022

LALTAIKA, J.:

The Petitioner, **KERSTIN ALEXANDRA GERMANN** has brought this application pursuant to section 233(1), 233(2), 233(3) (a), (b), (c) and (d), 233(4), 233(5), 233(6) of the Companies Act [Cap. 212 R.E. 2002] against the Respondents.

The first Respondent is a private limited liability of company registered under the Companies Act, Chapter 212 of the Revised Edition of the Laws of Tanzania 2002 (herein after "the Act"), bearing number 70225 in the register of companies. Her registered office in Dar es Salaam.

The second Respondent, on the other hand, is a natural person, one of the directors and shareholders of the first Respondent. The third Respondent is a public office appointed by the Minister responsible for trade under section 450 of the Act, entrusted with powers of administering the register of companies and other matters as they relate to companies in Tanzania.

The following factual backdrop is considered imperative to put this petition in its right context. Having, allegedly, been confirmed the legal personal representative of Karianne Laursen, it is the Petitioner's desire to be registered as a shareholder in respect of the shares of the deceased, Karianne Laursen.

On 30/06/202(sic) twenty-eight days after appointment by this court as legal personal representative of the deceased, the Petitioner requested to be registered as intimated above. Two months and eight days passed since the Petitioner notified the first and second

Respondents for her appointment and her choice to be registered as a shareholder but with no action taken hence this petition. In addition to the request to be registered as a shareholder of the first Respondent, it is the Petitioner's wish to be registered as a shareholder of the first Respondent in her own name, as legal personal representative of the deceased.

The Petitioner prays for the following orders. **One**, an order declaring the Petitioner to be a director and shareholder of the first Respondent in respect of 100,000 shares of the first Respondent valued TZS 1,000/= each from the date of order. **Two**, an order requiring the first Respondent and second Respondent jointly and severally, within 14 days from the date of the order, to register the Petitioner as a director and a shareholder of the 100,000 shares of the first Respondent valued TZS. 1,000/= each in the members/shareholders/register, if there is one, and an order requiring them to prepare the register, if there is none, and an order requiring them to prepare the register, if there is none, and register the Petitioner as shareholder and send the information to the third Respondent within those 14 days through the ordinary way of making such notification for registration. **Three**, an order requiring the third Respondent to register the Petitioner as a director and shareholder of the 100,000 shares of the first Respondent valued TZS.1,000/= each within 14 days of receiving from the first and or second Respondents information/documents registration of the Petitioner as per order (b) above, or from the expiry of 14 days from the order of this court, in case the 14 days expire without the third Respondent receiving anything from the first and/or the second Respondent, and requiring the third Respondent also to give access of

the first Respondent's account for online communication and/information storage and dissemination with the third respondent.

The hearing of this matter was ordered to be carried out by way of written submissions. The Petitioner was represented by **Mr. Paschal Mshanga**, learned advocate while **Mr. Twaha Yusuph**, learned advocates appeared for the first and second Respondents. The third Respondent neither appeared on 13/12/2021 nor complied with the order of this court for disposing of the matter by way of written submissions.

Mr. Mshanga commenced by submitting that the present application is grounded on the provisions of section 233(1)(2)(3)(4)(5) and (6) of the Companies Act [Cap. 212 R.E. 2002] which avails any member of the company like the Petitioner an opportunity to petition for the remedies against cases of unfair prejudice.

The learned counsel contended that the deceased was the chief financier, director, and shareholder of the first respondent until her death. The learned counsel argued that the as per paragraph 6 of the petition read together with the annexure AP3 the deceased owned 100,000 shares and was a company director. Mr. Mshanga stressed that following her death the Petitioner was named the executrix by deceased's will petitioned and was confirmed by this court as the executrix of the deceased's estate as evidenced by annexure AP2.

Submitting on paragraph 12(a)-(e) of the petition which enumerates several instances that have happened and continue to happen with prejudicial detriments to the company and the Petitioner, Mr. Mshanga submitted that the first and second Respondents under paragraph 7 of their reply to the petition, simply stated that the contents

are unknown to them, and they put the petitioner to strict proof. The learned advocate stressed that in other words the first and second Respondent had not seriously disputed the facts contained in their reply.

The learned counsel went further and submitted that it is a cardinal law that when a fact is stated on oath the same must be controverted on oath to give court an opportunity to weigh which fact is probably true than the other. The learned counsel stressed that a mere statement is put to strict proof amounts to admission of facts deposed thereto. To fortify his argument, Mr. Mshanga cited the Court of Appeal case of **East African Cables (T) Ltd vs Spenco Services Ltd** No.61/2016(unreported).

It is Mr. Mshanga's contention that since the death of the Ms. Karianne Laursen, the company has been illegally operated by only one director and shareholder standing unchallenged. To this end, the learned counsel contended that with the strength of the authorities referred above implore this court to draw an inference and rule out that the Respondents have admitted all the assertions deposed by the Petitioner in her petition and accordingly proceed to find it meritorious.

Submitting on the search report extracted from the third Respondent (Business Registration and Licensing Agency-BRELA), Mr. Mshanga stressed that the same shows that the current directors and shareholders are Karianne Laursen (the deceased) holding 100,000 ordinary shares and Rashid Msuluzya Kaswaka holding 150,000 ordinary shares. The learned counsel submitted that it is undisputed that Karianne Laursen died on 28/12/2020 and since then the company has never had two directors or two shareholders as required by the law and

that is why the latest report from the third Respondent reveals the current structure with the deceased as shareholder and director.

The learned counsel submitted that the prevailing circumstances and conduct of the second respondent in his own as the sole director and shareholders poses a great danger on the interest of the stake of the deceased shareholder which equally makes a point that this court ensures that justice is done and authorize the petitioner to institute or defend civil proceedings at the first Respondent's costs and in the name of the first Respondent for anything which the deceased shareholder Ms. Karianne Laursen was entitled from the date of her death to the date of resumption of the operation as per this court's order and in terms of section 233(3)(c) of the Act. To this end, the learned counsel argued that this court to find the petition meritorious and grant the reliefs prayed plus the costs in favour of the Petitioner.

In reply the first and second respondents made a joint submission. Mr. Yusuph submitted that the second respondent was surprised when called in the office of the District Commissioner of Kinondoni at Magomeni vide the District Commissioner's lawyer whose conduct was tantamount to trying to force the second respondent on his capacity as a shareholder and director of Skipper's Haven Company Limited to surrender 100,000 shares of the late Karianne to the Petitioner which directive, the learned counsel averred, he resisted.

The learned counsel submitted further that the second respondent was shown the Letters of Probate dated 2nd June 2021 which appointed the Petitioner as executrix of the late Karianne the legal wife of the second Respondent. However, the learned counsel argued, the second Respondent raised many questions on the probate including when the

late Karianne wrote the will, why she did appoint the Petitioner as executor and bequeathed to her as beneficiary as the probate granted while the late Karianne had a surviving husband and daughter Hanna Astrid Laursen Renolen. It is Mr. Yusuph's observation further such did not address debts which were known to the testator.

The learned counsel went on to think aloud as to how the will was executed while the Petitioner never went to Norway while the date the will was executed the testator was in Norway and the Petitioner was in Tanzania managing her hotel business leased from the first Respondent. The learned counsel was equally perplexed on how and when the Petitioner and the late Karianne start their friendship since Karianne was a Norwegian while the Petitioner is a Swiss.

Mr. Yusuph argued further that the Respondents conducted physical and online search on existence of the Probate and Administration Cause No.31 of 2021n and could not find any. It is Mr. Yusuph's submission that the first and second respondents are against the procedure used to grant probate to the Petitioner because the Petitioner, allegedly, manipulated the documents to influence this court to grant a probate.

Submitting on the necessity of attaching the purported will in the Petition, Mr. Yusuph is worried that the late Karianne's daughter could come to Tanzania (from Norway where the family resides) with another Will alleging that her mother bequeathed all her shares to her in the first Respondent or challenge the grant probate at hand. Should that happen, the learned counsel reasoned, this court will have no clear justification for its decision based on pleadings and attachments which give no clear explanation on distribution of shares and other properties if any of the

late Karianne Laursen contrary to section 28 of the Probate and Administration of Estates Act [Cap.352 R.E. 2002] that requires attachment of the Will.

In a rejoinder, Mr. Mshanga submitted that the Respondent's counsel had mixed up two distinct matters of Probate Cause No.31 of 2021 and the present matter. The learned counsel stressed that the present matter had nothing to do with plethora of allegations mounted against the grant of probate No.32/2021. The learned counsel went further and contended that this court cannot sit and re-open a closed Probate and Administration Cause No.31/2021 on purported allegations from the bar that the same granted assets to a person who is not a relative of the deceased.

Regarding nonexistent of Probate Case No.31 of 2021, Mr. Mshanga submitted that the shared ruling by Hon. Mlyambina J, clears all the doubts. The learned counsel contended that the allegation on not being served with a copy of the Will could not arise in the Petition for unfair prejudice of a shareholder. The learned counsel stressed that the same fall squarely on probate matters and the room to challenge the same is available under the Probate laws. On concerns of purported daughter's possibility to emerge and challenge the grant, the learned counsel maintained that the same is equally a probate matter. Furthermore, with regards to placing the matter before the corridors of the Kinondoni District Commissioner, the learned counsel stressed that it is irrelevant to the Petition at hand.

Having dispassionately considered the rival submissions, I am inclined to determine the crux of the matter. Admittedly, the Petition at hand has exercised my mind significantly. At this juncture, I would like

to thank the learned counsels for their forceful submissions that touched upon both procedural and substantive laws pertaining to this matter as interpreted by courts of record of our jurisdiction from time to time.

In my interpretation, Mr. Mshanga has displayed extreme urgency and a clarion call for this court to come to the rescue of his client whose rights as a shareholder of the second respondent were in jeopardy. Mr. Mshanga thinks this being a Petition under the Company's Act, has nothing to do with issues related to Probate and that this court cannot reopen a closed probate matter. Mr. Yusuph, on the other hand, has displayed fear of possible abuse of the legal process (and the office of the District Commissioner for Kinondoni) to bring the petitioner to the center of affairs of the second respondent. If I were a cartoonist, I would draw Mr. Mshanga in full speed towards his destination and Mr. Yusuph raising a red flag warning his audience of danger that may be occasioned by his learned brother's forceful speed. My reasoning below is predicated on this rivalry of thoughts between these brilliant legal minds.

My deliberation will center mainly on issues raised in this petition. However, for avoidance of any misunderstanding, I feel obliged to comment, albeit briefly, on the Administration Cause No.31 of 2021 which Mr. Mshanga argued so forcefully against "reopening" the same. With due respect, that is too hyperbolic of the learned counsel. To be fair, the compartmentalization of law into such division as Company, Probate and Administration of Estate, Land Law and the like, although useful in academia and administration of justice in court, are neither useful nor understandable to an average person pursuing his or her rights.

Although law can be chunked in as many divisions and subdivisions as possible, justice is only one. Justice cannot be divided or subdivided. It is a continuum. Administration of justice requires widening one's horizon beyond artificial compartmentalization of law.

Bearing in mind that the first and second respondents are opposed not only to this petition but also the way the petitioner was appointed Executor of the Will of the late Karianne Laursen and the Will itself, my hands are tied. I would have expected Mr. Mshanga to lay bare the entire process that led to the production of the Will, appointment of the Executor and in doing so, convince this court that the second respondent was under legal obligation first to recognize the Petitioner as a Director and secondly, transfer the shares as requested.

As alluded to in the first paragraph of this ruling, the Petitioner, had brought this application pursuant to section 233(1), 233(2), 233(3) (a), (b), (c) and (d), 233(4), 233(5), 233(6) of the Companies Act. For purposes of clarity, I am inclined to reproduce the sections 233(1) and 233(2) which I consider most relevant for this discussion.

"233.-(1) Any member of a company may make an application to the court by petition for an order on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial. If the court is satisfied that the petition is well founded, it may make such interim or final order as it sees fit for giving relief in respect of the matters complained of.

(2) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transferred by operation of law, as those provisions apply to a member of a company; and references

to a member or members are to be construed accordingly.

The relevant questions here are: is the Petitioner a Member of the Company? If not, is she a shareholder? It should be noted that the Petitioner's first prayer to this court include, "*an order declaring the Petitioner to be a director and shareholder of the first Respondent in respect of 100,000 shares of the first Respondent valued TZS 1,000/= each from the date of order.*"

I think there is a contradiction between the provisions of the law invoked to move this court and the prayers sought. This contradiction, to say the very least, is tantamount to putting this court between a rock and a hard place. I say so because, although this court had allegedly granted letters of Administration of Estate of the late Karianne Laursen to the Petitioner, that grant is only the beginning of the process leading to the transfer of shares and registration of the Petitioner as a Director of the Second Respondent.

Whether by design or by default, Mr. Mshanga has forcefully avoided taking the above route. He has equally made use of every opportunity that came his way to counter all attempts by his learned brother in the bench Mr. Yusuph (who appears less bombastic and much less hyperbolic) to raise a flag and alert this court to both the legality and legitimacy of the petition. How can I find merit in a petition that has been superficially (and hurriedly) argued as if our failure to respond equally hurriedly would lead to an Armageddon?

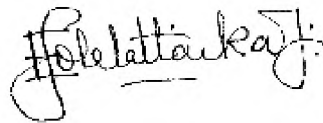
It should be noted that the learned counsel for the first and second respondents Mr. Yusuph had raised several legitimacy issues. Although I am alive to the trite position of the law that he **who alleges must prove**, technicalities employed by Mr. Mshanga not to attach the

purported Will in this petition, raises eyebrows. I cannot help but be reminded of the Maxim **"He who comes into equity must come with clean hands."** Even though it is the interest of justice that the second respondent adheres to the dictates of the law with regards to the minimum number of directors, the petitioner has failed to establish sufficient interest on the matter.

All said, I see no merit to this Petition and the same is hereby struck out. This court makes no order as to costs.

It is so ordered.

E.I. LALTAIKA

A handwritten signature in black ink, appearing to read "E.I. Laltaika". The signature is written in a cursive, somewhat stylized font with a horizontal line under the name.

JUDGE

16.9.2022