

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MWANZA SUB - REGISTRY  
AT MWANZA**

**MISC. CIVIL CAUSE NO 10 OF 2022**

**IN THE MATTER OF THE OF THE COMPANIES ACT, [CAP 212 R.E  
2002]  
AND  
IN THE MATTER OF AN APPLICATION MADE UNDER SECTION  
281(1)(a)(ii) OF THE COMPANIES ACT  
AND  
IN THE MATTER OF CUMPULSORY WINDING UP OF RETRUS  
TANZANIA LIMITED  
BY**

**EPHREM KUSEKWA MBOGOMA.....1<sup>ST</sup> PETITIONER  
LEE BURTON KWEKA.....2<sup>ND</sup> PETITIONER  
VERSU  
RETRUS TANZANIA LIMITED-----RESPONDENT**

**EX-PARTE RULING**

*Last Order: 15.12.2022  
Judgment: 22.02.2023*

**M.MNYUKWA, J.**

This is a Ruling on a Petition for winding up of Retrus Tanzania Limited, a limited liability company incorporated on 4<sup>th</sup> April 2016 through

a Certificate of Incorporation No 125223 with its headquarter at Plot No 160, Misungwi District in Mwanza Region.

In their Petition, the petitioners seeks for the following Orders

- (a) Retrus Tanzania Limited be wound up*
- (b) Advocate Kelvimn Mutatina be appointed by this Court as the official liquidator in respect of winding up Retrus Tanzania Limited*
- (c) Any other Order the court shall deem it fit to grant*

The present Petition is brought under section 281(1)(a)(ii). 279(1)(e) of the Companies Act, 2002 and Rule 111 and 112 of the Companies (Insolvency) Rules. 2004 R.E 2005. The petition is supported by the joint affidavit sworn in by Ephrem Kusekwa Mbogoma and Lee Burton Kweka. The petitioners also filed a certificate of compliance on 13/10/2022 certifying that the respondent was served by affixing the notice of petition in the conspicuous part of the wall of the respondent and also served him by way of substitution services by advertising it in the Citizen Newspaper dated 18/08/2022.

That despite of all these efforts done by the petitioners, the respondent did not file a reply to the affidavit and does not enter appearance to this Court. By the petitioners' prayer and with the consent of the Court, the Petition was heard ex-parte. When the matter was scheduled for hearing, the petitioners were represented by Silas John, the learned counsel.



In order to appreciate the basis of this Petition, I feel compelled to state the brief facts of the matter. In brief, the petitioners are the contributories and directors of the respondent, while the respondent is a company incorporated and registered under the Companies Act, Cap 212 as per the copy of the Certificate of Incorporation that was attached in the petition and marked as Annexure R1. The Petition reveals that, the main objectives of the respondent includes to carry on the business as truck dealers and to operate motor transport of all kinds, to carry business of consultancy services on Japanese vehicle and spare parts and to sell motor vehicle and accessories, to mention a few.

It is also alleged that, there is a misunderstanding among directors which resulted in the institution of criminal and civil proceedings amongst themselves. That, the incidence of criminal proceedings filed at Kisumu Resident Magistrates' Court which was about the forgery of the Minutes of the Meeting purported to show that other directors authorized their termination in the position of directorship. This allegation prompted the Business Registration and Licensing Agency to restore their directorship position. It is on record that, this fuel the relationship among the directors to be more worse, and that there is mistrust among themselves.

It is further alleged that, the petitioners tried to resolve the misunderstanding so as to bring peace and harmony, but in vain. That



different attempts were done by the petitioners including e-mailing the majority shareholders and tried to arrange for a meeting, but all efforts were unsuccessfully. Thus, the petitioners alleged that, there is minority oppression and management deadlock which hinder smooth and efficient running of the company as a commercial concern. And that, this resulted the petitioners to file the present petition to seek Court Order on the relief sought.

As I have earlier on indicated, during the hearing, the petitioners were represented by Silas John, learned counsel. Submitting to support the Petition, he quickly prayed the winding up of the company on two major grounds, minority oppression and management deadlock.

It is Mr. Sila's submissions that, there is abuses of power by the majority shareholders that unfairly prejudices minority shareholders. He refers to Annexure R3 of the Petition to say that, the respondent in association with Masonari Kotani have been continuously using their power to restrict the petitioners to manage the company. He added that, on the way back July 2022 the petitioners called the meeting to discuss on how the company can get money and how to clear the misunderstanding between them. Unfortunately Mr. Kotani and the respondent filed the case before this Court asking to restrict the meeting of the company permanently.



The counsel for the petitioners further submitted that, the majority shareholders unjustifiably hired the accounting firm to do auditing and reported the findings to the majority shareholders and they alleged the petitioners on the embezzlement of Tsh 400,000,000/-. He submitted that, all these acts prejudiced the minority shareholders as they depend on their daily earning to the company.

Submitting on the second ground of management deadlock, he refers to the case of **Chu v Lau** (British Virgin Islands) [2020] UKP 24 (12<sup>TH</sup> October 2020) in which the Privy Council defines what is management deadlock as to mean:-

*"Uninability of members to cooperate in the management of the company affairs lead to uninability of the company to function at board or shareholders level."*

He went on that, in the present petition there is a lot of misunderstanding between the shareholders and the management as stated in Annexure 5 of the Petition. The misunderstanding resulted the company not to work and to pay its debts including the service providers and the taxes. He added that, as directors are not in speaking terms, the company has paralyzed. The counsel refers to the decision of this Court in **Joelle Dahan v Albero Italian Restaurant & Hotel and Another**, Misc, Civil Cause No 3 of 2017 (unreported) which describes the



circumstances of management deadlock. He retires by praying this Court to consider the decision of the above cited case to grant the Petition as prayed.

I have gone through the Petition and consider the submission of the counsel of the petitioner, it is undisputed that there is no good atmosphere in managing the affairs of the company among the directors as they are not in good term. The Petition further reveals that, there is no communication at all among the directors. Worse enough, a suit was instituted to block the meeting to be conducted which scared the members to attend the meeting. There is also mistrust amongst the directors as they are accusing one another on embezzlement and conspiracy to remove some of the directors in directorship.

Indeed, this is the ultimate point where one may conclude that, the possibility of the company to fully operate and meet its objective is very low.

It goes without say that, the company affairs is mostly run by the presence of the meeting. It is through the meeting where directors can discuss up and down of the company. Again it is the effective communication amongst the directors where the efficient running of the company as a commercial concern may be achieved.





As there is management deadlock as indicated above, it is my considered view that, the company may not operate under such atmosphere and therefore deserves to be wound up. In the case of **Nilesh Ladwa v Green Light Auction Mart**, Misc. Civil Cause No 21 of 2020 when this Court faced with a situation akin to this one, it wound up the company. It went further by citing the case of **Ernest Andrew v Francis Philip Tembe** 1996 TLR 287 where the Court stated that:

*"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 directos 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 it to wind up this company and appoints the Registrar of Companies to act as the official receiver."*

Having taken into account all the legal requirements for winding up of a company, and having taken into consideration the Petition presented before me and the affidavit supporting it, this Court proceed to grant the petitioners' prayer for winding up the company.

Consequently, I hereby order as follows

1. That the respondent company incorporated on 4<sup>th</sup> April 2016 with the certificate of incorporation number 125223 going by the name of Retrus Tanzania Limited with its headquarter at Plot No. 160,

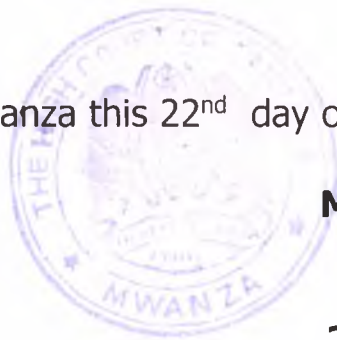
Misungwi District in Mwanza Region is hereby wound up under the provisions of s 281(1) of the Companies Act of 2002

2. That in terms of s 294 of the Companies Act 2002, Advocate Kelvin Mtatina is hereby appointed as the official liquidator of the respondent company for a period of six months within which he shall exercise all the powers to take possession of the assets, properties, accounts and records of the company forthwith as provided for under section 299, 300, 301, 303 and 304 of the Companies Act, 2002

3. No order as to costs

It is so ordered.

Dated at Mwanza this 22<sup>nd</sup> day of February 2023




  
**M.MNYUKWA**

**JUDGE**

**22/02/2023**

Court: Ruling delivered in the presence of the petitioners' counsel

  
**M.MNYUKWA**

**JUDGE**

**22/02/2023**