

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM SUB-REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 658 OF 2021**

**DR. SEBASTIAN SIASA NDEGE ..... APPLICANT**

**VERSUS**

**NEXT BRIDGE CONSULTING CO. LTD ..... 1<sup>ST</sup> RESPONDENT**

**STANBIC BANK TANZANIA LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

Date: 23/02 & 20/03/2023

**NKWABI, J.:**

The applicant brought this application seeking for injunctive orders inter-parte as follows:

1. This honourable Court be pleased to grant an order restraining the second respondent herein, her works men, agent, affiliates or any other person capable of acting under her instruction from processing in any way whatsoever or making payment to any individual person or corporate body from bank account No. 9120002042477 – USD and 9120002042366 – TZS both registered in the name of the 1<sup>st</sup> respondent until determination of the application inter-parte.
2. This Honourable Court be pleased to grant an order for quashing the proceedings of the meeting of the Board of Directors of the 1<sup>st</sup>

respondent company held on 08<sup>th</sup> day of December, 2021 for want of compliance with the procedure as set down by law.

3. Payment of costs for this application to the applicant.
4. Any other orders the Honourable Court deems fit, just to grant.

The chamber summons brought under the provisions of section 193(3) of the Companies Act Cap. 212, section 95 and Order XLIII Rule 2 of the Civil Procedure Code Cap. 33 R.E. 2019 is supported by an affidavit of the applicant. The respondents resisted the application through a counter affidavit duly sworn and filed by Gabriel M. Sabi, the authorised officer of the 1<sup>st</sup> respondent.

The application was argued by way of written submissions. The submissions for the applicant were drawn and filed by Mr. Denice Tumaini, learned counsel, while submissions for the 1<sup>st</sup> respondent were drawn and filed by Mr. Kisusi Rashid Chacha, also learned counsel.

This application was instituted against the 1<sup>st</sup> and 2<sup>nd</sup> respondents to challenge the unprocedural and improper removal of the applicant as a director in the 1<sup>st</sup> respondent, and as a signatory of the 1<sup>st</sup> respondent's bank account in the 2<sup>nd</sup> respondent.

It was contended that on 8<sup>th</sup> December 2021 the applicant was removed as director by other directors of the 1<sup>st</sup> respondent. That the meeting that removed him took without prior notice to the applicant as one of the directors and it took place without full consent and approval of the general meeting of the members of the 1<sup>st</sup> respondent. Thus, there was no ordinary resolution of the members to proceed with the process that was done. It is sought for order to nullify the proceedings ousting the applicant from the board of directors. That should be in accordance with the Memorandum and Articles of association and section 193 (1), (2), and (3) of the Companies Act No. 12 of 2002. Which should be convened after a 21 days' notice circulated among all members of a company.

There are neither ordinary resolution passed by the legitimate members of the 1<sup>st</sup> respondent and nor special notice of resolution for the removal of a director. Thus, the removal of the applicant was null and void. It is added, the 1<sup>st</sup> respondent did not prove any notice and resolutions and minutes thereto. The applicant was denied a right to be heard. The case of **Steven Mahuza v. Stefen Nagy & Another**, Commercial Case No. 115 of 2021 HC (unreported) was cited to this effect:

*"Under section 193(2) of the Companies Act, for removal of a director to be considered proper, a special notice of a resolution to remove a director or to appoint a person instead of the director so removed at the meeting is required from the members of the company. On receipt of special notice of a resolution to remove a director, the company should send a copy of such notice to the concerned director and the said director is entitled to be heard on the resolution at the meeting."*

The resolution relied upon by 1<sup>st</sup> respondent to reach her decision is defective as none of the procedural requirements to set a meeting was adhered to. And no opportunity was afforded to the applicant to be heard.

It is prayed that the proceedings of the meeting of the board of directors held on 8<sup>th</sup> December, 2021 be quashed and declare the 1<sup>st</sup> respondent's resolution invalid and bad in law with costs.

In reply submission, it was contended that in removing the director of a company the most crucial document is ordinary or members' resolution while

the notice has no effect citing **Morogoro Hunting Safaris Ltd v. Halima Mohamed Mameya** [2017] T.L.R. 383, CA at page 384.

*"Lack of, or accidental omission of giving notice or non-receipt of the notice by a member of the company does not invalidate proceedings of the meeting. The company carries out its management function by its directors and that directors must act collectively, that is by resolution provided otherwise in the Articles."*

It is maintained that the applicant consented to his removal as he was represented by Fatma Mahsen Rashid, so he suffers estoppel. It is stated members' meeting was convened on 2<sup>nd</sup> December 2021 and board of directors meeting was convened on 8<sup>th</sup> December, 2021 and the applicant complied via annexure NBC – 4 in disbursing payments. It is prayed that the application be dismissed with costs.

Reinforcing the submission in chief during rejoinder submission, the counsel for the applicant said that the notice is mandatory and the cited case of **Morogorao** should not be considered by this Court as it is in conflict with the law. He urged that the case cited by the counsel for the applicant guides

this Court. It was also argued that there is no any piece of evidence that appointed Fatma Mhasen Rashid to represent the applicant in the said meeting. He further argued that the applicant merely approved the transfer of funds to him and other directors of the 1<sup>st</sup> respondent and not his removal. It is finally prayed that this Court quashes the proceedings of the meetings of the Board of Directors held on 8<sup>th</sup> December, 2021 for want of compliance with the procedures set out in the law and subsequently declare the 1<sup>st</sup> respondent's resolution invalid and bad in law, and order payment of costs of this application.

I have considered the evidence that is in this application and the submissions of both counsel I think that this application has no merits because, clearly the applicant is faced with estoppel. He could not benefit from one outcome of a meeting and reject the other outcome of the same meeting. One cannot eat his cake and have it. He admits that he authorized transfer of funds out from the very resolution of board of directors. One of the payees is Fatma Mahsen Rashid, who is claimed to be his prox. Even Gabriel Munisa confirmed the authorization of payment on 10<sup>th</sup> December 2021 according to annexure NBC- 4.

Even assuming that the applicant was not given notice of the board of directors meeting, which I do not think is the situation in this application, that omission is well covered by the case of **Morogoro Hunting Safaris Ltd** (supra).

Consequently, I rule that this application is misconceived and unmerited. It is dismissed with costs.

It is so ordered.

**DATED at DAR-ES-SALAAM** this 20<sup>th</sup> day of March, 2023



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi", is written over the seal.

J. F. NKWABI

**JUDGE**