

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 403 OF 2021

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

AND

IN THE MATTER OF A PETITION BY MEMBERS FOR AN UNFAIR PREJUDICE

ORDER

BETWEEN

JITESH JAYANTILAL LADWA (Administrator of

the estate of the late Jayantilal Walji Ladwa) **1st APPLICANT**

JITESH JAYANTILAL LADWA **2nd APPLICANT**

SHELTER TANZANIA LIMITED **3rd APPLICANT**

VERSUS

CHANDULAL WALJI LADWA **1st RESPONDENT**

DHIRAJLAL WALJI LADWA **2nd RESPONDENT**

RULING

Date: 15/05 & 10/07/2023

NKWABI, J.:

This petition for unfair prejudice is brought under the provisions of section 233 (1), (2) and (3) (a) & (b) of the Companies Act, 2002. The petition is signed by the 2nd petitioner. The petitioners are petitioning for orders which I think would be of assistance to list all the orders sought as I do herein below:

1. A declaration that the respondents refuse sic. to recognize and register the 2nd petitioner on the 3rd petitioner's records is unlawful and improper.
2. A declaration that the 2nd petitioner has right and authority to take over and handle the deceased (Jayantilal Walji Ladwa) shares in the 3rd respondent sic.
3. That the respondents' conducts of refusing to register the 2nd petitioner on the register of the 3rd petitioner is illegal and amount to unfair prejudice to the 3rd respondent's affairs;
4. Declaration that the respondents are restrained, its shareholders, directors, managers, workmen, servants, agents, associates, and or assignees and any other person(s) claiming title or interest or right of the company until the 2nd petitioner name is registered for purposes of enabling him to make decision on the company's managed and business for wellbeing of the 3rd petitioner.
5. An order that costs of the petition be in the cause; and
6. Any other relief(s) the honourable Court may, in the circumstances deem fit and just to grant.

The petition was signed by the 2nd petitioner as I have indicated above. I am saying so because the one who signed it did not show that he is the administrator of the estate of the deceased. The affidavit verifying the petition too was signed by the 2nd petitioner. Indeed, there is an annexure to the petition which is JW-1 the letters of administration to the 1st petitioner. The respondents filed a reply to petition which was accompanied with a counter-affidavit. The attachment to the counter-affidavit SHJWL- A-2 shows that the respondents are the shareholders and directors of the 3rd petitioner. The deceased was one of the shareholders and directors of the 3rd petitioner as well.

The petition was disposed of by way of written submissions. Mr. Sisty Bernard, learned advocate, argued the petition on behalf of the petitioners while the respondents enjoyed the services of Mr. Patrick Toyi Kaheshi also learned advocate.

It is stated for the applicant that as the administrator of the estate of the late Jayantilal Walki Ladwa, the 1st applicant, has the responsibility to all the deceased property which includes the shares in the 3rd applicant . It is added that the acts of the respondents for not calling company meetings and

denying to recognize the 1st applicant after he has presented proof of his appointment is against the law particularly section 84 of the Companies Act. It is insisted that the acts of the respondents are prejudicial to the interests and well-being of the 3rd applicant.

It is also contended that at this point, it is not for the Court to determine whether the grant of administration was lawful or unlawful, be it that there is a notice of appeal on the appointment of the 1st applicant as administrator of the estate. Currently, the Court has to determine whether the act of the respondents denying to recognize the appointed administrator is proper against the interest of the company. It is prayed that the petition be found to have merits and prayers therein be granted.

In response, the counsel for the respondents maintained that the petition is unfounded and misconceived. The counsel for the respondents said that the prayers are illegal for the 2nd petitioner is neither a shareholder nor a director of the 3rd applicant. He is even not entitled to present a petition under section 233(2) of the Companies Act since he is not a member of the company because membership is acquired by subscription or by an agreement.

It is also contended that the prayer that the 2nd petitioner has rights and authority to takeover and handle the deceased's shares is inappropriate to be made under this petition then suitable to be made in probate Court after the filing of inventory and accounts in Court as he is suing in his own name. Else, he ought to have sued as a legal representative, but the counsel for the respondents was quick to point out that the probate cause is challenged in the Court of Appeal. Too, it was stated that out of brutality, the 2nd petitioner has destroyed the business of the 3rd petitioner.

It is also submitted that as provided under sections 78, 79 and 80 of the Companies Act for transfer of shares of the deceased, there is no evidence presented for that. The company may accept or refuse to transfer such shares. But the procedure has never been adopted and no communication for such procedure has been proved. I am referred to **Gursharan Randhawa & Another v. Andrew Turpinand & Another** (2017) EWCA, Civil 1201 the Court of Appeal Civil Division, (no copy was supplied however). The petition, it is argued, is an abuse of the court process. It is prayed that the same be dismissed with costs.

Stressing their position, it is observed, for the petitioners, that as per **Bhavesh Chandulal Ladwa & others v. Jitesh Jayantilal Ladwa**, Misc. Commercial Cause No. 35 of 2020 cited by the counsel for the respondents, even an act of not calling or convene a general meeting amount to unfair or prejudicial to company's interest. It is also added that an act of refusing to recognize the administrator of the estate of the late Jayantilal Walji Ladwa is prejudicial to the company affairs and unfair to beneficiaries of the late Ladwa estate. In short, the submission by the counsel for the respondents was objected. It is prayed that the petition be granted with costs.

If this Court was aware that there is a pending appeal in the Court of Appeal of Tanzania in respect of the appointment of the 1st petitioner as administrator of the estate of the late Jayantilal Ladwa as stated by the counsel for the respondents, which has not been disputed by the counsel for the petitioners, this Court would have not even admitted this petition as it would be against the position well settled by the Court of Appeal in **Tanzania Electric Supply Company Ltd v. Downs Holding SA (Costa Rica) and Downs Tanzania Limited (Tanzania)**, Civil Application No. 142 of 2012 where it was stated that:

"It is settled law in our jurisprudence, which is not disputed by counsel for the applicant, that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court, commences proceedings in the Court. We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter: see Aero Helicopter (T) Ltd v. F.N. Jansen [1990] TLR. 142."

I would have stopped there, but I add that even the 2nd petitioner has not been distributed the estate to him be it shares of the deceased in the 3rd petitioner, so, he cannot claim as he claims and be granted by this Court. The account of the estate ought to have been attached to this petition. I say so because, this Court, in coming to its decision, is enjoined to evaluate the evidence that is in the Court record which includes the statement on oath contained in the paragraphs in the affidavit/petition and annexures attached thereto. In this petition, there is only the letters of administration granted by the Court on 29th day of June 2021. There is neither accounts of the estate nor shareholders' or directors' resolution for the institution of this petition attached to the petition.

It is also quite interesting how the 3rd petitioner would be part to this petition as the petitioner and suing the respondents who are directors of the 3rd petitioner. The 1st and 2nd petitioners are not directors of the 3rd respondent, then how did the 3rd petitioner get authorization to institute this petition having recourse to **Pita Kempap limited v. Mohamed Abdulhussein**, Civil Application No. 128/2004 C/F 69 of 2005 CAT (unreported).

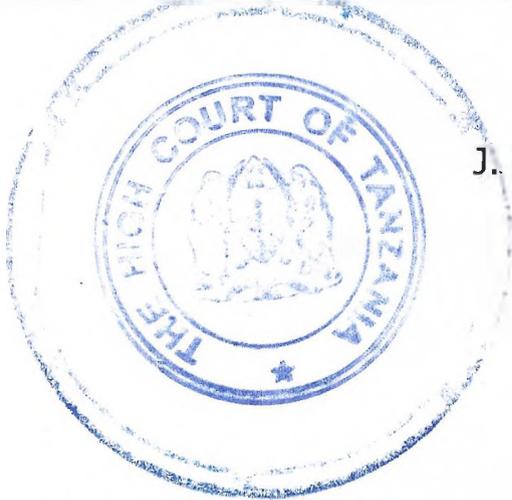
Because of the above observation, that the appointment of the 1st petitioner is still challenged in the Court of Appeal of Tanzania, there is no any proof that the 2nd petitioner has, by accounts of the estate, been allocated the shares of the deceased in the 3rd petitioner and the 3rd petitioner has no any shareholders' or directors' resolution to lodge this petition. I agree as observed by the counsel for the respondents, this petition for unfair prejudice is misconceived and amounts to an abuse of the Court process.

With respect, I am of the firm view that the counsel for the petitioners has failed to understand the gist of the submission of the counsel for the respondents, else he would have not tried to submit as he did in the rejoinder submission.

In fine, this petition for unfair prejudice is found to be wanting in merits. It is dismissed with costs.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 10th day of July, 2023



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

JUDGE