

IN THE HIGH COURT OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

WINDING UP CAUSE NO. 5 OF 2021

IN THE MATTER OF COMPANIES ACT, CAP 212, Act No. 12 of 2002

AND

**IN THE MATTER OF THE PETITION FOR WINDING UP OF M/S KATANI
LIMITED**

BY

THE BOARD OF TRUSTEES OF NATIONAL SOCIAL SECURITY FUND,

AS CREDITOR OF M/S KATANI LIMITED..... PETITIONER

AND

TANZANIA REVENUE AUTHORITY 1ST INTERESTED PARTY

EX-EMPLOYEES OF KATANI LIMITED 2ND INTERESTED PARTY

RULING

K. R. Mteule, J

22 August

This Ruling concerns the propriety of a Notice filed herein on 7th August 2023. On this date a notice titled "A Notice of Interest to join the suit as a interested party" was lodged in this matter by Peter Bana Advocate on behalf of one Waziri Hassan intending to be an interested party. The document did not have any explanation as to under which law is it filed. It did not cite any provision of Law and it was filed after the liquidator has presented his liquidation report.

On the same date of 7th August 2023, all the parties to this matter appeared except the creator of the above-named document titled "A Notice of Interest to join the suit as a interested party". The matter was for the Liquidator to furnish his report on the winding up exercise. Before hearing the liquidator on the winding up report, parties' attention was drawn to the document filed by Mr. Bana. Being puzzled with the existence of such document in the court record, parties discussed briefly and agreed that the court adjourns the matter for the creator of the document, Mr. Bana Advocate to appear today on 22 August 2023 and address the court on the intention of what he filed.

Today Ms. Ezerida appeared on behalf on Mr. Bana with instructions to proceed. She requested to withdraw the document and prayed for the court to grant her a leave to file a formal application. Parties being again puzzled with the type of the application intended to be file, objected the second prayer to file such unknown application. But none of the parties objected the withdrawal prayer. Mr. Mwakingwe Advocate for the Liquidator posed that upon disclosure of the type of application to be filed, then he shall not have objection, but he retained his objection since the nature of the application is not disclosed.

In rejoinder, Ms Ezerida submitted that she cannot disclose the objection but the court will come to know the substance of it after the submission to defend it.

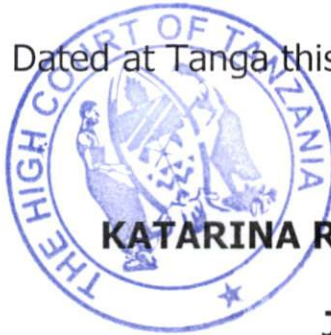
Having heard the parties, it is apparent that the prayer for withdrawal of the notice is not in issue. Since non of the parties is objecting the prayer, then it is to be allowed.

The issue for discussion is on the request to grant leave to Ms. Ezerida to bring a formal application. I am still puzzled as to why has Ms. Ezerida made this prayer. In essence, a party is at liberty to file any matter if the law so allows. She declined to mention the type of the application she is intending to file. I agree with the parties that most applications were to be filed before the liquidator accomplishes his task. If Mr. Bana and Ms. Ezerida had any valid application to be brought at this stage of liquidation process, then the same could have been filed before as they had ample time to do so from 7th August 2023 when Mr. Bana dropped the mysterious document in court and disappear to this date. It will be an abuse of court to have the process kept stand still awaiting for someone to lodge a claim whose basis is not even explained. Although Ezezida did not pray for the matter to be halted, the essence of her prayer for leave to file the application suggests that things should stop to allow such application to be filed. Court business cannot be stalled to wait for unknown application or motions to be filed. Court business goes by provisions of the law. It is from certain provision of law where the court derives its jurisdiction. As rightly submitted by Mr. Mwakingwe and Mr. Brian, I equally find no legal basis for this court to keep the proceedings of this matter halted awaiting for unknown application to be filed.

I would point out that shall Ms. Ezerida requires to file any application, there is no point of asking the leave of the court. Any party is at liberty to lodge any matter in court so long as the law allows. Having said so, the second prayer of granting leave to Ms. Ezerida is not denied or granted in my view is superfluous. As well the court will not stop the proceedings to wait for any application to be filed since filing of a matter

in court is normally at a free will of any person so long as it is within the purview of the law. It is so ordered.

Dated at Tanga this 22nd Day of August 2023



A handwritten signature in blue ink, appearing to be "KRM", written over the seal.

KATARINA REVOCATI MTEULE

JUDGE

22/8/2023

Court:

Ruling delivered this 22nd Day of August 2023 in the presence of Ms Ezerida, Mr. Mwakinga Advocate for the Liquidator, Mr. Rashid Mohamed SA and Aisha Kingu for TRA, Ms. Mariam for Debora Msaki for the Employees, and Brian Mganaga for the TRA.



A handwritten signature in blue ink, appearing to be "KRM", written over the seal.

KATARINA REVOCATI MTEULE

JUDGE

22/8/2023