

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE LAND CASE NO. 599 OF 2023

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

(AS REVISED)

AND

IN THE MATTER OF TALLOP MICROFINANCE LIMITED

AND

IN THE MATTER OF AN APPLICATION BY

SYLVIA MARTINE UMBE.....PETITIONER

VERSUS

SAUMU OMARY MHANDO.....1ST RESPONDENT

TALOP MICROFINANCE COMPANY LTD

(As Necessary Party).....2ND RESPONDENT

JUDGMENT

(DEED OF SETTLEMENT)

23rd & 27th February, 2024

DYANSOBERA, J.:

The petitioner on the one hand did, on 20th October, 2023, institute the above-mentioned petition against the respondents craving for the following reliefs: -

a) Declaration that the 1st respondent's acts as clarified herein above affect the company's affairs in a manner which is unfairly prejudicial to the interests of the petitioner hence affecting the relationship of business affairs of the 2nd respondent and its serving shareholders and directors.

b) Declaration that the 1st respondent's acts of opening a new company and become a shareholder to that of new company is illegal in law and do affect the 2nd respondent's company affairs in a manner which is unfairly prejudicial to the interests of the petitioner.

c) An order to the effect that the serving shareholders or members be allowed to purchase the 1000 paid up shares valuing Tshs. 5, 000,000/= belonging to the 1st respondent and/or in the alternative, shares returned to the 2nd respondent company or in the further alternative an order compelling the 1st respondent to sell the said shares to the relevant shareholders or members.

d) An order compelling the 1st respondent to sign and conclude the relevant documents pertaining to the share transfer (transfer deeds) followed by an order that, the 1st respondent is no longer a shareholder or a director and that she should never associate herself with the business affairs of the company whatsoever.

e) Any order that the 1st respondent pay the petitioner's costs and incidentals to this suit.

f) Any other relief(s) as the court may deem fit and just to enable smooth and proper running of the 2nd respondent's business affairs in protection of the company, the petitioner and its members.

The respondents, on the other hand, contentiously prayed for dismissal of the petitioner's suit and, at the same time, cross-petitioned as follows: -

a) A declaration that the respondent's acts including:-

- i. Failure to issue the share certificate for the 1000 paid up shares to the Petitioner since 2019
- ii. Failure to update the changes on current position of shares held by the 1st respondent at BRELA
- iii. Failure to issue dividend to the petitioner since the year of income 2019, 2020 and 2021
- iv. Failure to conduct independent audit report on genuine worthiness, portfolios on her lending money ad credits, assets and liabilities of 1st respondent company since 2018 to the present
- v. Failure to give duly signed minutes of annual general meeting of shareholders, audited financial report and resolutions to the petitioner since 2019 to the present as clarified hereinabove affect TALLOP MICROFINANCE LIMITED affairs in manner that is unfairly prejudicial to the interests of the petitioner in this cross petition (SAUMU OMARY MHANDO)

b) A declaration by this Honourable Court against the 1st and 2nd respondents in this cross petition as prayers in paragraph 2 above, to issue order of compelling the petitioner to resolve her acts and act accordingly hence do what she is supposed to act contrary to her acts enlisted at paragraphs 2 (a-e) above with immediate effect.

c) The order against the 1st respondent in this cross petition for specific performance of purchasing 1000 paid shares as the agreed price of Tshs. 35, 000, 000/= as evidence by acceptance agreement stipulated above and the petitioner shall duly sign all relevant documents for sale and transfer of shares henceforth fully exist from affairs of TALOP MICROFINANCE LIMITED, as the 1st respondent herein.

d) The 1st respondent in case of neglect and or refuse and or fails to whatsoever reason within the time frame ordered by this Honourable court to purchase 1000 paid up shares at the agreed price of Tshs. 35, 000, 000/= be compelled to register new shareholder who will buy the said shares belonging to the petitioner.

e) An order that the 1st respondent in this cross petition to pay the costs of this cross petition and the incidental costs to this suit and the petition

f) Any other relief(s) and order this honourable court may deem fit and just to issue and grant.

Now, the parties in their respective capacities have agreed to settle the suit amicably on the terms and conditions hereinbelow stipulated in the DEED OF SETTLEMENT which they pray to be adopted by this court as the decree of the court.

The Deed of Settlement which the parties have agreed and which I adopt as part of the judgment of this court is as follows:

1.0 That, all parties to the suit agree that the pending paid up 1000 shares belonging to the 1st respondent valuing Tshs. 5,000,000/= have been increased in addition of 250 shares for which resolution had already been passed to increase the paid up shares in respect of all shareholders including the 1st respondent; to make a total of shares up to 1, 250 shares to be purchased by **Domitila Patrick Kidamwina**, one of the shareholders and as registered at Business Licensing and Registration Agency (hereinafter to be referred as **BRELA**).

2.0 That, it is also agreed by all parties to this deed of settlement that a total of Tshs. 25,000,000/= (hereinafter referred to as the Consideration) shall be paid to the 1st respondent as a consideration for purchase and transfer of the said shares to Ms. **Domitila Patrick Kidamwina** one of the serving shareholders, the amount which shall

cover all transfer of shares and other related incidental transactions hereto.

- 3.0 That, the sum Tshs. 25,000,000/= mentioned in paragraph 2.0 above shall be paid to the 1st respondent, one SAUMU OMARY MHANDO through the 1st respondent's lawyer/ Law Firm namely, M & O law Office, Bank: ABSA Bank Tanzania, Account No. 0216002571, Swift Code: BARCTZTZ managed by Mr. Mwombeki Kabyemela, Advocate, for and on behalf of the 1st respondent SAUMU OMARY MHANDO; and who by signing this Memorandum of Settlement accepts and acknowledges receipt of the amount mentioned herein.
- 4.0 That, upon payment of the said consideration to the 1st respondent, the 1st respondent shall sign and complete all the relevant documents pertaining to the transfer of shares to **Domitila Patrick Kidamwina** or as may be directed otherwise for the time being including by the operation of the law; and or as may be agreed by the parties.
- 5.0 That, upon the 1st respondent being paid the consideration, the 1st respondent shall cease to be the shareholder of the company immediately, shall cease to associate himself with any affairs/business of the company and shall hand over any assets in one way or another related to the 2nd respondent company or to any shareholder or director if any.
- 6.0 That, the 1st respondent in collaboration and cooperation with the petitioner, the necessary party and other serving shareholders, directors and or any other officer(s) duly appointed by the petitioner, necessary party or any other person with authority and mandate to to so; shall make sure all transfer of shares any other transaction related thereto are duly effected and finalized at the offices of Tanzania Revenue Authority (TRA) and Business Registration and Licensing Agency (BRELA) for the purposes of effecting the changes where only there is such a need and requirement to do so.

- 7.0 That, upon failure by the 1st respondent to sign and complete the relevant transfer of shares documents, or upon failure by the 1st respondent to cooperate with the petitioner, the 2nd respondent, other serving shareholders/directors and or any other officer(s) duly appointed by the petitioner, 2nd respondent or any other person with authority and mandate to do so, the 1st respondent shall be declared 'as failed to honour her obligation'. The petitioner and necessary party shall have the rights to enforce their rights as enshrined in this deed of settlement by order of the court passed upon the filing, recording and registering this Memorandum of Settlement as judgment and decree of the court.
- 8.0 That, in consideration payable to the 1st respondent, NOW, it is agreed by all the parties to this suit that by signing this Memorandum of Settlement, a total of 1, 250 shares having value of Tshs. 5, 000/= each as registered at BRELA Offices are hereby purchased by Domitila Patrick Kidamwina, one of the serving shareholders hence are hereby transferred from **SAUMU OMARY MHANDO** (the 1st respondent) to the said Domitila Patrick Kidamwina, the serving shareholder.
- 9.0 That, each party to the suit and to this Memorandum of Settlement shall bear its own costs including their advocates' fees which they might have incurred in the course of persecuting (sic) the case as court fees etc.
- 10.0 That, parties herein further agree that, by signing and upon execution of this deed of settlement; and upon fulfilling of all the terms and conditions as enshrined in this Deed of Settlement, the petitioner shall have no any claims against both respondents and 1st respondent shall also have no any other claims against both the petitioner and the Necessary party (2nd respondent) in respect of the cross petition; and that no an such and further other claims far from the instant one which might had already been commenced against each other shall whatsoever stand; and that no any other claims or cause of action shall

be commenced in any court of law between the same parties and the same subject matter or cause of action within Tanzania territory.

11.0 That, this deed of settlement together with the terms and conditions as enshrined herein shall form part and parcel of judgment and decree of this Honourable court.

12.0 The terms and conditions of this Deed of Settlement are hereby recorded as the decree of this court.



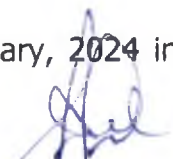

W. P. Dyansobera

Judge

27.2.2024

Delivered at Dar es Salaam this 27th February, 2024 in the presence of Vanessa Njunwa.




W. P. Dyansobera

Judge