

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM SUB-REGISTRY  
AT DAR ES SALAAM  
MISCELLANEOUS CIVIL CAUSE NO. 25724 OF 2023.**

**IN THE MATTER OF COMPANIES ACT, CAP 212 R.E 2002  
AND  
IN THE MATTER OF PETITION FOR AN ORDER TO CALL, HOLD  
AND CONDUCT AN EXTRAORDINARY GENERAL MEETING  
BY  
GILBERT ELIBARIKI MUSHI ..... PETITIONER**

**RULING**

*Date of last Order:30-4-2024*

*Date of Ruling:3-6-2024*

**B.K.PHILLIP, J**

This application is made under sections 137 (1) (2) and (3) of the Companies Act, Cap 212 R.E 2002. ( " Cap 212"), supported by an affidavit sworn by the petitioner. The petitioner is a Managing Director of a Company known as Gilly Company Limited (Henceforth "the Company"), incorporated on 15<sup>th</sup> September 2010 with two Directors, namely Gilbert Elibariki Mushi (the petitioner herein) and Ester Ezekieli Mushi who held 200 shares in the Company. On 24<sup>th</sup> October 2013 Ester Ezekieli Mushi passed away, thus the Company remained with one Director (the petitioner herein). In this application, the petitioner being the sole remaining Director of the Company seeks an order of this court allowing him to convene an extraordinary general

meeting of the Company.

The learned advocate Anna Amon appeared for the petitioner. The application was disposed of by way of written submission. In her submission in support of this application, Ms. Amon referred this court to the contents of the affidavit in support of this application in which the petitioner narrated the background to this application. Moreover, Ms. Amon pointed out the following; That the the objects of the Company are buying, selling, distributing and supplying all kinds of pharmaceutical products for both humans and animals. Ester Ezekiel Mushi was also known as Esther Gilbert Mushi. She used the names "Ezekiel" and "Gilbert" as her middle name interchangeably. Following the death of Elizabeth Gilbert Mushi, on 8<sup>th</sup> May 2023, the petitioner was appointed as the administrator of the deceased estate. He bequeathed the 200 shares left by the deceased to the heirs namely Brian Gilbert, Priscilla Gilbert, and Magreth Gilbert, who are the deceased's children. These shares need to be transferred to the heirs, however according to our laws, the Company cannot run its affairs and pass resolutions with one Director only.

Relying on the provision of sections, 137 (1) (2) (3) of Cap 212, Ms. Amon contended that this court has the power to grant leave to the petitioner to hold the Company's extraordinary meeting. To cement her arguments she cited the case of **GODFREY HERRY MOSHA, MISC. COMMERCIAL CAUSE NO. 46 OF 2021**, (unreported) in which the court held as follows;

*"In the circumstance of this petition, I find it prudent that the orders sought to*



*be granted given that, the company cannot run its affairs legally if its Board of Directors lacks a sufficient quorum, as the sole surviving director, the petitioner is hereby ordered within 60 days from the date of this ruling to call and conduct a meeting of the shareholders of the Company and one of the agenda should be the appointment of an additional Director of the Company following the demise of Ms. Elizabeth Godfrey Moshu, who was a Co-Director. "*

In conclusion of her submission, Ms. Amon beseeched this court to grant the orders sought by the petitioner.

Having dispassionately analyzed the submission made by Ms. Amon as well as perused the affidavit in support of this application together with documents annexed thereto which includes the death certificate of Elizabeth Gilbert Mushi, the certificate of incorporation and Memorandum, and Articles of Association of the Company, I am satisfied that this application has merit. Truly, the petitioner deserves to be allowed to convene the Company's extraordinary meeting to enable the appointment of the second Director otherwise, as correctly submitted by Ms. Amon, the Company cannot run its affairs with one Director only. Thus, I hereby order that the petitioner shall convene the Company's extraordinary meeting of the shareholders of the Company within sixty (60) days from the date of this order and one of the agenda in that meeting should be the appointment of the second Director. It is so ordered.

Dated at Dar es Salaam this 3<sup>rd</sup> day of May 2024



  
**B.K. PHILLIP**

**JUDGE**