

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 20 OF 2003

**IN THE MATTER OF CRDB BANK LIMITED (APPLICANT)
AND
IN THE MATTER OF COMPANIES ORDINANCE (CAP 212) AND
IN THE MATTER OF APPLICATION FOR RECTIFICATION OF
SHARE REGISTER**

R U L I N G

KALEGEYA, J:

This is an application for an order that the Applicant's members' register be rectified by entering correct particulars in respect of some shareholders, and inserting other shareholders who were wrongly excluded. The Applicant is represented by Mr. Lauwo, Advocate, while the Registrar of Companies is represented by Mr. Kakwezi. The application, which is not contested, was at first supported by an affidavit of the said Mr. Lauwo, which was fully adopted during the submissions and whose salient paragraphs run as under:

- "1.
2.
3. *That after concluding reconciliation of the share register it was discovered that the names of 8 shareholders were wrongly recorded in the register of members as having 10,236 shares instead of 10,177 shares as revealed in reconciliation summary attached herein and marked Annex 'A' which we request to be taken as part of this affidavit.*

4. *That after concluding reconciliation of the share register it has been discovered that the names of 105 shareholder with 841 shares were not entered in the register or were not issued with share certificates the list of such shareholder attached herein and marked Annex 'B' herein attached which we request to be take as part of this affidavit.*
5. *That the net effect of this rectification is to increase the number of issued shares to 824,444 from of 823,379 therefore the capital of the company will be 8,244,440,000/= instead of 8,233,790,000/= as it appeared in the 2002 financial statements*
6. *That in 45th meeting of the Board of Directors of CRDB BANK LIMITED held on 2nd day May 2003 at Board room 4th floor office accommodation scheme building resolved by a special resolution to rectify the register of members by deleting the 8 names entered erroneously and inserting the 105 omitted names. A copy of resolution to that effect is herein attached and marked Annex C, which I pray to be part of this affidavit."*

The Applicant's Board of Directors' Meeting referred to in para.6 of the supporting affidavit detailed the errors, and displayed a special resolution which directed that an application be made to the court for rectification of the register. The relevant part runs as under:-

"10.0 RECTIFICATION OF THE SHARE REGISTER

10.1 TABLED Board paper no. 45/2003/8 titled

"Rectification of the Shareholders Register".

10.2 NOTED the contents of the paper.

10.3 PRESENTED the recommendation that the Bank makes an application to the court to rectify the share register so that;

- 10.3.1 The names of 8 shareholders that were wrongly recorded in the register as having 10,236 shares instead of 10,177 shares are rightly recorded as per Annex 1 attached.*
- 10.3.2 The names of 105 shareholders with 841 shares who were not entered in the register or not issued with share certificates be recorded in the register as per Annex 2 attached.*
- 10.3.3 The total number of shares in the register is 824,444 when these amendments are made. The amount represents Tshs.8,244,440,000 instead of Tshs.8,233,790,000 currently appearing in the Bank's Capital Account.*
- 10.4 APPROVED that the Bank makes an application to the court to rectify the share register as provided in 9.3.1, 9.3.2 and 9.3.3 above."*

However, during the composition of the ruling I discovered that there were variations in the number of shares-holders whose particulars are intended to be rectified. The supporting affidavit and the chamber summons make reference to 8 shareholders but the schedule attached in support thereof and which details names, receipt numbers, respective shares allotted and recorded and the difference which necessitated the application, displays only seven shareholders. As a result, I deferred the ruling and called upon the Counsel to make a clarification. Mr. Lauwo,

Advocate, for the Applicant conceded of the error and applied for time to check on the matter. He has now come back with a prayer for correction. He has filed a supplementary affidavit whose contents run as under:-

- “5. *That on 17th day of July 2003, I made an application to this court seeking to rectify the said share register.*
6. *That in the affidavit supporting the said application, it was wrongly stated that the names of shareholders referred to in annex A therein were eight (8) instead of seven (7).*
7. *That further, in the said affidavit, the referred shareholders were wrongly portrayed as having 10117 shares instead of 59 shares.*
8. *That after close scrutiny it was discovered that the error originated from a proposal submitted to the Board of Directors, wherefrom the Board Resolution attached to the said affidavit as annex “C” was prepared.*
9. *That upon discovery of such errors a fresh proposal had to be submitted, and was submitted to the Board of Directors sitting on the 30th July 2003 whereby the said resolution was corrected. The corrected resolution is attached herewith and marked annex “A”.*
10. *That if this application is granted the error in annexure “C” to the affidavit as submitted on the 17th June 2003 will be corrected and records will reflect the true picture of the company capital structure.*
11. *That in the premises above I pray that application be granted and this Honourable Court allows the applicants to rectify the share – register as prayed.”*

Attached to the said affidavit is an extract of the rectifying minutes whose contents are as follows:-

**“EXTRACT FROM THE CRDB BOARD OF DIRECTORS’
MEETING HELD ON 30TH JULY 2003**

**AGENDA NO 14
RECTIFICATION OF THE SHARE REGISTER**

At its meeting held on 2nd May 2003 the Board approved rectification of the share register on the following aspects;

- 1. The names of 8 shareholders that were wrongly recorded in the register as having 10,236 shares instead of 10,177 shares are rightly recorded as per Annex 1 attached.*
- 2. The names of 105 shareholders with 841 shares who were not entered in the register or not issued with share certificated be recorded in the register as per Annex 2 attached.*
- 3. The total number of shares in the register is 824,444 when these amendments are made. The amount represents Tshs.8,244,440,000 instead of Tshs.8,233,790,000 currently appearing in the bank’s Capital Account.*

The statement in item no. 1 had wrongly quoted figures from Annex 1 and this called for the correction of the statement.

RESOLVED *that the corrected version should read as follows;*

- 1. The names of 7 shareholders that were wrongly recorded in the register as having 10,236 shares instead of 59 shares are rightly recorded as per Annex 1 attached.*
- 2. The names of 105 shareholders with 841 shares who were not entered in the register or not issued with share certificates be recorded in the register as per Annex 2 attached.*

3. *The total number of shares in the register is 824,444 when these amendments are made. The amount represents Tshs.8,244,440,000 instead of Tshs.8,233,790,000 currently appearing in the Banker's Capital Account.*

DATED AT DAR ES SALAAM This 11TH DAY OF AUGUST 2003.

Sgd:
DR.C.S. KIMEI
MANAGING DIRECTOR

Sgd:
M.J. LINGOWE (Mrs.)
COMPANY SECRETARY"

Now, having carefully considered the submissions including the supporting evidence, and particularly, regard being had to the corrections effected vide the supplementary affidavit and its annexure, I am satisfied that the application is meritorious. The rectification sought is intended to cater for shareholders' interests.

On the other hand, the law permits the course taken by the Applicant. The Companies Ordinance, Cap 212, provides

"101. (1) If-

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or*
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,*

the person aggrieved, or any member of the company, or the company may apply to the court for rectification of the register.

- (2). Where an application is made under this section, the court may either refuse the application or may order rectification of*

the register and payment by the company of any damages sustained by any party aggrieved."

On the grounds exposed above, the application is accordingly granted.

L.B. KALEGEYA
JUDGE

Delivered on 13/8/2003

L.B. KALEGEYA
JUDGE
13/8/2003

...e tity that this is a true an correct
the original of the judge en...
.....
.....
Registrar
Commercial Cour
Dar es Salaam
13/8/03
.....
dated