

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

**MISC.COMMERCIAL CIVIL CAUSE No.16 OF 2020**

**In the Matter of the Companies Act No.12 of 2002, Cap.212  
R.E2002  
AND**

**In the Matter of an Application Made Under Section 281(1) of the  
Companies Act  
AND**

**In the Matter of Compulsory Winding Up of Kluane Drilling  
Tanzania Limited**

**BETWEEN**

**KLUANE DRILLING LIMITED .....PETITIONER**

**Versus**

**KLUANE DRILLING TANZANIA LIMITED...RESPONDENT**

**JUDGEMENT**

**Last Order: 12/10/2020**

**Judgement: 23/10/2020**

**NANGELA, J.:**

This judgement is in respect of a petition filed in this by a Petitioner who seeks for the following Orders of this Court:

1. That, the Respondent be wound up by the Court under the provisions of the Companies Act, Cap.212 R.E 2002;
2. That, Mr Vintan Willgis Mbiro be appointed as Liquidator of the Company to take possession of the

Assets, properties, accounts ,and records of the Company forthwith;

3. Costs of the Petition be provided for;
4. Further, Orders be made and directions be given by this Honourable Court as may deem fit.

The Petition, which was filed under section 281(1) of the Companies Act, Cap.212 [R.E.2002], is supported with a verifying affidavit deposed by one, Arwa Yusufali, the authorized attorney of the Petitioner.

The facts leading to this Petition are brief. The Petitioner is a Company registered under the Business Corporation Act of Yukon, Canada. Its registered office is at 14 MacDonald Road, Whitehorse, Yukon, Canada Y1A4L2. It was incorporated on 9<sup>th</sup> April 1987.

On the other hand, the Respondent is a private company limited by shares. It was incorporated and registered on 16<sup>th</sup> June 2010 under the Companies Act, Cap.212, with Reg. No. 76955 and its registered office is at House No.304, Plot No.50/39, Block 'B' Mwinjuma Road, Mwinjuma Street, Kinondoni, Dar-es-Salaam. A copy of the Certificate of Incorporation was attached to the Petition as *Annex.KDT-1*.

The Respondent was registered with a view to undertake the business of construction of utility projects and provide support activities for mining and quarrying, and, in terms of the Respondent's ownership, its shares are owned by the Petitioner (99%) and Mr James Allan Coyne owns (1%). The Petitioner and the Respondent, therefore, shares inter-company transactions. A copy of the share certificate was attached to the Petition as *Annex.KDT-3*.

It has been alleged that, from 2011, the Petitioner and the Respondent were involved in inter-company transactions, whereby,

the Petitioner supplied the Respondent with consignments of Drilling equipment for purposes of drilling operations of the latter in Tanzania. The shipment was supplied to the Respondent on condition that payments were to be made within 60 days upon delivery of the equipment to the Respondent. The Petitioner attached copies of invoices to the Petition as *Annex.KDT-4*.

It is also the Petitioner's averment that, apart from the supply of drilling equipment, the Petitioner further made available to the Respondent a working capital as loan, issued in support of the Respondent's business operations. The condition attached to the funding availed to the Respondent was that the funds would be repaid within 5 years of the Respondent's operations in Tanzania. A copy of the *loan agreement*, as well as copies of *financial and bank statements*, was annexed to the Petition as *Annex.KDT-5* and 6 respectively.

It is alleged that, the Respondent received the equipment consignment and the funds from the Petitioner but failed to make the necessary repayment as agreed, thus making the outstanding balance owed to the Petitioner to be **US\$ 545,774.52** (*equivalent to TZS 1,269,737,940*) as of 13<sup>th</sup> December 2019, when the Petitioner sent a *Demand Notice* (*Annex.KDT-7*) to the Respondent. The *Demand Notice* was nevertheless, not honoured. The Petitioner sent another demand note which was also unheeded to by the Respondent.

According to the Petitioner, the business of the Respondent has remained dormant for about two years now due to unavailability of business opportunities and, hence, the Respondent has been suffering losses. As such, on 20<sup>th</sup> February 2020, a meeting was held which resolved that the Respondent be wound up. It was resolved further

that a Liquidator, in the name of Mr Vintan Wilgis Mbiro, be appointed by the Court, to take possession of and manage the assets, books, accounts and records of the Company forthwith. The resolution of the said meeting was attached as *Annex.KDT-10*. It is on the basis of this background that this Petition was filed in this Court, seeking for the Orders as aforementioned.

On 18<sup>th</sup> June 2020, when this Petitioner was called on for orders, Ms Ernestila Bahati, Learned Advocate appeared for the Petitioner while Mr Beatus Malawa, the Respondent's Company Secretary, appeared for the Respondent. Mr Malawa informed this Court that, the Respondent is not intending to oppose this petition. This Court adjourned the matter to allow Mr Malawa to file a formal document regarding the Respondent's position given that there was none as such, save for the verbal statements of Mr Malawa.

On 5<sup>th</sup> August, 2020, this Court was availed with a letter from the Respondent formally stating its position as earlier submitted. On the material date, Ms Bahati appeared in Court on behalf of the Petitioner while the Respondent was absent. She prayed for a hearing date to be fixed as per Rule 106 (1) of Government Notice No.43 of 2005. This Court fixed the hearing date to be the 8<sup>th</sup> of September 2020. Unfortunately, on the material date all parties were absent in Court and the hearing of the Petition was rescheduled to 12<sup>th</sup> October 2020 at 10.00am.

On the material date, Ms Bahati appeared for the Petitioner. The Respondent was absent. In her submission, Ms Bahati was very brief. She simply submitted that, since the Respondent did not file any affidavit objecting the Petition, but rather supports it, and since the Petitioner has complied with all requirements under the relevant rules,

and has satisfied all conditions set by the law, the Court should proceed and grant the Petitioner's prayers.

I have examined the Petition, its annexure, as well as the verifying affidavit. It is trite in law that, a proceeding by a company has to be sanctioned by a Board Resolution. See *Milo Construction Company Ltd v Florence Mtetemela and Another*, Commercial Case No.16 of 2009 (unreported); and *Elias Masija Nyang'oro and Another v Mwananchi Insurance Co. Ltd*, Misc.Civil Cause No 13 of 2017 (unreported).

In this Petition, there is no doubt that a Board Resolution (*Annex.KDT-10*) was arrived at to the effect that a Liquidator be appointed by the Court to liquidate the Respondent Company, and hence these proceedings.

It is also on record that the Respondent was served with the Petition as required by Rule 111 (5) of the *Insolvency Rules, GN.43 of 2005* and, as stated earlier, the Respondent has made it clear, by way of a letter to this Court dated 04<sup>th</sup> August 2020, that the Respondent does not wish to oppose the Petition and understands fully the repercussions of not opposing the same.

As it may be noted, the Petition is brought under section 281(1) of the Companies Act. The section provides as hereunder:

"281-(1) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or any creditors (including any contingent or prospective creditors), contributory or contributories or by an administrator, or any of those parties, together or separately:-....."

It is clear to me that, in terms of section 281(1) of the Companies Act, Cap 212, the Petitioner is entitled to bring the Petition. Besides, the Respondent does not object to the granting of



the prayers sought in this Petition. It is also clear to me, pursuant to the provisions of rule 99 (2) of the *Companies (Insolvency) Rules; GN No. 43 of 2005*, the petition was advertised in the *Citizen Newspaper* dated 1<sup>st</sup> May 2020, at page 5, as well as *Mwananchi Newspaper*, dated 1<sup>st</sup> May 2020, at page 6. So far, up to the time of the hearing of this Petition, no one filed notice of appearance to oppose the winding up petition as provided for in Rule 104 of the *Companies (Insolvency) Rules 2005*.

Having taken into consideration all the legal requirements for winding up of a company, and having looked at the petition and its accompanying affidavit, this Court proceeds to grant the Petitioner's prayers for winding up of the Company and, thus, I hereby order as follows:-

1. That, the Respondent Company, registered on 16<sup>th</sup> June 2010 under the Companies Act, Cap.212, in the name of **KLUANE DRILLING TANZANIA LIMITED**, and issued with Reg. No. 76955 and, whose registered office is at House No.304, Plot No.50/39, Block 'B' Mwinjuma Road, Mwinjuma Street, Kinondoni, Dar-es-Salaam, is hereby wound up under the provisions of section 281(1) of the Companies Act of 2002;
2. That, in terms of section 294 of the Companies Act, 2002, Mr Vintan Willgis Mbiro is hereby appointed as the official Liquidator of the Respondent Company for a period of six months within which he shall subject to the control of the court, exercise all the powers to take possession of the Assets, properties, accounts, and records of the Company forthwith, as

enumerated under section 299, 300, 301, 302, 303 and  
304 of the Company Act, 2002;

3. That, this Court makes no orders as to Costs.

**It so ordered.**

Dated at Dar es Salaam this 23<sup>rd</sup> day of October 2020.



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**DEO JOHN NANGELA**

**JUDGE, HIGH COURT OF TANZANIA (COMMERCIAL  
DIVISION)**

**23<sup>rd</sup> / 10 / 2020**

Judgement delivered on this 23<sup>rd</sup> day of October 2020, in the presence  
of Ms Sarah Mushi the Advocate for the Petitioner and the absence of  
the Respondent.

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**DEO JOHN NANGELA**

**JUDGE, HIGH COURT OF TANZANIA (COMMERCIAL  
DIVISION)**

**23 / 10 / 2020**