

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

MISC. COMMERCIAL CAUSE NO 12 OF 2022

IN THE MATTER OF THE COMPANIES ACT, CAP 212 R.E 2002

IN THE MATTER OF RESTORATION OF A COMPANY

BETWEEN

BAHARI SCHOOLS LIMITED.....APPLICANT

VERSUS

THE REGISTRAR OF COMPANIES..... RESPONDENT

Last Order: 25/04/2022.

Ruling, 29/04/2022.

**RULING**

**NANGELA, J.:**

On 6<sup>th</sup> April 2022, the Petitioner, a body corporate duly incorporated under the laws of the United Republic of Tanzania, filed this Petition under section 400 (6) of the Company Act, Cap.212 read together with the Written Laws (Miscellaneous Amendment) (No.3) Act, 2019 and any other provision of the Law.

The Petitioner enjoyed the legal services of Ms Advera Nsiima Kamuzora, learned Advocate, and the learned State Attorney, Ms Vicensia Fuko, represented the Respondent. Perhaps it will be appropriate that I set out the brief facts constituting the matter as gathered from the pleadings filed in Court.

In 2007, the Petitioner was incorporated under a Certificate of incorporation No.59354 of 2007, as a Company limited by guarantee. Her businesses were, among others, involving operating education institutions/schools in the country.

However, in 2019, the government enacted the Written Laws (Miscellaneous Amendments) (No.3) Act of 2019 whereby, the term "Company" was re-defined to mean one that is registered under the Companies Act, Cap.212 or existing company established for investment, trade or commercial activities, and any other activity as

the Minister may, by notice published in the Gazette, prescribe.

Subsequent to the amendments, the Registrar of Companies issued a letter to the Petitioner on 16<sup>th</sup> February 2022 notifying the Petitioner that, by operation of the law, she was struck out from the register of companies.

Aggrieved by the Registrar's act, the Petitioner filed this Petition noting that she has not been given opportunity to be heard as she still takes interest in promoting commerce, trade and/or investments as it operates in education institutions/schools and other activities geared at promoting development.

In view of the above, the Petitioner has craved for the following orders:

1. A declaration and an Order that  
the Petitioner be restored in the  
Register of Companies.

2. Any other relief the Court deems  
fit to grant.
3. No orders as to costs.

In her answer to the Petition filed on the 25<sup>th</sup> of April 2022, the Respondent did not, in essence, object to the granting of the prayers sought save that, she pressed on the Court to issue orders that require the Petitioner to amend its Memorandum of Association and align its objects with the requirement of the law.

On the 25<sup>th</sup> April 2022, the parties appeared before me and the Respondent reiterated her prayers for restoration as set out in the Petition. I have looked at the law. According to section 5 of the Written Laws (Miscellaneous Amendments) (No.3) Act of 2019, section 3 of the Companies Act, Cap.212, R.E 2002 was amended to require a Company limited by guarantee to be registered or incorporated under the Act.

Section 6 of the Written Laws (Miscellaneous Amendments) (No.3) Act of 2019, does also amend

section 3 of the Companies Act, Cap.212, R.E 2002 by introducing section 3A. According to that section, companies limited by guarantee, which were erstwhile registered under the Companies Act as Non-governmental Organizations, were required to regularise their affairs in accordance with the new legal position.

Section 10 of the Act which amended Section 400 of the Companies Act, Cap 212 by adding Section 400-A (1) (a) – (e) provides circumstances under which the registrar of companies shall issue notice of his intention to strike the company off the register. One of such circumstance is under section 400-A (e) which relates to a situation where a company is operating contrary to its objectives in its MEMARTS.

Where de-registration is effected, however, the law provided a leeway to apply for its restoration. Section 400(6) and section 400-A (6) of the Companies Act (as

amended) cater for a situation of the like nature. Section 400(6) of theCap.212 provides that:

“ If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register **the Court on an application made by the company or member or creditor before the expiration of ten years** from the publication in the Gazette of the notice above may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon a certified copy of the order being delivered to the Registrar for registration, the company shall be deemed to have continued in

existence as if its name had not been struck off, and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off." (Emphasis added).

Under section 400A (5) and (6) the Act it is provided that, upon application for restoration the Court may make such orders and give further direction as it deems fit and as if the name of that Company had not been struck off from the register.

On the basis of the above legal position, and taking into account the pleadings and submission made by the parties before me, I find that, orders to restore the Petitioner to its original status within the register of companies are warranted but the same shall not be

without further directives on the part of the Petitioner as prayed by the Respondent.

In the upshot, this Court settles for the following orders:

1. That, this Application is hereby granted.
2. The Registrar's order which struck the Petitioner's Name off the register of the Companies is hereby quashed and set aside and the "*status quo ante*" is restored.
3. The Petitioner is granted a **nine (9) months period** to ensure that its Memorandum and Articles of Association are duly amended in conformity with the requirements of the law.
4. This Court makes no orders as to costs.



**It is so ordered.**

A handwritten signature in black ink, appearing to read "Deo John Nangela".

**DEO JOHN NANGELA  
JUDGE**

**High Court of the United Republic of Tanzania  
(Commercial Division)  
29/ 04 /2022**

ORIGINAL