

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR-ES-SALAAM**

**MISC. COMMERCIAL CAUSE. NO.41 OF 2022**

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

AND

IN THE MATTER OF COMPANIES INSOLVENCY RULES G.N 43  
OF 2005

AND

IN THE MATTER OF PETITION FOR WINDING UP OF ALFA  
PET BOTTLERS LIMITED BY

ALFA PET BOTTLERS LIMITED.....PETITIONER

Date of the Last order: 08/03/2023  
Delivery of the Ruling: 26/05/2023

**RULING**

**NANGELA, J.,:**

This is a winding up petition brought to the attention of this Court under section 279(1) (a), 281 (1) and 294 of the Companies Act, Cap.2002, R.E 2002. This winding up petition is supported by a verifying affidavit of Zakaria Haroon, the Director and Principal Officer of the petitioner's Company, filed in this court on 5<sup>th</sup> of October 2022.

The Petitioner is seeking for the following orders:

1. That, this Honourable Court be pleased to issue an order for winding up of Alfa pet Bottlers Limited, with certificate of incorporation No. 75690, dated 30<sup>th</sup> day of March 2010
  2. That, the Court be pleased in terms of Section 294 of the Companies Act of 2002, to appoint Advocate Claudio Msando, with Roll Number 8482, working with Msando Law office, a Law Firm registered under the business Names Registration Act [Cap 213 R.E 2002], OF THE LAWS OF THE United Republic of Tanzania having its offices at Faykat Tower, 9<sup>th</sup> Floor, plot No. 236-238, near Airtel Morocco, Ali Hassan Mwinyi Road, Block No. 41, with P.O Box 20578, Dar es salaam-Tanzania as an official
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liquidator of the company for a periodic of three months within which he shall, subject to the control of the court in exercising all the powers in line with the laws of the land.

3. Costs of the petition, and
4. Any other reliefs or orders as the Court will deem just and equitable to grant to the petitioner.

Briefly stated, the Petitioners is an incorporated Company with a Certificate of Incorporation No.75690. Its registered office is at Plot 49, Mbagala area, Dar-es-Salaam. According to the Petitioner, the reasons for seeking the winding up orders are, among others, that, the Company has not been able to engage in profitable trading and, the markets for its products has been minimal. In view of that, a resolution sanctioning the winding up petition was passed by the members of the company on 17<sup>th</sup> August 2022 to the effect that, the company

be wound up voluntarily and, that, the process be undertaken through the Court. The said resolution was annexed to the petition as **Annex, Alfa-4**.

It was averred that, based on the Board Resolution, Advocate Claudio Msando was proposed for his possible appointment by this Court as the Liquidator. Having filed the petition, the petitioner has also complied with the legal requirement to have it advertised in the Government Gazette, and the same was gazetted on the 18<sup>th</sup> day of November 2022. It was also published on the Uhuru Newspaper dated 08<sup>th</sup> day of December 2022 pursuant to Rule 99 (2)(b) of the Companies (Insolvency) Rules GN No. 43 of 2005.

On 8<sup>th</sup> of March 2023, Mr. Msando, the learned Advocate for petitioner, appeared before this Court. He prayed for this petition to be heard by way of the written submission. Since there has been no objection or Notice of any sort was filed either to challenge the Petition or to seek that an interested party be joined as creditor in this Petition following the

adverts, this Court granted the prayer by Mr. Msando who dutifully complied with the orders of this Court.

Supporting the prayers sought in this Petition, it was Mr. Msando's submission that, the members of the company having resolved that the company be wound up for failure to achieve its vision and mission, the Court should grant the prayers. He further submitted that, as a legal person, the company is vested with various duties and obligations which include payment of taxes, payment of salaries, bills as well as preparing and filing the statutory reports with the Registrar of Companies, and all these duties create financial obligations to the Company.

He submitted, therefore, that, the winding up of the company will afford the petitioner protection and unnecessary liabilities as well as unnecessary obligations. He invited this Court to invoke its powers under section 279 (1)(e) of the Companies Act Cap 212 R.E 2019 and, if the Court is pleased that it is just and equitable to wind up the Petitioner, then, should proceed to issue orders to the effect.

Mr. Msando relied on the case of **Bazizane Company Limited**, Miscellaneous Civil Case No. 224 of 2020 (in the matter of petition for winding up **of Bazizane Company Limited**), whereby, the members having mutually agreed and resolved to wind up the company because its directors lost interest in the business of the company, the same was wound up.

In his final prayers, Mr. Msado did pray as well that this Court be pleased to sanction the appointment of **Advocate Claudio Msando** as the official Liquidator of the Company (the Petitioner), an appointment which is to run for a period of three months. Having received the Petitioner's submission, the issue to look at is whether this Court should grant the prayers sought by the Petitioner.

Essentially, although a company may, voluntarily wind up its affairs and this Court has powers to issue winding up orders, such orders are not and should not be easily issued by the Court without being satisfied that, there are cogent reasons and supporting evidence that the orders sought be

granted. The reason for such a view is that a winding up order is a serious order that brings a company to its death or operational ending.

I have carefully considered the submission made by the Petitioner's counsel and scrutinized the documents annexed to the petition in support of it. As I said, this Court has been invited to issue an order of winding up based on voluntary decision of its members to have the affairs of their company wound up. The evidence to support that decision is the members' resolution passed on 17<sup>th</sup> of August 2022 which expressly reveal their mutual agreement to close shop.

As per the law in this jurisdiction, one among the reasons for voluntary winding up of a Company is where members have passed resolution to wind up the company. Section 279 (1) (a) of the Companies Act, Cap 212 R.E 2019 is alive to that fact. In essence, members may invoke that provision if they find that the Company is unable to carry on its business, or if it was formed only for a limited purpose, that purpose is no longer there. Besides, the company may also be

unable to meet its financial obligation and the members may decide to have it wound up.

Looking at the petition itself as explained, members of the Petitioner, through a special resolution, have agreed to put to an end the said company through a Court order to that effect. Having considered all necessary parameters and evidential materials submitted before me, it is my humble view that, this is the fit case to grant the prayers sought by the petitioner. As such, this Winding up petition is hereby allowed and the court settles for the following orders, that: -

1. Pursuant to the provisions of section 279 (1) (a) of the Companies Act Cap 212 [R.E 2019]. The Petitioner, Alfa Pet Bottlers Limited, a company registered with certificate No. 75690 is hereby wound up.
2. In terms of section 294 of the Companies Act of 2019, Advocate Claudio Msando with Roll No. 8482 is hereby



appointed to act as an official liquidator of the Company for a period of three months within which he shall, subject to the control of the court, exercise all the powers enumerated under section 299, 300, 301, 302, 303, 304 and 306.

3. This Court makes no orders as to costs.

**It is so ordered.**

**DATED AT DAR-ES-SALAAM ON THIS 26<sup>th</sup> DAY OF MAY**

**2023**



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**DEO JOHN NANGELA**

**JUDGE**