

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

**(COMMERCIAL DIVISION)**

**AT DAR-ES-SALAAM**

**MISC. COMMERCIAL CAUSE. NO.42 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  
SIBATANZA LIMITED**

**SIBATANZA LIMITED.....PETITIONER**

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

## **RULING**

**NANGELA, J.:**

This is a ruling in respect of winding up Petition in respect of **SIBATANZA LIMITED**, a Company incorporated under the laws of Tanzania since 31<sup>st</sup> of July 2002 and issued with a Certificate of Incorporation No. 139599918 and registered office at Mtwara Road, Shangani Street Plot No. 49 Mbagala area.

The petition was brought to the attention of this Court by the Petitioner herein under section 279(1) (a), 281 (1) and 294 of the Companies Act, Cap.2002, R.E 2002, seeking for winding up orders on the ground that the Company has not been able to achieve its vision and mission from the time of its incorporation.

Specifically, the Petitioner is seeking for the following orders:

1. That, this Honourable Court be pleased to issue an order for winding up of Sibatanza Limited, a Company with certificate of incorporation No. 139599918, dated 31<sup>st</sup> day of July 2002.
2. That, this Honourable 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 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 any other reliefs or orders as that the Honourable Court will deem just and equitable to grant to the petitioner.

This winding up petition was supported by a verifying affidavit of VU HAI SON, the Principal Officer of the petitioner's company, filed in this Court on 5<sup>th</sup> October 2022.

Having filed the petition, the petitioner also complied with the requirement set by Rule 99 (2)(b) of the Companies (Insolvency) Rules GN No. 43 of 2005 by advertising the petition in the Government Gazette dated 18<sup>th</sup> November 2022, as well as Uhuru Newspaper dated 12<sup>th</sup> January 2023.

On 8<sup>th</sup> March 2023 Mr. Claudio Msando, the learned advocate appearing for petitioner, entered appearance before this Court and prayed that, this petition to be heard by way of the written submission. Since no objection was registered following absence of intervenors or interested parties in this winding up petition, the petition itself having been subjected to the requirements of Rule 99 (2)(b) of the Companies (Insolvency) Rules GN No. 43 of 2005, this Court granted the prayer.

The Petitioner's learned counsel was given seven days to file his submission and he did duly comply with that order. In support of the petition, he submitted that, was preferred under

the provision of section 279 (1)(a) & (d) of the companies Act cap 12 R.E 2019, a provision which provides for the circumstances under which a company may be wound up by Court.

He submitted that, under section 279 (1) (a) “a Company may be wound up by the court if its members have resolved, by special resolution, that, the company be wound by Court. Concerning the present Petition, he submitted that, the members of the Petitioner did, on the 1<sup>st</sup> day of September 2022, resolve through a special resolution, that, the affairs of the company be wound up through a Court process. The said company’s resolution was annexed to the Petition as **Annexure Sibatanza-4**.

He contended that, the members of the company made such a decision to wind up the affairs of the company because they see no achievement of the company’s vision and mission since its inception or incorporation. He contended that, since the company is an artificial person in the eyes of law, it is vested with various duties and obligations which include tax payments, payment of salaries, bills, filing of statutory report to the

Registrar of Companies at BRELA, all of which create financial liabilities which the company is becoming unable to meet.

He submitted, therefore, that, an Order winding up of the company's affairs will afford the Petitioner protection and unnecessary liabilities. He therefore invited this Court to invoke powers under section 279 (1)(a) of the Companies Act Cap 212 R.E 2019 and grant the prayers that the Company be wound up by the Court as that will be just and equitable.

To support his submission, Mr. Msando relied on the case of **Bazizane Company Limited, Miscellaneous Civil Case No. 224 of 2020**, where the members of the respective Company had mutually agreed and resolved to wind up the company since the Directors of the Company had lost interest on business of the company.

Finally, he prayed that, should this Court grant the prayer for the winding up of the Petitioner, then, **Advocate Claudio Msando** be appointed by the Court as the *Official Liquidator* of the said Company, for a period of three months. The issue for consideration, therefore, is whether this Court should grant the prayers sought by the Petitioner.

I have carefully considered the submission by the Petitioner's counsel and the documents in support of the petition. As stated earlier herein, the prayer for an order of winding up is supported by voluntary winding up resolution passed on 1<sup>st</sup> September 2022 which reveals that the members mutually agreed to wind up the affairs of the Company.

The law is clear that, one among the reasons for voluntary winding up of a Company is where its members have passed a resolution to wind up its affairs as per section 279 (1) (a) of the Companies Act, Cap 212 R.E 2019. This is what the members of the Petitioner, through a special resolution did, thus, expressing their mutual agreement to end the operations of the company.

Having considered all necessary parameters and the available evidential materials submitted before this Court, it is my humble view that, this is the fit case to grant the prayers sought by the Petitioner. As such, this Court settles for the following Orders: -

1. That, pursuant to the provisions of section 279 (1) (a) of the Companies Act Cap 212 [R.E 2019], the Petitioner, **SIBATANZA LIMITED**,

a company registered with certificate  
No. 139599918 is hereby wound up.

2. That, 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.

**It is so ordered.**

**DATED AT DAR-ES-SALAAM ON THIS 26<sup>th</sup> DAY OF  
MAY 2023**



.....  
**DEO JOHN NANGELA**  
**JUDGE**



