

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL CAUSE NO. 59 OF 2020

**IN THE MATTER OF THE COMPANIES ACT. NO. 12 OF 2002, (CAP
212 R.E. 2002)**

AND

IN THE MATTER OF NGURDOTO MOUNTAIN LODGE LIMITED

AND

IN THE MATTER OF APPLICATION BY:

JANETH WILLIAM KIMARO 1ST PETITIONER

MICHELLE MREMA 2ND PETITIONER

VIV MREMA 3RD PETITIONER

**(As joint personal legal representatives of the estate of the late MELLEO
AUYE MREMA)**

VERSUS

JOAN AUYE MREMA 1ST RESPONDENT

NGURDOTO MOUNTAIN LODGE LIMITED 2ND RESPONDENT

(Necessary party)

RULING

B.K. PHILLIP, J

The petitioners herein lodged this petition under the provisions of sections
233 (1), (2), (3), 121(1), (2), (3), 137(1), (2), (3) of the Companies Act,

2002 and Article 26, 27, 28 of table A of the 1st schedule to the Companies Act, No. 12 of 2002, praying for the following reliefs;

- i. Declaration that the affairs of the 2nd respondent Company are run in a manner prejudicial to the interest of the members and the Company itself.*
- ii. An order to declare the petitioners as personal legal representatives in respect of share(s) held by the late MELLEO AUYE MREMA in Ngurdoto Mountain Lodge Limited.*
- iii. An order directing the 1st respondent to rectify the 2nd respondent company's register and register the petitioners as personal legal representative in respect of share (s) held by the late MELLEO AUYE MREMA in NGURDOTO MOUNTAIN LODGE LIMITED.*
- iv. An order stopping the 1st respondent from acting as a Director.*
- v. An order that this Honourable Court be pleased to regulate the affairs of the Company in the future.*
- vi. An order for an immediate meeting of shareholders to appoint new Directors.*
- vii. Costs of this suit.*
- viii. Any other order or relief that this Honorable Court will deem fit, just and equitable to grant to enable smooth and proper running of the 2nd respondent's business affairs in protection of interest of the Company and the Petitioners.*

The contents of the petition have been verified by an affidavit sworn by the petitioners. The petition is contested by the 1st respondent.

A brief background to this petition is that, the 2nd respondent is a Company incorporated under the Companies Act, 2002. The Memorandum and Articles of Association of the 2nd respondent (Henceforth "the MEMARTS") which have been attached to the petition show that the 2nd respondent had two directors namely Joan Auye Mrema (The 1st respondent herein) who have ten (10) shares and the late Melleo Auye Mrema (hereafter to be referred to as "the deceased") who had ten (10) shares too. What triggered the filing of this petition is the death of the late Melleo Auye Mrema who passed on the 30th of July 2017. Following the death of 2nd director in the 2nd respondent, the petitioners were appointed as administrators of the deceased estate which includes the shares held by the deceased in the 2nd respondent ("the Company")

Currently, the remaining director, that is the 1st respondent is running and managing the affairs of the 2nd respondent alone. The petitioners have not managed to be formally recognized by the 1st respondent as part of the management of the 2nd respondent by virtue of their appointment as administrators of the deceased estate. Consequently, they decided to file this petition in Court seeking for the reliefs listed at the beginning of this ruling.

The petition contains narrations on the background of this petition, which I have summarized herein above. In addition, the petitioners have stated the following; That they wrote a letter to the 1st respondent seeking to be recognized as legal representatives of the deceased and be involved in the management of the Company, but the 1st respondent did not make any response. The certificate of incorporation of the 2nd respondent and its

MEMARTS, and the letter of appointment of the petitioners as administrators of the deceased's estate have been attached to the petition.

At the hearing of this petition, the learned advocates Agnes Dominic and Edmund Ngemela appeared for the petitioners and the respondents respectively.

Submitting for the petition, the learned advocate Ms. Dominic started her submission by adopting the contents of the skeleton arguments she filed in Court pursuant to Rule 64 of the High Court (Commercial Division) Procedure Rules 2012, the contents of the petition and the affidavit verifying the petition. Referring this Court to the contents of the petition she submit that, the late Melleo Auye Mrema was one of the directors of the 2nd respondent and is the one who worked hard to build the good will of the 2nd respondent which, following his death is now run by the 1st respondent at a loss. The core business of the 2nd respondent which is hotel and tourism has been changed by the 1st respondent into another business involving operating a hostel for University students. Currently, The Company is facing multiple suits which are still pending in Court to date, contended Ms Dominic.

Referring this Court to a letter dated 6th February 2020, for request to be recognized as legal representatives of the deceased, addressed to the 1st respondent, Ms. Dominic submitted that despite receiving the aforesaid letter, the 1st respondent refused to recognize the petitioners as legal representative of the deceased so that they can be involved in the management of the Company. She insisted that, the petitioners have been

appointed as administrators of the deceased estate pursuant to section 44, 99 and 108 of the Probate and Administration of the Deceased Estate Act, and the same provides the powers of administrators of the deceased's estate. Article 26 of Table A to the 1st schedule of Companies Act, requires the Company to recognize the administrator of the deceased's estate as the legal representative of the deceased and what the 2nd respondent is doing is in contravention of the laws, contended Ms. Dominic.

Moreover, she submitted that the 1st respondent has not made any substantive answers to the petition, as his answers are general denials, putting the petitioners under strict proof of their allegations without giving clear or specific response opposing the petitioners' allegations by a statement made under oath. To bolster her arguments she referred this Court to the case **of Janeth William Kimaro and two others Vs Pelagia Auye Mrema and two others, Misc. Commercial Application No. 2 of 2020**, (unreported).

Furthermore, Ms. Dominic submitted that the fact that the petitioners have not done the distribution the deceased's estate cannot be a justification for the 1st respondent's refusal to recognize them as the legal representative of the deceased's estate. She invited this court to grant all the reliefs prayed in the petition.

In rebuttal, Mr. Ngemela started his submission by adopting the contents of the reply to the petition. He went on to submit that there is no dispute that Melleo Auye Mrema is now deceased and that the petitioners have been appointed as administrators of the deceased estate. Furthermore,

he submitted as follows; that this Court is supposed to put into consideration the fact that the 1st respondent has been running the Company before the appointment of the petitioners as administrators of the deceased estate without any financial support/ assistance. The 1st respondent as the sole director of the Company who had remained , did all his best to rescue the Company's business including making some initiatives on increasing the revenue, which included turning the Company's Hotel premises into a Hostel for University students for a while. That currently, the Company has settled all case which were pending in court against it. The petitioners have never been denied the opportunity to participate in the management the Company or to be recognized as legal representative of the deceased, but it is the petitioners themselves who are to be blamed for what is going on now regarding the management of the Company and the involvement of the heirs of the deceased in the business because they have failed to undertake the distribution of the deceased's estate ever since they were appointed. He insisted that it is not legally proper to hold the 1st respondent as negligent and irresponsible director, and stop him from acting as the director of the Company

Moreover, Mr Ngemela explained that, the 1st respondent has no problem with the reliefs prayed by the petitioners except, the reliefs in number four (4) and seven (7) which are removal of the 1st respondent from the directorship of the Company and payments of costs of this petition respectively. He told this court that the case law cited by Ms. Dominic in her submission is distinguishable from the facts of this case.

In rejoinder, Ms. Dominic reiterated her submission in chief. She insisted that the 1st respondent was notified on the petitioner's appointment as administrators of the deceased estate, but did not convene any meeting thus, he is at fault and the delay in the distribution of the deceased estate cannot be a bar to the petitioners' recognition as legal representatives of the deceased.

Having perused the pleadings and analyzed the submissions made by the learned advocates, I am of a settled opinion that the task of this court in this petition is to make determination of the following major issues.

- i. Whether or not the petitioners are entitled to be recognized as legal representatives of the deceased (Melleo Auye Mrema), despite the delay in the distribution of the deceased estate?
- ii. Whether or not the 1st respondent should be stopped from acting as the director of the company.

Before embarking on the determination of the major issues stated herein above, let me start with the concern that was raised by Ms Dominic that the petition has not been properly refuted by the respondents. First of all, I wish to acknowledge that the case law cited by Ms Dominic on the proper way of opposing allegations made by a party to a matter gives the correct position of the law. However, upon perusing the contents of the reply to the petition, I am of the view that the 1st respondent have properly refuted the allegations made by the petition by giving substantive explanation to support his stance. In addition to putting the petitioners to strict proof on some of their allegations, the 1st respondent averred some statements to

support his position. Thus, the case cited by Ms. Dominic to support her argument aforesaid is distinguishable from the circumstances of this case. Also, it has to be noted that a response to a petition is like the one in hand is made by way of a reply to the petition, notwithstanding that, the petition is accompanied with an affidavit verifying its contents. Thus the respondent was not required to file a counter affidavit.

Coming to the merits of the petition, there is no dispute that the petitioners are the administrators of the deceased's estate. The provisions of Article 26,27 and 28 of table "A" of the Companies Act are applicable as far as shares of the deceased in the Company are concerned as the MEMARTS are silent on the fate of the shares in case the shareholder passes on. It has to be noted that the petitioners being the administrators of the deceased estate acquire the title of being legal representative of the deceased. The heirs of the deceased are declared by the Administrators of the deceased estate upon distribution of the deceased's estate among them (heirs). This means that the legal representatives start taking care of the properties/rights of the deceased before the distribution of the deceased's estate to the heirs. The logic behind this is to avoid creation of a vacuum whereby the deceased's estates might lack people to take care of the same or oversee what is going on in the deceased's estate. It is an obvious fact that distribution of the deceased's estate sometimes takes quite a long time depending on size of the deceased's estate and the complexity of the matters involved. Therefore, the fact that the petitioners have not yet distributed the deceased's estate cannot be an excuse for not recognizing them as legal representatives of the deceased in the Company

in respect of the shares that were held by the deceased and involving them in the management of the company.

As regards the 2nd issue, that is whether or not the 1st respondent should be stopped from acting as the director of the Company, I don't see any plausible legal reasons to stop the 1st respondent from his directorship in the Company. This is a private company. Its management is supposed to be conducted according to its MEMARTS. The MEMARTS indicate clearly that the directors of the Company were two, that is the deceased and the 1st respondent. The procedure for removal of directors is provided in the MEMARTS. Therefore, under the circumstances, I decline to order the removal of the 1st respondent from acting as the director of the Company. After all, making such an order will create more chaos in the management of the Company, since the 1st respondent is the one who has the relevant information on the affairs of the Company.

In the upshot I hereby enter the following orders;

- i. The 2nd respondent is run in a manner prejudicial to the interests of its members.
- ii. The 1st respondent is ordered to register the petitioners as personal legal representatives in respect of the shares held by the Late Melleo Auye Mrema in the 2nd respondent (Ngurdoto Mountain Lodge Limited) within one (1) month from the date of this order.
- iii. Immediately after complying with the order of this court in item (ii) herein above the 1st respondent shall convene a general meeting of all members of the company (2nd respondent) , whereby normal

agendas for the general meeting shall be discussed and deliberated as stipulated in the Articles of Association of the 2nd respondent.

iv. The Costs of this case shall be borne by the 1st respondent

Dated at Dar es Salaam this 15th day of July, 2021.



B.K. PHILLIP

JUDGE