

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO.21 OF 2020  
IN THE MATTER OF THE COMPANIES ACT, CAP 212 OF 2002**

**AND**

**IN THE MATTER OF AN APPLICATION MADE UNDER SECTION  
281(1) (a) (ii) OF THE COMPANIES ACT**

**AND**

**IN THE MATTER OF COMPULSORY WINDING UP OF TWIGA  
INTERGRATED SOLUTIONS LIMITED**

**BY**

**VERSUS**

**NILESH LADWA .....PETITIONER**

**RULING**

30<sup>th</sup> June & 27<sup>th</sup> July 2021

**Rwizile, J.**

The petitioner applied for compulsory winding up of Twiga Intergrated solutions limited where he is the Managing Director and shareholder. In his affidavit supporting this petition, he averred that the company is owned by two shareholders who are now not in good terms warranting winding-up process. Before the matter was fixed for hearing upon compliance with preliminary stages, Mr. Mtobesya who filed an affidavit opposing the petition filed also a point of objection.

It was coached in terms that the petition should be dismissed because it is incompetent before this this court for contravening rules 99(1) and 102(1) of the Companies (Insolvency) Rules, 2004, GN No. 43 of 2005.

When submitting in support of the objection, Mr. Mtobesya learned advocate, said that upon perusing the court record, it was found, on 2<sup>nd</sup> December 2020, the petitioner filed a certificate of compliance. He argued that there is no statement showing if there was publication in the Government Gazette which is defined under section 4 of the Companies Act, as required under rule 99 (1) of the rules.

According to the learned, to him, since there is none compliance of the rule, the only remedy is to dismiss the petition under rule 102(3) of the Rules. He asked this court to do so as the procedure was not complied with.

Mr. Shalom counsel for the petitioner was of a different view. He submitted that the object is premature. He was of the view that, advertising is done within 7 days prior to the hearing date. The learned counsel was of the submission that the matter was not fixed for hearing yet and creditors are joining the proceedings. Likewise, he submitted, the certificate was may be filed 7 days preceding the hearing date. He was of the submission that since the several amendments were made in the petition and the same has not come for hearing yet, the objection raised is misplaced and does not fall within the definition stated in the case of **Mukisa Biscuits Manufacturing Co. Ltd V West End Distributor Ltd** (1966) EA 696

By way of rejoinder, Mr. Mtobesya added that rule 99(1) is coached with words "and" not "or" which means publication is in both, the newspaper with wider circulation and in the Government Gazette.

Paragraph 2 of the affidavit, he submitted states that the hearing was scheduled on February 2021.

On his side therefore this was pure non-compliance of the rules and so the case of **Mukisa Biscuits** (supra) is cited out of context he asked this court to dismiss the application.

Having heard both parties and meditated the submission, I have to state here that the preliminary objection is based on whether the rules on preliminary stages have been complied with before a petition for winding-up can be entertained. It is therefore clear that since it is based on compliance of the law. It has and sounds as such within the meaning of the same as stated in **Mukisa Biscuits'** case. Therefore, I agree with Mr. Mtobesya on that point.

As to whether the petition complied with the law, it has been submitted that the same was not advertised in the Government Gazette and daily circulating newspaper before the hearing date. It follows therefore that rule 99 of the rules of insolvency is a tool for the petitioner to satisfy the court that the same has been duly advertised. The essence and rationale behind this process is to make sure that all interested parties in the subject are fully informed of the petition. The most important thing therefore is that, if the court does not direct otherwise, the procedure stated under the rule must be fully complied with.

The record shows, on 7<sup>th</sup> July 2020, this court was asked to proceed with hearing of the petition *ex parte*. The matter was not heard and on 23<sup>rd</sup> February 2021, upon being satisfied that there was need for further publication and advertisement, it was so directed. On 24<sup>th</sup> March 2021 when the matter was fixed for orders, Mr. Masoud appeared in opposition and asked for time to prepare necessary legal papers for that matter. The Preliminary Objection and the affidavit on opposition were later filed. This

means, there was a court directive dispensing with the requirement of publication in the government gazette. Therefore, even though there was no publication in the Government Gazette, it as clear as crystal therefore that, the court order was complied with. This therefore did not in my own opinion conflict with the law.

Rule 99(4) provides for dismissal of the petition if the court is satisfied that there was not compliance of the rules. It is in line with rule 102(3) of the rules. The good thing about these rules, is that the remedy provided is, upon being satisfied that rules have not been complied with, the court may dismiss the application.

From my understanding of the law, if the words of the law are not coached in mandatory terms, that means, they are permissive. They provide a discretion on the court to see what would be the proper remedy to apply. In this case, I am convinced that even though it could have been found that the petitioner did not comply with the two provisions of rules 99 and 102, which is not the case, still, the court had discretion to deal with the matter in the manner that best suits the case at hand.

For the foregoing reasons, I hold that the preliminary objection raised, has no merit. It should be overruled, as I hereby do.

**AK. Rwizile**  
**Judge**  
**27.07. 2021**



Recoverable Signature

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Signed by: A.K.RWIZILE