

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY]
AT ARUSHA**

MISCELLANEOUS CIVIL CAUSE NO. 16 OF 2019

IN THE MATTER OF THE COMPANIES ACT, 2002

AND

**IN THE MATTER OF PETITION FOR WINDING UP OF ISLE OF GEMS
LIMITED**

Between

PETER C. PEREIRA 1ST PETITIONER

GERALD P. PEREIRA 2ND PETITIONER

And

ISLE OF GEMS RESPONDENT

RULING

4th December & 16th December, 2020

Masara, J.

This is a ruling on a petition for winding up of Isle Gems Limited, a limited liability company (the Company), incorporated in Tanzania on 16/5/2003 through a Certificate of Incorporation No. 46007 with its registered office at Arusha Tanzania. The petitioners, Mr. Peter C. Pereira and Mr. Gerald P. Pereira, are shareholders and Directors of the Company. They brought the petition under section 281 of the Companies Act Cap 212, [R. E 2002] following a Board resolution passed on 18/6/2018 by members for the Company that their Company be wound up voluntarily. The petitioners have advanced two grounds for the winding up order; namely, that one member

of the Company, Mr. Gerald P. Pereira, intends to retire due to old age and that the remaining member is unable to proceed himself with the Company.

Having filed the petition, the petitioners served the petition on the Tanzania Revenue Authority who did not enter appearance so as to satisfy the Court whether the company has any tax liabilities. The petition was also advertised in the Guardian Newspaper dated 2/7/2018 pursuant to Rule 99 (2) (b) of the Companies (Insolvency) Rules GN No. 34 of 2014. Having been satisfied that the service and advertisement requirements were complied with, the petition was fixed for hearing.

On 12/10/2020, when the petition came up for hearing, there were no any objections filed from any sources whatsoever. The Petitioners were represented by Ms. Isabella Kapaya and Henrica Qorro, both learned advocates. Ms. Kapaya informed the Court that the Company has no creditors and is a going concern. She invited the Court to adopt the reasons as stated in the petition and grant the winding up order.

I have carefully considered the submission by the Petitioners' counsel and the documents in support of the Petition. Undoubtedly, the Court is invited to issue a winding up order against the Company based on their voluntary winding up resolution passed on 18/6/2018. As intimated earlier, the Petition was filed by members with their resolution attached. No creditors or other contributories who responded to the notice of petition so far despite being advertised since 2018. The Petitioners' counsel informed the Court that the

members are no longer interested in the affairs of the company as one is very old. The law provides that one among the reasons for a Voluntary winding up of a Company is where members pass Resolution to wind up the company, as per section 333(1)(a) of the Companies Act, Cap 212 [R.E 2002].

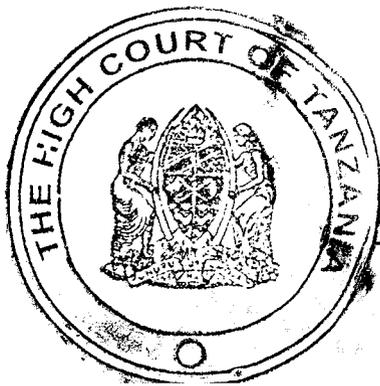
In the petition at hand, the resolution was passed on 18/6/2018. Also, it is on record that notice was advertised in the Guardian Newspaper on 2/7/2018. The law, under section 334(1) of Cap 212, puts a mandatory requirement that as soon as the resolution for voluntary winding up is made, notice of the resolution must be advertised in the Government Gazette within 14 days. However, there is no proof that the resolution was advertised in the Government Gazette in the instant petition. The copy of what is purported to be the Government Gazette dated 2/11/2018 which is made part of the record shows nothing about Isle of Germs. Therefore, the law was not complied with, as above stated.

Again, in this petition, the petitioners pray that a winding up order issue and liquidator appointed by the Court. However, the law under section 340(1) of Cap. 212 makes it mandatory for the company in a general meeting to appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company. The Court cannot impose a liquidator to a company especially when the proposed mode of winding up is voluntary. Therefore, the prayer made by the petitioners that this Court appoints liquidator cannot be implemented. I decline the invitation.

Further, in the course of considering the petition, I have also noted that the copies of the petition were not properly filled in. Some of the forms were not signed, dated nor attested by a commissioner for oaths, which renders the petition defective.

Guided by the provisions of law cited and the reasons stated, I find the petition incompetent as it does not adhere to the requirements of the law. The order applied for by the petitioners cannot be granted for the above reasons. I therefore strike out the petition for the above shortfalls. I make no order as to costs.

Order accordingly.



A handwritten signature in black ink, appearing to read "Y. B. Masara".

Y. B. Masara,
JUDGE.

16th December, 2020