IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
MISC.COMMERCIAL CAUSE NO. 21 OF 2023

IN THE MATTER OF THE COMPANIES ACT. No. 12 OF 2002

AND

IN THE MATTER OF APPLICATION

BY

RAJIV BHARAT BHESANIA.....1ST PETITIONER

EKTA VINESH KARSANJI.....2ND PETITIONER

VERSUS

HARDEEP KAUR CHAGGAR.....1ST RESPONDENT

PAMUTITU TRUST COMPANY LIMITED...2ND RESPONDENT

Date of Last Order: 14/06/2023
Date of Ruling: 04/08/2023

RULING

NANGELA, J.:

This petition was brought to the attention of this court under section 233 (1) and (3) (a) of the Companies

Act, Cap.212 R.E 2002 and the Petitioners seek for the following: -

1. A declaration that the document entitled "Declaration of Trust" annexed and marked as "B" of this petition filed at BRELA is illegal and, therefore, null and voice and of no effect.
2. A declaration that the shareholding position in the 2nd Respondent Company, namely Pamutitu Trust Company Limited is as appearing in the Memorandum and Articles of Association filed in BRELA during the incorporation of the 2nd Respondent.
3. A declaration that the Directors of the 2nd Respondent Company, namely Pamutitu Trust Company

Limited are as they appear in the Memorandum and Articles of Association filed at BRELA during the incorporation of the 2nd Respondent and any change in the shareholding structure of the of the 2nd Respondent subsequent to its incorporation are irregular and ought to be expunged from the Company Register at BRELA.

4. A declaration that the Promoter and first Company Secretary of the 2nd Respondent Company, Mr. Roman Stephen Urassa, was in breach of trust to the Petitioners and in dereliction of his duties to the 2nd Respondent.
5. A Declaration that the Minutes of the Extraordinary Resolutions dated 19th August

2022 and Annexed and marked as "C" of this Petition are legal decision of the Board of Directors of the 2nd Respondent and the same to be registered to Business Registration and Licensing Agency (BRELA).

6. An Order that the 1st Respondent pay the Petitioners the costs of this Petition.
7. Any other orders as this Honorable court may deem just.

On the 06th of June 2023, the Respondents filed their "answer to the petition" including an affidavit in opposition. On the 12th of June 2023, the Petitioners filed their reply to the "answer to the petition." However, in the 1st Respondent' answer to the petition, there was included therein a "Notice of Preliminary Points of Law in objection

to the petition. The several points of objection raised by the Respondents were as hereunder:

1. That, the petition is time-barred in terms of Item No.21 of the Schedule to the Law of Limitation Act, Cap.89, R.E 2019.
2. This Honourable Court is not the court of the lowest grade seized with jurisdiction over dispute(s) in relation to Declaration(s) of Trust.
3. The Petition is bad in law for non-joinder of BRELA.
4. The Petition is bad in law due to improper verification or lack of proper verification.
5. The unfair prejudice petition is bad and invalid in law for joining of the 1st Respondent thereto in violation of the mandatory provisions of section 233 (1) of the

Companies Act, Cap.12 R.E 2002.

6. The Petition is bad in law for containing claims, reliefs and prayers which are ultra vires the mandatory provisions of section 233 (1) of Companies Act, Cap.212 R.E 2002.
7. So far as the Petition contains claims, reliefs and prayers beyond the purview of the provisions of section 233 (1) of the Companies Act, the Petitioners lack the requisite locus standi to institute the Petition because such an action can only be instituted in the name of the Company and on behalf of the Company as required by section 233(3)(c) of the Companies Act, Cap.12 R.E 2002.
8. The Petition is premature and, hence, incompetent and

invalid for want of Court's prior authorization in terms of the mandatory provisions of section 233(3)(c) of the Companies Act in having claims, reliefs and prayers beyond the scope of section 233(1) of the Companies Act, Cap.212 R.E 2002.

On the 14th of June 2023 when the parties appeared before this court, the court directed that the matter before it be disposed of by way of written submissions. The directives of the court have been complied with and, hence, this ruling.

In his submission in support of the preliminary objections, Mr. Mpaya Kamara, the learned counsel appearing for the 1st Respondent urged this court to uphold the points of law raised by the 1st Respondent and dismiss the petition with costs. The reasons advanced in his submission, starting with the first objection is that the application should be found to be time-barred.

He contended that, what is before the court is an application as it has been brought under section 233 (1) and (3) of the Companies Act, Cap.212 R.E 2002. He contended that the Petitioners have included in their application several documents and prayers, and, that, some of the documents are dated the 17th of September 2015 (Declarations of Trust-**Annex."B"),** photocopies of 16th day of February 2023, Letter from BRELA- **Annex.D**) as forming the basis of their application.

In view of all that, it was Mr. Kamara's submission that, all incidents constituting the Petitioners' complaint in the application for unfair prejudice pre-date or reckon from the 17th of September 2015 up to date of the **Annexure "D"** which is the latest document. He contended that, even if it were said to have been a former date or latter, the period up to the filing of the petition at hand is beyond sixty (60) days.

Mr. Kamara submitted that, the Companies Act is silent on the time frame within which to file an application under section 233 (1) and (3) thereof. However, it was his submission that, it is trite law that where a substantive law

does not provide for a time frame for proceedings under the relevant law, the Law of Limitations Act, Cap.89 R.E 2019 comes into play. As such, he placed reliance on Item 21 of Part III of that Act which provides for a period of 60 days for making an application under the Civil Procedure Code, the Magistrates Courts' Act, or any other written law where no period of limitation is provided for.

Counting from the 16th of February 2023 (the date shown in **Annexure "D")** he contended that, the period of 60 days lapsed on the 18th of April 2023 while the application at hand was filed on the 17th of May 2023. He contended that, pre-court negotiations have never been a ground for stopping the time from running. To support that viewpoint, reliance was placed on the decision of the Court of Appeal in the case of **M/S P&O International Ltd vs. The Trustees of Tanzania National Parks (TANAPA),** Civil Appeal No. 265 of 2020 (unreported).

For such a reason, he surmised that the Petition at hand is time barred and should be dismissed with costs under section 3 of the Law of Limitation Act.

In his submission in support of the first objection, Mr. Kamara submitted that, he was aware of the decision of this court (Agatho, J.) in the case of **Rupesh Kumar Soni vs. Vidon Kumar Soni & 2 Others**, Misc. Commercial Cause No.25 of 2022 whereby, at page 12, this court took a view that, a petition under the Companies Act is a suit and not an application but the court held that the limitation period for such a petition based on section 233 (1) of the Companies Act, is not 60 days.

Mr. Kamara contended that, that decision of this court should held to have been made *per in curium* since there are various petitions envisaged under the Companies Act but that, the wording of section 233 (1) of the Companies Act is very loud, specific, and clear that a Petition filed there-under is an application and it is not a "Petition" like any other under the Act.

He urged me to depart from the **Rupesh Soni's case** (supra) arguing that the learned Judge mis-interpreted a "petition" under section 233(1) of the Companies Act, to mean a suit. He relied on the case of **Kiriri Cotton Co. Ltd vs. Dewani Ranchhodd Keshavji**

[1958] EA 239 regarding the position when a court is to depart from its own decision considered to be held *per in curium*.

Mr. Kamara did not submit of the 2nd objection which he chose to abandon. As regards the 3rd Objection, he contended that, the Petition is bad in law for non-misjoinder of BRELA. He argued that paragraphs 24, 35, 36, and 37 of the Petition have made allegations against BRELA which is not a party in this matter.

In particular, the allegations include that, for several months the Petitioners have been trying to call for an extra-ordinary General Meeting of the Company, but their well-founded efforts have been thwarted by the 1st Respondent and the Company Secretary, Mr. Urassa who enjoys favour of a partisan BRELA.

Mr. Kamara contended that, the Petitioners' allegations are serious one as they include bias, negligence, and refusal to register changes passed at the duly convened meeting of members of the Board of Directors of the Company on the 19th of August 2022. He

contended that, it is only BRELA who can fully defend such allegations.

He submitted, however, that, as a matter of principle, a non-joinder itself may not invite a dismissal of an application or suit in court. Even so, his argument is that the joining of BRELA cannot be dispensed with, and, given that no such leave has been sought by the Petitioners, that defect goes along with the rest and the Petition cannot be left intact.

Submitting in respect of the 4th objection, Mr. Kamara submitted that, the petition is bad in law due to improper verification or lack of proper verification. He contended that the verification clause has two defects, namely: that, it does not verify paragraph 15. Second, while paragraphs 23 and 25 of the Petition are verified by the Petitioners, their verification is based on information received from "legal professionals" whose names are not disclosed.

He contended, hence, that, such verification of paragraphs 23 and 25 is contrary to the legal position laid down in various decisions, including the case of **Jaqueline**

Ntuyabaliwe Mengi & 2 Others vs. Abdiel Reginald Mengi & 5 Others, Civil Application No.332/01 of 2021, (CAT) (at DSM) (unreported). Mr. Kamara contended, that, in case this Petition is not dismissed, then, paragraphs 15, 23 and 25 of the Petition should be struck out.

Coming to the 5th and 6th points of objection, Mr. Kamara submitted that, the Petition is bad and invalid in law for joining of the 1st Respondent thereto in violation of the mandatory provision of section 233 (1) of the Companies Act and, that, it is also bad in law for containing claims, reliefs and prayers which are ultra-vires the mandatory provisions of section 233 (1) of the Companies Act, Cap.212 R.E 2002.

Addressing the two points together, Mr. Kamara submitted that, the avenue under section 233 (1) of the Companies Act is pre-eminently for the protection of the minority shareholders against unfair prejudice on the grounds that the company's affairs are being or have been conducted in manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least Petitioners or that any actual

proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

Mr. Kamara has referred this court to its decision in the case of **Sabri Muslim Karim (formerly known as Sabri Ally Saad) vs. Muslim Shivji Karim**, Misc. Commercial Cause No. 54 of 2022, (referring to pages 9-10) where this court stated that:

> "… **one of the purposes** served by section 233 of the Companies Act, Cap.212 R.E 2002 is, *firstly*, to protect rights of the minority shareholders…. the gist of any action preferred by way of a petition based on unfair prejudice claims, as the one at hand, is not the wrong done to the company but the disregard by those in control of the company, of the interests of the minority shareholder(s). An unfair prejudice petition, therefore,

> is a form of statutory remedy available to the members of a company, especially the minority ones, who may be the victims of 'unfairly prejudicial' conduct of the majority. (Underline supplied).

From the above premises, Mr. Kamara submitted that, the acts or omissions that are actionable under section 233 (1) of the Companies Act are those of the Company or those which are committed in the name of the Company to the prejudice of the minority shareholders or any other member of the Company as the case may be.

He concluded that, the petition contemplated by and under section 233 (1) of the Companies Act can only be one filed against the Company (not a co-shareholder) by the aggrieved minority shareholder or member of the Company.

In view of the above Mr. Kamara contended that, since the Petitioners have, vide paragraph 6 of the Petition volunteered a *carte blanche* to exonerate the Company

against any wrongdoing, that fact takes the entire application outside the scope and purview of section 233 (1) of the Companies Act. He wondered why, for instance, would the "**Declaration of Trust**" which by themselves constitute a distinct agreement between the Petitioners and the 1st Respondent (and to which the Company is not a party) be actionable and nullified through a Petition brought under section 233 (1) of the Companies Act.

He also wondered why the acts or omissions for which the Company is wholly absolved from any wrongdoing should be brought by the Petitioners against a fellow co-shareholder in the name and under the aegis of unfair prejudice under section 233 (1) of the Companies Act? He concluded that all such are acts which are ultra vires the scope of the section.

As regards the 7th and 8th grounds of objection, Mr. Kamara addressed them jointly as well. He submitted that, as per paragraphs 4, 5 and 8 of the Petition, the Petitioners claims to hold 51% of the shares in the 2nd Respondent (the Company), hence, enjoy a majority status able to hold a sway in the Company.

Mr. Kamara contended that, with such a majority shareholding, they cannot prefer an application under section 233 (1) of the Companies Act. He contended that the petition, therefore, is not an application by minority shareholders. He submitted that, being not a minority, the Petitioners are trying to sue under the guise of and apparently for and on behalf of the Company which they have cleared of any wrong-doing and have fronted prayers that cannot be sought either by themselves or in any event by the Company under section 233 (1) of the Companies Act.

In his view, Mr. Kamara submitted that, what the Petitioners ought to have done is to file an application under section 233 (3) (c) to be authorized to commence civil proceedings in the name and on behalf of the Company against the 1st Respondent, Mr. Urassa along with BRELA.

To support his views, Mr. Kamara referred to this Court an excerpt from **Avitar Singh**- ***Company Law,*** 15th edn., at pages 518-519 where the learned author stated as follows:

"Sometimes an obvious wrong may have been done to the Company, but the controlling shareholders would not permit an action to be brought against the wrongdoer. In such cases, to safeguard the interest of the Company, any member or members may bring action in the name of the Company. This was recognized in the *Foss vs, Harbottle* itself. …The principle has now found a suitable illustration in the facts of Glass v. Atkin, a decision of the Ontario High Court. A Company was controlled equally by the two defendants and the two plaintiffs. An action arose alleging that the two defendants had fraudulently converted the Company's assets to their own

use. Allowing the action, the Court said: *While the general principle was for the company itself to bring an action where it had an interest, it was appropriate for the two plaintiffs here to bring an action on behalf of the company since the two defendants controlled the company in the sense that they could prevent the company from taking action.* The word "control" for this purpose means majority control. But it has now been recognized that control can exist without majority power. It has been held that "control exists if it would be futile to call a general meeting because the wrongdoers would directly or indirectly exercise a decisive influence

> over the result. This exception to Foss v. Harbottle applies whenever the defendants are shown to be able by means of any manipulation of their position in the company to ensure that the action is not brought by the company."

Based on the above submission, Mr. Kamara urged this court to dismiss the petition with costs.

In response to the above submission regarding the preliminary points of law raised by the 1st Respondent's counsel, the Petitioners' learned counsel Mr. Joesph M. Msengezi, Adv., urged this court to dismiss all objections with costs. He argued that such grounds of objection raised and argued by Mr. Kamara are a total misconception and devoid of merits, hence, baseless.

In the first place, Mr. Msengezi was of the view that, Mr. Kamara has not been able to cite any authority to back up his assertions that, what is before this Court is not a "Petition" but rather an "application" and so, the petition at hand is time-barred considering the 60days' limitation

period provided under Item 21 Part III of the *Law of Limitation Act*, Cap. 89 R.E 2019.

In his submission, Mr. Msengezi contended that, the cause of action which prompted this Petition arose on the 16th of February 2023 as per Annexure "D" of the Petition. He contended that, the *Learned Counsel* for the 1st Respondent has readily admitted that fact in his paragraph 2, at page 3 of his written submission.

Mr. Msengezi contended that, it is a settled legal position that a "petition" (under the Companies Act) is regarded as a suit and its time limit is six years as prescribed under Item 24 Part I of the Schedule to the Law of Limitation Act, Cap.89 R.E 2019. To back up his averment, reliance was placed on the decision of this court in the case of **Rupesh Kumar Soni** (supra).

In that case, Hon. Agatho, J., made a finding to that effect regarding a similar matter under section 233 (1) of the Companies Act and stated as follows:

> "The cases of **John Okoth Nyaronga vs. Mediterranean Shipping Co. Ltd**, Misc.

> Commercial Case No.6 of 2009 (unreported) and Hussen **Gulamabbas Hassanali vs. Monaban Trading and Farming Co. Ltd & 2Others**, Misc. Commercial Case No. 20 of 2011/HCCD at Dar-es-salaam, dealt with the issue and concluded that a petition under the Companies Act, Cap.212 R.E 2002, is a suit."

From that findings of the court, Mr. Msengezi contended that, although the *Learned Counsel* for the 1st Respondent admit on page 3 of his submission, he seems to be misleading the court to believe that the decision by Hon. Agatho, J., was or is a decision held *per in curium.*

He argued that the decision of **Kiriri Cotton Co. Ltd** (supra) and that of **M/S P&O International Ltd** (supra) are all inapplicable and distinguishable because, the decision by Agatho J., cannot be said to be *per in curium*. For that matter, Mr. Msengezi maintained that, since the petition at hand is a suit, the sixty (60) days

limitation period does not apply as the limitation days for suits is 6 years and this petition is well within time.

Concerning the non-joinder of BRELA, Mr. Msengezi contended that, such cannot fall within the ambit of a preliminary point of law because such an omission is not a pure point of law which has the potential to bring a suit to its finality. He relied on the decision of the Court of Appeal in the case of **Millicom (T) N.V vs. James Alan Russell Bell & 2Others**, Civil Rev. No.3 of 2017 (unreported).

He submitted that, matters that are to do with internal management of a Company are solely governed by the MEMARTS of that Company.

According to Mr. Msengezi, the test regarding whether a party is a necessary party to be joined in a suit was canvassed in **Rupesh Soni's case** (supra), citing the cases of **Abdullatif Mohamed vs. Mehboob Yusufu Osman & Another**, Civil Revision No.6 of 2017 (CAT) (unreported). From those authorities referred to, it was the submission of Mr. Msengezi that, since the Petitioner does not have any relief against BRELA, there is no point in seeking to join BRELA as a party.

As regards the 4th ground of objection, Mr. Msengezi was equally vociferous. He contended that, the allegation that there is a non-verification of Paragraph 25 of the Petition is misleading as paragraph 25 is fully verified. As regards paragraphs 15 and 23 the same did inadvertently slip off the hand, but do not affect the Petition, he so argued. He relied on the decision of this court in the case of **Michael Clement Juma vs. Abdallah Mfaume Mdogwa,** Misc. Land Appl. No.165 of 2022 (unreported).

In a further contention about the requirement of verification, Mr. Msengezi submitted that, where the verification clause is defective, the remedy is to have it amended, considering what the overriding objective principle is all about.

To support that view, reliance was placed on the decision of the Court of Appeal in the case of **Sanyou Service Station Ltd vs. BP Tanzania Ltd (Now PUMA Energy (Tanzania) Ltd**, Civil Application No. 185/17 of 2018 and **Jamal S. Mkuba & Another vs. The Attorney General**, Civil Appl. No. 240/01 of 2018 (both unreported).

In those two cases, the Court ordered an amendment of the verification clause. Mr. Msengezi submitted that; the case of **Jacqueline Ntuabaliwe Mengi** (supra) which was relied upon by Mr. Kamara, was distinguishable from the matters before this court.

Concerning the 5th and 6th points of objection, it was Mr. Msengezi's submission that, what Mr. Kamara has contended regarding section 233 (1) of the Companies Act and who can bring action under it was a wrong interpretation of the law.

Referring to the decision of this court in the case of **Re Sabri Saad** (supra) at page 10, Mr. Msengezi was of the view that, this court's decision was that the section can be relied upon by not only minorities but even the majority shareholders can as well rely on section 233 (1) of the Act. For that matter, he charged that the two preliminary objections are also devoid of merits.

Finally, as regards the 7th and the 8th objections which he as well addressed jointly, Mr. Msengezi submitted that, the same are bent to mislead the court. He contended that, the Petitioners are shareholders of the 2nd

Respondent with 270 and 240 shares respectively. He thus contended that, the provisions of section 233 (1) of the Companies Act applies even to the majority shareholders. In view of all such submissions, Mr. Msengezi urged this court to overrule the objections with costs.

Having looked at the submissions filed by the *Learned Counsel* for the parties herein, the issue which invites my attention is whether the points of law raised by Mr. Kamara should be sustained or not.

In addressing the first issue, I find it pertinent to first consider one collateral issue raised by Mr. Kamara regarding whether this petition is a suit or an application. In Mr. Kamara's view, the petition is an "application", and, for that matter, it should have been filed within 60 days from when the cause of action accrued. He has urged me to as well make a finding that the decision made by His Lordship Agatho, J. was a decision made *per in curium*.

For his part Mr. Msengezi held a view that the 'petition' made under section 233 (1) of the Companies Act is a suit and supports his view by what this court (Agatho, J.,) stated and, that, being a suit, the petition was filed

well in time. It is worth noting, however, that, the decision made by His Lordship Agatho, J in the case of **Rupesh Kumar Soni** (supra) is not the only decision of this court that have taken a stand that, a 'petition' filed under the Companies Act is a suit. There are other decisions as well.

See for instance the cases of **Hussein Gulamabbas Hassanali vs. Monban Trading and Farming Company Ltd & Two Others**, Misc. Commercial Case No. 20 of 2011, HCCD at Dar es salaam, and **John Okoth Nyanga vs. Mediterranean Shipping Co. Ltd**, Misc. Commercial Case No. 6 of 2009 (unreported) and the Court of Appeal of Tanzania decisions in **Tanzania Motor Services Limited and Another vs. Mehar Singh T/A Thanker Singh**, Civil Appeal No 115 of 2005, where it was held, *inter alia*, that, a suit may be instituted by way of a petition.

Much as Mr. Kamara has argued that such a petition is an application, however, there are several convincing authorities which makes it clear that a petition can still be a suit in its kind. See for instance, the Court of Appeal decision in the case of **Tanzania Motor Services**

Limited and Another vs. Mehar Singh T/A Thanker Singh (supra) as well as the cases of **John Okoth Nyanga vs. Mediterranean Shipping Co. Ltd.,** (supra) and **National Investments Company Ltd (NICOL) vs. Bank ABC AND 2Others**, Misc. Commercial Case No.76 of 2015.

In the case of **Margareth Lothar Roland Purucker vs. Lothar Roland Purucker & another** (Misc. Commercial Application 20 of 2022) [2023] TZHCComD 26 (17 February 2023), this court held a view, as well, that, petition filed under section 233 (1) of the Companies Act as a suit.

In view of all such authorities, I am not convinced by Mr. Kamara's submission but rather by what Mr. Msengezi submitted. These authorities provide a reliable bulwark for the stance that a petition under section 233 (1) of the Companies Act, Cap.212 R.E 2002 is a kind of a "**suit**". I am bound to follow them as well.

Having so held, let me now revert to the first objection and the issue to consider is whether this petition is time barred. Being a **"suit**" and not an **"application"** it

means the 60 days rule applicable to applications which lacks prescribed time limits as per Item 21 of Part III of the Law of Limitation Act, Cap.89 R.E 2019 will not apply to it. Instead, the time applicable to a suit as per Item 24 Part I of the Schedule to the Law of Limitation Act, Cap.89 R.E 2019, which is six years period shall apply.

Having so said, is this petition out of time? In his submission, Mr. Msengezi has contended that, the current petition is not time barred as the cause of action arose on the 16th of February 2023 as per **Annex."D**". In the case of **Ali Shaban and 48 Others vs. Tanzania National Roads Agency and Attorney General**, Civil Appeal No. 261 of 2020 (unreported), the Court of Appeal of Tanzania was of the view that:

> "no preliminary objection will be taken from the abstract without reference to some facts plain on the pleadings which must be looked at without examination of any evidence."

The above holding by the Court gives a leeway to examine the pleadings and materials annexed and forming

part thereto when determining a preliminary point of law. I will thus examine **Annex."D"** of which reference was made thereto by Mr. Msengezi in his submission and the rest of documents. In my view, **Annex.D,** a letter from BRELA to Petitioners and 3others is a mere response to matters brought to the attention of the Agency but does not indicate that it is the source from which the cause of action could be triggered.

However**, Annex.D** does give one a clue of what was happening within the 2nd Respondent which should then shed lights as regards when the disputes concerning the affairs of the 2nd Respondent arose and from there one may be able to say whether such a dispute is now time barred or not. The Annexures which I find relevant to look at are those marked **"Exhibit "C"** and these include a letter to BRELA dated 28th June 2022 and its response from BRELA dated 08 July 2022.

Paragraph 1 of the letter dated 28th June 2022 reads:

"This Letter follows the Complaint and Caveat dated

> 25th May 2022 that was officially lodged with you regarding the Pamutitu Trust Company Limited ("The Company"). The Complaint centered around Company Secretary named Steven Urassa…"

As I look at the annexures, it is clear to me that, the disputes for which a Petition was later preferred arose sometime between the year 2021 and 2022. It was not in this year 2023 as suggested by Mr. Msengezi.

Considering that this Petition was filed on the 17th of May 2023 and considering the conclusion which I made to the effect that based on the existing authorities referred to herein above this Petition is a "suit" whose limitation period is governed by Item 24 Part I of the Schedule to the Law of Limitation Act, Cap.89 R.E 2019, this matter is thus not time barred. The first issue is, therefore, devoid of merits and should be over-ruled as I hereby do.

As regards the 3rd Objection, the contention by Mr. Kamara is that this Petition is bad in law for non-joinder of

BRELA. I think I will not allow myself to be detained by this point of objection. I am in full agreement with Mr. Msengezi that, it lacks merits of being a point of law.

My conclusions hereabove, are fortified by the decision of the Court of Appeal in the case of **Golden Globe International Services and Another vs. Millicom (Tanzania) N.V and Another**, Civil Application No.195/01 of 2017. In that case, the Court stated, at page 22 of its typed ruling, as follows:

> " …We are of the considered opinion that the issue of non-joinder of any party cannot be raised as a preliminary objection as such an omission is not a pure point of law which can lead the matter before the Court to be finally determined…For the reasons stated above, we are of the view that, the objection on non-joinder of some parties ought to be argued in a normal manner hence the point of

> objection was prima facie legally untenable, we therefore over-rule it."

In view of the above holding by the Court of Appeal, a similar fate should befall on the 3rd objection raised by Mr. Kamara. I do hereby over-rule it.

As regards the 4th objection, the gist of it is about the verification clause. In the case of **Michael Clement Juma vs. Abdallah Mfaume Mdogwa and 3 Others**, Misc. Land Application No.165 of 2022, the court (Hon. Arufan J.,) citing the Court of Appeal decision in the case of **The University of Dar-es-Salaam vs. Mwenge Gas and Lub-oil Limited**, Civil Appl. No.76 of 1999 (unreported) made a finding that, defects in an affidavit, and for that matter a defect regarding a verification clause are not the kind of defects which would entitle a striking out of the entire affidavit but amendable.

The court reasoned, and I do fully associate myself with that reasoning, that:

> " …to strike out an application [on such grounds as to its

> defects on the verification clause as herein] will not benefit any of the party in the [petition] or the court but rather, it will continue to delay dispensation of justice…"

In view of the above, since Mr. Msengezi has admitted that the paragraphs 15 and 23 were inadvertently not included in the verification clause, I do not find such omission to be fatal and, considering the overriding objective principle, such a minor omission can still be cured by an amendment of the affidavit verifying the petition.

As regards the 5th and 6th objections, I will also state that having looked at the submissions offered by the *Learned Counsel* for the parties herein, I find that, in the case of **Re Sabri Karim (Formerly known as Sabri Ally Saad vs. Muslim Shivji Karim** (supra), this court made a position that, section 233 (1) of the Companies Act, Cap.212 R.E 2002 does not only apply to the minority shareholders but rather, even majority shareholders may rely on it.

In particular, this court stated as follows on page 10 of the typed judgement of its own:

> "From that wording of the law, whilst it is usually expected that an unfair prejudice claim will be brought by a minority shareholder, the law does not bar the majority shareholder who feels the company's affairs are being driven in an awry manner to the detriment of the company and his interest in the company. In the English case of **Macom GmbH vs. Bozeat and others** [2021] EWHC 1661 (Ch), for instance, a claim was made by a majority shareholder against the minority shareholder. In that case, the Court made a finding in favour of the petitioner, the majority shareholder, to the effect that,

> the conduct of the minority shareholder had been unfairly prejudicial. The Court stated, in particular, that, the majority shareholder had a right to be involved and consulted on the company's affairs under the Articles of Association and the Shareholders' Agreement."

It follows, therefore, that, even the 5th and 6th points of objection raised and jointly argued by the 1st Respondent's Counsel cannot stand. The same are hereby over-ruled.

Finally, is the 7th and 8th points of objection. In my view, the response given in respect of the 5th and 6th points of objection does equally address the 7th and 8th points of objection. As such, I see no reasons why I should reiterate what has already been stated hereabove. I will equally over-rule the 7th and 8th points of objection as being without merit.

In the upshot of the above, all points of law raised by the 1st Respondent and argued by Mr. Kamara in his

submission are found to be of no merits. In view of that, this court settles for the following orders:

1. That, the grounds of objections raised by the 1st Respondent are hereby overruled with costs.
2. Parties are directed to proceed with the hearing of the Petition on the date and in the manner so appointed by the court.

DATED at DAR-ES-SALAAM, THIS 04TH DAY OF AUGUST 2023

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DEO JOHN NANGELA
JUDGE

Date: 04/08/2023 Coram: Hon. Nangela, J.

For the Applicant: Absent

For the Respondent: Absent

C/Clerk: Fortunata

Court: Ruling delivered today, this 04th of August 2023 in the absence of both parties.

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DEO JOHN NANGELA
JUDGE.