

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION

HCT - 00 - CC - CC - 29 - 2011

IN THE MATTER OF THE COMPANIES ACT (CAP 110)

AND

IN THE MATTER OF TANKHILL PROPERTIES LTD

AND

IN THE MATTER OF A PETITION FOR WINDING UP

BY JAME TAIBO TABAN

BEFORE: THE HON JUSTICE GEOFFREY KIRYABWIRE

Ruling

The Petitioner is the widow of the late Steven Taban and holder of letters of Administration to his estate dated 26th February 2010.

It is the case of the Petitioner that her late husband was a 20% shareholder of the company known as M/S Tank Hill Properties Ltd (hereinafter referred to as “THP”). The other 80% share holder of THP was a company known as M/S Victoria International Properties Ltd (hereinafter referred to as “VIP”) whose shareholders are Mr. Narandas Shankala and Mr. Peter Hartley.

It is the case of the Petitioner that she obtained the shares of her late husband in THP by Transmission on his demise on the 5th January, 2005.

It is further the case of the Petitioner that THP owned one property known as “Muyenga Shopping Centre” and that her late husband had his 70% shares valued at USD 40,000- being the value of the land he offered for the development of the centre.

It is the case for the Petitioner that save for 2006 when she was given USD 45,000- being part of a loan taken by THP she has never been informed of the affairs of THP nor given any dividends. However, on the 5th January, 2010, she learnt from Mr. Peter Hartley one of the Directors of THP that Tank Hill Shopping Centre had been sold for USD 1,000,000- and that her share of that would be USD 150,000-.

The Petitioner states that following a lot of acronomy with the Directors, it was agreed that she be paid a further USD 50,000- to make her total claim USD 200,000- in line with her shareholding in THP. She was then paid USD 150,000- on the 24th June 2010 but no further money has been given to her. She further states that she has lost contact with the other Directors of THP.

She then prayed in her petition

- a) That the company may be wound up by the court under the Company Act.
- b) That such orders be made by court in premises as shall be just.
- c) That the costs of the petition be met by the company.

The company and the Directors did not reply to the petition.

Counsel for the Petitioner submitted that the Petitioner is an oppressed minority shareholder within the meaning of Section 211(1) of The Company Act. Counsel for the Petitioner submitted that the Petitioner had been oppressed by the Directors of THP not allowing her to participate in the Company's Management, by fraudulently selling off THP's sole asset without fully granting her the benefit of the sale and allowing her to participate in the sale.

Counsel for the Petitioner referred court to the case of **Irene Kalabako V Moringa Ltd & 2 Ors** Company Cause No. 21 of 2009 where **Bamwine J** held that by the majority shareholders stripping the company of its most priced asset, by transferring it to another company and not giving the Petitioner the right value of her shares from the sale then they had acted in a manner that was oppressive to the minority shareholder.

He also referred court to the case of Re: **Vora Limited** Company Cause No. 1 of 1994 where **Ntabgoba** (PJ as he then was) he held that if the winding up of a company would not relieve the oppressed minority or it would prejudice them then court had a wide discretion to impose another solution like the purchase of shares of the oppressed minority.

Counsel for the Petitioner submitted that since the sole company property was sold winding up THP would not serve the petitioner's interests. He submits that it would be better for court order the majority shareholders to purchase the shares of the minority at the market price of the sale of company property being USD 200,000-.

He further submitted that the affairs of the company be investigated by a liquidator or an official receiver.

I have addressed my mind to the petition, its supporting affidavit and the submissions of counsel.

It has been submitted that this is a petition for winding up of the company as a result of the oppression of a minority shareholder.

The law relating to winding up as a result of oppression of any company member is found under Section 211 of the Company Act.

The Petition is uncontested but it appears on the evidence that the company THP was set up to run and manage the Muyenga Shopping Centre as its only asset. This asset was sold leaving not much else for THP to do and indeed the evidence on record is that its offices have been closed down.

The Petitioner cites several acts of oppression notably being locked out of the affairs of the company and the sale of the centre for which she received USD 150,000-.

It would appear to me on the evidence that her greatest complaint is that for a sale price of USD 1,000,000- for the centre, the Directors of THP should have paid USD 200,000- representing the 20% of her late husband's shareholding and not USD 150,000- and therefore they should pay her an extra USD 50,000-.

Following a court ordered investigation of THP under S. 164 of the Companies Act, it was established by The Registrar of Companies in a report filed on the 07th November 2012 that

- 1) Company Form No. 7 appointing Directors was never filed.
- 2) Company Form No. A9 showing the company's registered office was never filed.
- 3) There are two board resolutions for acquisitions of bank loans for USD 150,000- (dated 28th October 1999) and USD 275,000- (dated 30th November 2005) respectively. There is also a company form no. 4 affecting the second transaction dated 27th February 2009.
- 4) There is no other company form on file.

Based on the above, I find that following the sale of the Muyenga Shopping Centre, there is nothing to show that THP is active. It therefore does not make sense to ask other members to buy out the Petitioner's shares.

The most logical course of action is to wind up the company under Section 211 (1) of The Company Act. If during the process of winding up other members choose to salvage it, then a share buyout may be considered.

I accordingly issue a winding up order for THP. I further appoint the official receiver under Section 234 of the Company Act for purposes of this winding up.

The Petitioner shall bear her own costs of the petition as the company no longer trades.

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Geoffrey Kiryabwire
JUDGE

Date: 15/04/13

15/04/13

9:48

Judgment read and signed in open court in the presence of;

- E. Kashiya h/b for Mushanga for Petitioner

In court

- Petitioner
- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire
JUDGE

Date: 15/04/2013