

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

HCT-00-CV-CI- NO 0027 OF 2009

HUSSEINALI H. JIVRAJ:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

RANCHERS LIMITED:::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

RULING

Moses Segawa - for Applicant

Applicant is not in court.

Imelda Nagayi - Court Clerk

This application is brought under Order 38 rule 6(h) and Section 135 of the Companies Act Cap. 110 seeking orders that an extra ordinary general meeting of the Company be called, held and conducted by the Applicant, Husseinali H. Jivraj, the only surviving shareholder to do act as in (a) - (c).

2. Consequently to the above order, a meeting of the Board of directions be held to do (a) - (b).
3. Orders that costs be provided for by the company.

Supported by the affidavit of the applicant deponed on 20/5/2009.

Grounds of applications

Applicant and one Ryaz Kulji formed Ranchers Limited in 2002. Ranchers held 50% shares in the company both of them directions and joint signatories to all company accounts.

On 2/5/2009, Ruyaz Kulji perished in a motor rally accident. The death has brought the business of the company to a standstill. Applicant is the only remaining member in the company. Provisions of Section 29 of Company's Act requiring a company to have two members, the company is now outside their provisions. Applicant risks being personally responsible for company debts of the company. See Section 30 of Company's Act.

Another legal challenge; Company can neither convene a direction's meeting since as per Article 37 of the Articles of Association. It is required to have a minimum of two. There is no ordinary resolution reducing the number from two.

Article 43;

A simple majority of the directions may meet together for dispatch of business.

Applicant cannot call on extra general meeting of the company since such a meeting is called at instance of the Board in which is now non existent. Even if it were called, since there is a requirement for a simple majority, it would not be able to come up with a simple majority. See also Section 141 of the Act.

In the context of the prevailing situation, the company is stuck. The applicant is unable to access company funds. Company is not meeting its obligation to suppliers, employees etc.

Risk of suits against it.

Based on this, the only way out is the one provided for under Section 135 of the Company's Act.

The predicament of the company falls squarely within the provisions of that Section. The Section empowers court to address such a situation where it is impracticable to call a meeting of the company in any manner.

Court has power to enable applicant constitute such meeting.

Court is invited to grant the orders prayed for.

Court

What happens to the interest of the deceased?

The applicant is the Managing Director of the company and is under Fiduciary duty to exercise his powers at the Board and in management with proper purpose.

When the executor comes in he has not to take over the shares of the legal representative. Legal representative would make the applicant accountable he can convene an extra ordinary meeting a control.

Court

Ruling on 28/5/2009 at 4.00 p.m.

Elizabeth Musoke

JUDGE

27/05/2009