

A so at the earliest, the law of limitation notwithstanding, as none of the prospective petitioner is to blame for what has happened.

B I think I will be failing in my duty if I do not advise the concerned parties in this matter to amicably settle the matter between them as they are blood relations. They should see to it that they do not waste time in fruitless litigation that will only inflame ill-feelings and act to their own detriment. In the event that is not possible they are enjoined to seek the assistance of the Administrator General. It is, C however, any pious hope that my advise will not fall on deaf ears or on barren soils, if I may use that expression. Having regard to the circumstances of this case, namely the chequered history, parties to bear their own costs. Order accordingly.

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E **IN THE MATTER OF MOFAJU'S INVESTMENT COMPANY LTD**

F **HIGH COURT OF TANZANIA
AT MWANZA
(Nsekela, J.)**

G **MISCELLANEOUS CIVIL CAUSE No. 30 OF 1997**

G *Company law – Memorandum of Association – Alteration of the provisions of the Memorandum of Association – Section 7 of the Companies Ordinance, Chapter 212.*

H Mofaju's Investment Company Ltd petitioned the High Court for confirmation of altered Memorandum of Association whereby 10 sub-clauses were added. Neither a copy of the petition nor a notice of its hearing was served on the Registrar of Companies.

I **Held:** (i) In order for the court to make an informed opinion one way or the other and arrive at a sound decision, the Registrar's presence is of utmost importance in order to assist the court to arrive at the decision;

(ii) Order that the Registrar of Companies should be served with notice together with the petition and related documents.

Petition to be heard after service on the Registrar

Cases referred to:

(1) *Re: Private Boarding House Ltd* [1967] EA 143

Statutory provision referred to:

(1) Companies Ordinance, section 7

RULING

(Delivered 10 September 1998)

D **NSEKELA, J.:** This is a petition by Mofaju's Investment Company Ltd. for confirmation of the alteration of the provisions of its Memorandum of Association by the addition of ten (10) sub-clauses adding to the objects of the company. Paragraphs 5 and 6 of the E petition read as follows:

5. That an extra-ordinary general meeting of the company duly convened and held on 30 May 1997 the following resolution was duly passed as a special resolution in accordance with section 7 of the Companies Ordinance (Chapter 212) namely:

That pursuant to section 7(1) of the Companies Ordinance (Chapter 212) the provisions of the Memorandum of Association of the company with respect to its objects added more objects clauses which are A1 to A10 which will appear and read as per attached.

6. That the intended additional company's objects proposed to be effected by the said special resolution are required to enable the company to carry on same business which under existing circumstances may conveniently or advantageously be combined with the business of the company.

I At the bottom of page 2 of the petition it is indicated that a copy of the petition should be served on the Registrar of Companies but

A there is no evidence on the record that the same was served. Section 7 of the Companies Ordinance provides as under:

B 7(1) Subject to the provisions of this section a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it:

- (a) to carry on its business more economically or more efficiently; or
- (b) to attain its main purpose by new or improved means; or
- C (c) to enlarge or change the local area of its operations; or
- (d) to carry on some business which under existing circumstances as may conveniently or advantageously be combined with the business of the company; or
- D (e) to restrict or abandon any of the objects specified in the memorandum; or
- (f) to sell or to dispose of the whole or any part of the undertaking of the company; or
- E (g) to amalgamate with any other company or body of persons.

F (2) The alteration shall not take effect until, and except in so far as, it is confirmed by the court.

G I must comment at this juncture that the petition is admittedly not elegantly drafted. There are apparently a number of annexes which have been attached to the petition without any identification in the body of the petition. For instance, paragraph 2 of the petition refers to the Memorandum of Association but there is no indication where this is to be found: Apart from this the objects clause of the Memorandum of Association should be set out in the body of the petition. I have mentioned the fact that it would appear that the Registrar of Companies was not served with notice. Needless to say, the Registrar of Companies is a central figure in the administration of the Companies Ordinance and I subscribe to the view that he should be given a chance to enter appearance in matters that concern the office. In *Re-Private Boarding House Ltd* (1), the headnote reads as under-

A The petitioning company in the course of petitioning for an order confirming the alteration of its Memorandum of Association had applied *ex parte* for an order dispensing with advertisement of the petition and notices. On that application the judge dispensed with advertisement provided a copy of the petition of companies. But when the Registrar appeared at the hearing, the advocate of the company objected and claimed that the Registrar had no right of audience. B

C **Held:** (i) The Registrar of Companies should be served with notice of and has a right to appear and be heard on applications to confirm alterations of objects and like proceedings in which his records are involved. C

(ii) The Registrar of Companies in such cases, when served with notice, should in turn give notice to the applicant and to the court as to whether or not he intends to appear." D

E I am in entire agreement with what was stated in the above case. In order for the court to make an informed decision one way or the other, the Registrar's presence is of utmost importance in order to assist the court to arrive at a sound decision. In the premises, I order that the Registrar of Companies should be served with notice together with the petition and related documents. If he does not wish to be present this fact should be communicated to the petitioner and the court. Thus the petition will only be heard after service of the petition on the Registrar. F

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