



## Court Rules on Corporate Governance Matters vis-à-vis Administration of Shareholder's Estate

On 25 January 2024, the High Court of Tanzania at Dar es Salaam, (the Court) issued its ruling in the case of Mary Deogratias Magubo (formerly known as Mary Boniface Fungo) & 2 Others vs. the Registrar of Companies, Misc. Commercial Cause No. 192 of 2023 (the application). The Court ruled that a meeting of the Applicant company, that is the member's extraordinary general meeting, be called, held and conducted by the 1st Applicant as the only member of the company and that the 1st Applicant as one member of the company present in person shall be deemed to constitute quorum for a valid meeting of the company.

### Background of the Case

The 1st Applicant, Mary Deogratias Magubo, instituted the Application against the Registrar of Companies (the Respondent). The Application arose following death of her husband, Deogratias Alphonse Magubo, who was the shareholder and a director of the 2nd Applicant Company. As a result, the 1st Applicant was appointed by the probate court as the Administratrix of the estate of her late husband, vide Probate and Administration Cause No. 996/2023. The 1st Applicant averred that due to the death of her husband, the 2nd Applicant Company consequently remained with only one shareholder and one director, that is herself, and that as such, it became impracticable to conduct meetings of shareholders and directors of the 2nd Applicant Company in the manner prescribed by the company's Memorandum and Articles of Association.

### Arguments Raised

The Applicants lodged an Application to the Court and prayed that: (i) the Court be pleased to give an order that the meetings of shareholders of the 2nd Applicant company be called, held and conducted and the 1st Applicant be deemed to constitute a meeting and pass a resolution appointing Elia Boniface Fungo and secondly, any other ancillary or consequential directions as the court thinks fit and just to grant.

In the filed Application, among others, the Applicants argued that upon the death of the other shareholder and director, the business of the 2nd Applicant Company is not practicable and that all operations of the company are not in good condition because meetings of directors and of shareholders are impossible to conduct with only one remaining director and shareholder. Further, it was argued that the 2nd Applicant Company's activities, which are impracticable due to lack of quorum, include operating the company's bank account, signing of tender documents and contracts.

It was argued that section 137(1) of the Companies Act, Cap 212 (the Act), is intended to enable a member or director of a company with deficiency in him to call or conduct a meeting of the company in which he is eligible to vote; to overcome the difficulty of lacking the requisite quorum as prescribed in the Articles of Association of the company; or as laid down in the Companies Act. Under this provision, the Court has discretion to allow the 1st Applicant, acting alone, to hold a meeting and constitute the quorum under circumstances like the ones obtaining in the present case where it was impracticable to hold the company's meetings pursuant to the Memorandum and Articles of Association of the company.

The Court raised an issue suo mottu on whether the application was necessary despite there being in place an Administratrix of estate of the late Deogratias Alphonse Magubo, director and shareholder. In terms of section 99 of the Probate and Administration of Estates Act, Cap. 352 of the Laws of Tanzania, the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. It was still not clear if the appointment of the Administratrix of estate of the late shareholder and director, the deficiency in shareholding and membership of the 2nd Applicant Company was thereby effectively cured by transmission of the deceased's shares to his Administratrix of estate, hence filling up any gap in the practical operations and management of the 2nd Applicant Company. This issue, as determined by the Court, is discussed below together with the applicants' prayers.

For further information on legal updates please contact:

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### About ECRA Attorneys

ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hawks with professional experience of more than a decade in a range of areas of their expertise.

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# LEGAL NEWS

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## Determination of issues and Decision of the Court

The Court determined the question whether appointment of the Administratrix of estate of the late shareholder and director, the deficiency in shareholding and membership of the 2nd Applicant Company was thereby effectively cured through transmission of shares by operation of law.

It found that in law, the 2nd Applicant Company had never had deficiency in shareholding despite the death of the other shareholder and director, the late Deogratias Alphonse Magubo, because his Administratrix of estate under the doctrine of share transmission effectively and immediately stepped in as the second shareholder in the company. Transferability of shares of the deceased person by operation of the law to his legal personal representative did not have to await transfer processes of the deceased's shares to the lawful heirs of the deceased person. The position in law is that upon death of the deceased shareholder, the Administratrix of his estate automatically became a shareholder in the company upon her appointment by the probate court, effectively replacing the deceased person. Transmission is an automatic process; when a shareholder dies, his shares immediately pass to his personal representative.

It was further held that Mary Deogratias Magubo (as Administratrix of estate of the late Deogratias Alphonse Magubo) who is holding 800 shares in the 2nd Applicant Company in trust for the benefit of the heirs is not yet a member of the 2nd Applicant company as her name as such is yet to be entered into the register of members of the company. This follows the fact that not every shareholder is a member of the company. Members of the company are only those persons whose names are in the register of members of the company and these can be the subscribers to the Memorandum of Association and such other persons who may be admitted by the directors to membership of the company. Furthermore, while shareholders have investment interests in the company, members have legal interests in the management and operation of the company: they have a right to appoint and remove directors; and a right to vote on changing Memorandum and Articles of Association of the company and other corporate decisions.

Based on the above, with respect to quorum and meeting of members and court's endorsement of one Elia Boniface Fungo into an undisposed position in the 2nd Applicant Company, the Court was of the view that, the first prayer regarding convening of meeting cannot be granted exactly as it is phrased because it purports to seek the court's intervention to convene a meeting of shareholders. Although the company has already got two shareholders, it has only one member and the meeting quorum is determined by reference to membership and not shareholding. Further, the first prayer was seeking the court's endorsement of one, Elia Boniface Fungo, into an undisposed position in the 2nd Applicant Company. The Court held that it cannot decide for members what they wish to do with the said Elia Boniface Fungo in their company. That is an internal matter which should be handled in a properly-convened and conducted meeting of the company after taking into consideration the rights and interests of the members of the company as well as the dictates of the Memorandum and Articles of Association of the company.

Although, the court declined part of the first prayer regarding appointment of Elia Boniface Fungo, it proceeded to order that a meeting of the applicant company, that is the member's extraordinary general meeting, be called, held and conducted by the 1st Applicant as the only member of the company and that the 1st Applicant as one member of the company present in person shall be deemed to constitute quorum for a valid meeting of the company. On the second prayer regarding any other ancillary or consequential directions from the Court, the Court held that the 2nd Applicant Company is empowered to rectify the register of members of the 2nd Applicant Company by effecting changes in the shareholding and membership of the company to the extent allowed by the Court under the first prayer.

Also, the Court held that except for dispensation of members' quorum requirements and decision-making powers with respect to orders above, other procedural and legal requirements prior to and after the calling and conducting of a valid members' extraordinary general meeting of the 2nd Applicant Company be complied with and adhered to by the 1st Applicant, to the extent that they are not incompatible with or affected by the orders given by the Court on the prayers above.

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