

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**COMPANY CAUSE NO. 16 OF 2018**  
**IN THE MATTER OF THE COMPANIES ACT 2012**  
**AND**  
**IN THE MATTER OF FRESH HORIZONS LIMITED AND EASTERN CREAMERIES**  
**LIMITED**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application is brought under sections 98 of the Civil Procedure Act and Order 52 r 1, 2 & 3 of the Civil Procedure Rules.

The applicant was represented by Gad Wilson and Amos Musheija.

The applicant is seeking orders;

That the 70 shares held by Eastern Creameries Limited(Liquidated) in Fresh Horizons Limited be reverted back to the Company.

That consequently the directors deal with the above shares by way of transfer and allotting them to a willing buyer.

The main grounds for this application are;

- a) That Fresh Horizons Limited was incorporated on the 4<sup>th</sup> day of May 2013 with two shareholders: Eastern Creameries Limited with 70 shares and Adonai Elohim Limited holding 30 shares.

- b) That the said shares that were allotted to Eastern Creameries had not been paid for by the time it was liquidated.
- c) That on 27<sup>th</sup> day of May 2016, the shares holders of Eastern Creameries Limited by special resolution resolved to voluntarily wind up the company because they had lost interest in the objectives for which the company was incorporated and Samantha Atukunda was duly appointed the Liquidator.
- d) That the Liquidation process was successfully completed and eastern Creameries Limited was fully dissolved and struck off the register of Companies.
- e) That 70 shares held by Eastern Creameries Limited in Fresh Horizon Limited were left in abeyance and were never dispensed with before Eastern Creameries Limited was fully liquidated.
- f) That the Liquidator and the official receiver cannot in any way deal with the said shares as their powers have since ceased at the dissolution of Eastern Creameries Limited and is currently Non-existent.
- g) That at the moment, Fresh Horizons limited is operating with only one Shareholder Adonai Elohim Limited, and would like to allot the shares to another person.

The applicant through one of its current directors has deposed an affidavit in support of the application and amplified the grounds set out herein above in support of the application.

The former shareholders of Eastern Creameries Limited have agreed in a letter dated that 11<sup>th</sup> April 2018 attached to the affidavit as annexure 'G' that all the 70 shares held by company be transferred to Stephen Wakhweya and that they inadvertently forgot to declare the said shares in company's statement of affairs and the members' final meeting held on 8<sup>th</sup> June 2017.

The Liquidator wrote to the official receiver requesting that the 70 shares be transferred as agreed upon by the shareholders of Eastern Creameries Ltd and the official receiver advised the Liquidator that the powers of official receiver and the liquidator in respect of Eastern Creameries Limited that was liquidated have since ceased and any reversal of the decisions taken must be by court.

This court entertained the matter and heard the submissions of counsel for the applicant. The applicant's counsel made submissions based on the application and the supporting affidavit. They also filed brief submissions in court and this court has considered them in arriving at this decision.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

*The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.*

The applicant's problem or dilemma in this matter is in simple terms, they cannot hold a meeting to direct the affairs of the company since one of the shareholders was liquidated and this leaves only one shareholder who cannot convene a general meeting.

Since the company had two shareholders and one of them has since ceased to exist after the voluntary winding up and liquidation, this affected the operations of the applicant-fresh Horizons Limited.

The **Companies Act** envisages such situations and is ably provided for under section 142 which provides as follows;

*(1) Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or conduct the meeting of the company in the manner prescribed by the articles of this Act, the court may of its own motion or on application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a meeting of the company be called, held and conducted in the manner the court thinks fit.*

The applicant has set out the reasons why they are unable to hold a meeting in order to enable them deal with the shares of the liquidated company-Eastern Creameries Ltd and this court is satisfied with the said reasons.

In the circumstances, the applicant is directed to hold a meeting for the purpose of allotting the 70 shares to Wakhweya Stephen as agreed upon by the former shareholders of Eastern Creameries Limited.

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**2<sup>nd</sup> /07/2018**