



**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**WINDING UP CAUSE NO. 5 OF 2006**

**IN THE MATTER OF ZIANI HOLDINGS LTD**

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

**PHILOMENA GERTRUDE BANDARI.....PETITIONER**

**VERSUS**

**DUNCAN CHENGO BANDARI AND ZIANI HOLDINGS LIMITED...RESPONDENTS**

**RULING**

1. On 9<sup>th</sup> April, 2021 this court was required to deliver a ruling to an application filed by Duncan Chengo Bandari, who was the respondent in this case. The nature of the ruling that was to be delivered was on the settling of terms of sale of Plot No. LR MN/1/6308, which is an asset for Ziani Holdings Limited.

2. On 9<sup>th</sup> April, 2021, Mr. Matheka for the respondent informed this court that his client had passed on. He was not sure of how the death of his client (deceased) would affect the application dated 14<sup>th</sup> August, 2020 seeking the settling of the terms for the sale of the property in issue.

3. Mr. Karina for the petitioner was of the view that the deceased was not a party to the case herein. He stated that since directors are different legal personalities from companies, the death of the respondent should not deter this court from writing a ruling.

4. This court has considered the above brief submissions and noted that the Judgment by Judge Serгон delivered on 26<sup>th</sup> February, 2009 stated *interalia* as follows-

**“The evidence indicates that the petitioner and the respondent hold equal shares in the company. The duo are the only directors and shareholders of the company.”** (emphasis added).

5. The provisions of Order 24 Rule 4(1) of the Civil Procedure Rules apply in this case. They state as follows-

**“4. (1) Where one or two or more defendants dies and the cause of action does not survive or continue against the surviving defendant and defendants alone, or a sole surviving defendant dies and the cause of action survives or continues, the court on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.”**

6. Since the deceased had a share in Ziani Holdings Limited, it is essential at first for his family to establish if he had executed a will and if not, there will be need for them to move to the Family Court for to seek orders for the appointment of an administrator of the deceased's estate or if he left a will, the Executor or Executrix of the said will, will be in a position to apply to Court for probate of the will of the deceased and follow the other processes of the law in regard to the deceased's estate.

7. Noting that the share of the deceased in Ziani Holdings Limited forms part of the assets in his estate and is available for distribution, this court cannot proceed to deliver a ruling on the application for settling of terms of the sale of the property known as Plot No. LR MN/I/6308 until the legal representative of the deceased has moved this court in an application for substitution of the deceased respondent, Duncan Chengo Bandari. There shall be no order as to costs.

**DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 16TH DAY OF APRIL, 2021. IN VIEW OF THE**

**DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO THE COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17<sup>TH</sup> APRIL 2020, THE RULING HEREIN HAS BEEN DELIVERED THROUGH TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of-**

Mr. Karina for the Petitioner

Mr. Matheka for the respondent

Mr. Oliver Musundi – Court Assistant.