



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

MISCELLANEOUS APPLICATION NO. E884 OF 2020

IN THE MATTER OF ISO HEALTH LIMITED.

AND

IN THE MATTER OF THE COMPANIES ACT NO. 17 OF 2015

AND

IN THE MATTER OF AN APPLICATION FOR THE REDUCTION OF THE SHARE PREMIUM OF ISO HEALTH LIMITED.

RULING

1. This ruling is in respect to the Originating Summons dated 23rd July 2020 wherein the applicant seeks orders that: -

1. Spent.

2. Pending the hearing and determination of this application, this Honourable court do grant leave to the applicant to issue notice of the filing of this application and the hearing thereof by publication in one issue of a newspaper with nationwide circulation.

3. The Special Resolution passed by the shareholders of the applicant on 15th July 2020 for the reduction of the share premium account of the applicant be approved and confirmed by this Honourable court.

2. The application is supported by the affidavit of applicant’s Company Secretary **Mr. Cornelius Kimamo Kigera** and is premised on the grounds that: -

i. The shareholders of the company initially passed a Special Shareholder Resolution approving the reduction of share capital of the company by the cancellation and extinguishment of share capital in the amount of Kenya Shillings eleven thousand two hundred and twenty-three (KES 11,223) comprised of eleven thousand two hundred and twenty-three (11,223) ordinary shares of Kenya shillings one (KES 1) in the company each of which is fully paid up.

ii. The High Court in Miscellaneous Application Number E066 of 2020 subsequently approved and confirmed the applicant’s share capital reduction on 13th May 2020.

iii. Pursuant to the Article of Association and Memorandum of Association of ISO Heath Limited (“the Applicant”), the shareholders of the applicant have passed a Special Resolution to reduce the share premium account of the applicant (paid in USD but recorded in Kenya Shillings at the exchange rate provided below) as part of this initial reduction of share capital as follows:

	Current total in	amount reduced by	share
premium			
after	Share premium		account

Account	reduction		
USD value	6,718,802.17	5,003,525.87	1,715,206.30
KES value at a conversion rate of USD 1 to KES 101.32	680,724,750	506,939,155.3	173,185,594.7

iv. The reduction of the share premium account of the applicant amounting to KES 506,939,155.3 does not involve the diminution of liability in respect of unpaid capital and is solely intended to reduce the share premium of the applicant. This is on the basis that the paid-up share capital is far in excess of the applicant's requirements as the applicant ceased trading with effect from 23rd February 2019.

v. The applicant seeks that the aforesaid Special Resolution be approved and confirmed by the court.

vi. All claims by creditors of the applicant have been discharged, terminated and/or are properly secured.

vii. It is only just and fair that the applicant be allowed to reduce its share capital by this Honourable Court issuing a confirmation as is required under the Companies Act, 2015.

3. When the matter came up for mention on 29th July 2020 this court allowed prayer No. 2 of the application and granted the applicant leave to issue notice of filing of the application and the hearing thereof by publication in one issue of a newspaper with nationwide circulation.

4. When matter came up for further mention on 15th October 2020, **Miss Akal**, learned counsel for the applicant, informed the court that the application was still unopposed despite the fact that a notice had already been published in a newspaper of wide circulation. Counsel urged the court to grant the orders sought in the application.

5. I have considered the instant application and perused the affidavit of service dated 27th August 2020 and I am satisfied that a notice of the application was duly published in a newspaper of wide circulation, *to wit*, the Daily Nation of 24th August 2020. I note that there has been no response or opposition to the application.

6. Consequently, I allow the application and order that the Special Resolution passed by the shareholders of the applicant on 15th July 2020 for the reduction of the share premium account of the applicant be and is hereby approved/confirmed by this court.

7. I make no orders as to costs.

Dated, signed and delivered via Microsoft Teams at Nairobi this 25th day of November 2020 in view of the declaration of measures restricting court operations due to Covid -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

No appearance for the parties

Court Assistant: Sylvia