



Taruru as the Director of Unimax Technologies Limited Director Of Unimax Technologies Limited & another v Equity Bank Limited & another (Commercial Miscellaneous Application E746 of 2023) [2023] KEHC 22037 (KLR) (Commercial and Tax) (5 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E746 OF 2023**

**DAS MAJANJA, J
SEPTEMBER 5, 2023**

BETWEEN

**EDWIN MEMUSI TARURU AS THE DIRECTOR OF UNIMAX
TECHNOLOGIES LIMITED 1ST APPLICANT**

**TABITHA TARURU MILANOI AS THE EXECUTOR OF THE ESTATE OF
IRENE NJERI TARURU (DECEASED) 2ND APPLICANT**

AND

EQUITY BANK LIMITED 1ST RESPONDENT

REGISTRAR OF COMPANIES 2ND RESPONDENT

RULING

1. Unimax Technologies Limited (PVT-RXUA7J6) (“the company”) was incorporated on November 19, 2020 under the *Companies Act*, 2015. According to the CR 12 dated August 16, 2023, the company has a single shareholder Irene Njeri Taruru (“the deceased”) holding 80 shares out of 100 shares. The deceased and Edwin Memesi Taruru are directors. Following the death of the deceased on July 19, 2023, the company has been unable to operate its business principally through its accounts at Equity Bank Limited and Sidian Bank Limited. In the former account the deceased was the sole signatory while in the latter both deceased and Edwin were joint signatories.
2. Edwin together with an executor of the estate of the deceased, Tabitha Taruru Milanoi have filed this application dated August 29, 2023 invoking sections 103 and 863 of the *Companies Act*, 2015. They seek a raft of orders including orders that Edwin be granted full access to the bank accounts, that the court direct the Registrar of Companies to link the company to the e-citizen account of Edwin on the e-



- Citizen portal to enable him make the necessary changes to the company register and that the registrar be directed to remove the deceased as a director of the company.
3. While the application appears to be straightforward, it calls for an understanding on how to deal with the property of a deceased person and its intersection with company law. This is because ultimate control of a company vests in the shareholders and it is the shareholders who appoint the directors to manage the company on its behalf. In this case the only shareholder is now deceased. The applicants disclose the fact that the deceased left a written will dated May 16, 2023 in which she bequeathed the shares to her two children, David Leshan Memusi and Robert Leiyan Memusi in equal shares. She appointed Tabitha Milanoi Taruru, Catherine Nyambura Kalya, Mary Wangari Murugu and Eunice Akinyi Aluoch as executors and trustees.
 4. Based on the aforesaid facts, can the court grant the orders sought in the application. I think not. According to the will, the deceased's shares devolve to her children in equal shares. Edwin cannot deal in the shares or do any act affecting the company as this would amount to intermeddling. Under section 45 of the Law of Succession Act (chapter 60 of the Laws of Kenya) ("the LSA"), a person cannot deal with the property of the deceased otherwise than in accordance with the provisions of the Act. A grant of representation is required to vest the property of the deceased in the executors as section 79 of the LSA provides that a grant of representation, in this case a grant of probate, vests all the deceased's property in the executors. The executors must therefore apply for the grant of probate in order to deal with the deceased's properties. I would also point out that where the executors must act, they must do so jointly. The application would be incompetent as it is filed by a single executor.
 5. The directors of the company are ordinarily appointed by the shareholders so that the proper procedure is for the executors to apply for a grant of probate and if necessary apply for partial confirmation limited to the shares of the company. Once this is done, the executors, as shareholders, can appoint Edwin as a director in addition to any other directors they may wish to appoint.
 6. The applicants have invoked section 103 of the Companies Act, 2015 which empowers the court, *inter alia*, to rectify the register if, "the cessation of membership of a person who has ceased to be a member of the company has not been entered in that register, the person affected, or the company or any member of the company, may apply to the court for rectification of the register." This is not a case where the deceased has ceased to be member. Her shareholding remains and is only transmitted to the beneficiaries under the will in accordance with the Law of Succession Act.
 7. The court cannot short circuit the Law of Succession Act by granting the orders sought. The application dated August 29, 2023 is therefore dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF SEPTEMBER 2023

D. S. MAJANJA

JUDGE

