

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON
THURSDAY, THE 20^H DAY OF JULY, 2023 BEFORE HER LADYSHIP
JUSTICE AKUA SARPOMAA AMOAH (MRS.)

SUIT NO. CM/MISC/0132/2022

EMMANUEL EGYEI MENSAH & ANOR. ... APPLICANTS

VS.

THE REGISTRAR OF COMPANIES & 5 ORS. ...
RESPONDENTS

PARTIES: - APPLICANTS REPRESENTED BY KOFI DZIKUNU –
PRESENT \

1ST RESPONDENT – PRESENT

2ND AND 3RD RESPONDENTS – ABSENT

COUNSEL - OSEI OUSU WITH PAPA KWESI KUDOARDZI
HOLDING BRIEF FOR DANIEL AMANKWAH FOR
THE APPLICANTS – PRESENTS

JOYCELYN ASHIDAM FOR THE 1ST RESPONDENT –
PRESENT

COUNSEL FOR 2ND AND 3RD RESPONDENTS –
ABSENT

J U D G M E N T

By the present Originating Motion, the Applicants herein seek an Order of this Court directed at the Registrar of Companies to delete their names from her record as Directors of the 2nd Respondent.

By an affidavit sworn to by the Finance Manager of Quantum Group of which Cardinal Petroleum Ltd is said to be a subsidiary, the Applicants rest their Application on the following grounds;

The Applicants are Directors and Shareholders of Cardinal **Petroleum Limited as evidenced by *Exhibit 1*.**

Sometime in the year 2015, the said company acquired all the shares of the 2nd Respondent, Sky Petroleum Limited. A copy of the Sale and Purchase Agreement is attached as *Exhibit 2*. Pursuant to this, transaction, the Applicants were made Directors of the 2nd Respondent Company. As a

result, the previous directors resigned their position on the assumption of office of Applicants.

Cardinal Petroleum owned the 2nd Respondent company (erroneously referred to as 1st Respondent) until the 24th of October, 2019 when it sold its shares in the 2nd Respondent to the 3rd Defendant company Black Star Transport Haulage as evidenced by *Exhibit 4*, the Deed of Share Transfer and Share Purchase Agreement.

The Applicants' case is that upon the sale of the shares and change of ownership of the 2nd Respondent company, they ceased to be Directors of the said company unless reappointed by the new shareholders.

The Applicants therefore formally resigned their positions as Directors of the 2nd Respondent. *Exhibit 3* (erroneously referred to as *Exhibit 5*) has been attached as proof of the Applicants' resignation.

The new shareholders have however failed or refused to reappoint new directors and all demands on the 2nd Respondent and its new shareholders to amend the records of the 2nd Respondent by removal of the names of the Applicants have proved futile.

The Applicants' case is that the continuous existence of its names on the records of the 2nd respondent company could result in them being unduly saddled with liabilities and obligations created by the Respondents.

It is for this reason that the Applicants seek the intervention of this Court.

Counsel for Applicants draws this Court's attention to a Notice of Discontinuance filed in respect of the 4th, 5th and 6th Respondents.

This leaves the 1st, 2nd and the 3rd Respondents as Respondents to the instant action. The record shows that they have all been duly served with Hearing Notice, to appear today. However, they are absent. There are also no affidavits in opposition to the Motion even though the record discloses that the said Respondents have been duly served with same.

This Court in the circumstances shall proceed to hear and determine the Applicants Motion.

Section 171 of the *Companies Act, 2019 (Act 992)* currently mandates every incorporated company to have at least two Directors with one of them being ordinarily resident in Ghana.

The relevant portions of *Section 175 of the Companies Act, 2019 (Act 992)* upon which the instant Application is premised states as follows;

Vacation of office of director

(1) *The office of director shall be vacated if the director*

(c) *resigns from office by notice in writing to the company*

The Applicants therefore by virtue of *Exhibit 3* should be deemed by law to have formally vacated office as Directors of the 2nd Respondent. There is however no evidence that the 2nd Respondent has taken or is taking the necessary steps to fill the vacancy created by their resignation.

There is also no Application before this Court indicating that circumstances have rendered it impossible or impracticable for the 2nd Respondent to appoint Directors to replace the Applicants. See *Section 172 (8) (b) of Act 992*. It is for this reason that I consider the instant Application meritorious.

There however appears to be one hurdle left to surmount. Even though not opposed to the instant Motion, Counsel for the 1st Respondent informs the Court that the **E-Registrar** platform is programmed to reject any Application for the removal of Directors, if doing so will leave one or no Director on the Board of that Company. 1st Respondent therefore prays this Court to Order the expeditious appointment of two or more Directors by the 2nd Respondent to enable the Order of this Court to be carried out by the 1st Respondent.

In the premises, the Application is granted as prayed. *The Registrar of Companies is hereby ordered to expunge from its records the names of the Applicants, Emmanuel Egyei Mensah and Felix Gyekye as Directors of the 2nd Respondent Company, Sky Petroleum Limited. It is further ordered that the 2nd Respondent, Sky Petroleum Limited, appoints 2 or more Directors to the Board of the said Company and notifies the Registrar of same within*

30 days of this Order, to enable the Registrar carry out the Order for deletion of the names of the Applicants.

The Applicants are hereby ordered to serve a copy of this Order on the 2nd Respondent, Sky Petroleum Ltd.

(SGD)

AKUA SARPOMAA AMOAH (MRS.)

JUSTICE OF THE HIGH COURT

Statute referred to:

THE COMPANIES ACT, 2019 (ACT 992)