



UNITED STATES INTERNATIONAL UNIVERSITY

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TEACHING NOTE

AZURI PRODUCTS LIMITED

1.0 CASE SYNOPSIS

Azuri was started as an informal business in the year 2005 by Tei Mukunya. Tei, a marketer of an international tobacco company (BAT) turned into an entrepreneur when she saw a business opportunity in the course of her duty. While on a marketing assignment in Western Kenya, she came across women groups producing wonderful farm products but with no capacity to market to them. The products were nutri-porridge, Kakurura, sweet potato flour and dried fruits. She developed a passion to help the women and secured a market for the products in Nairobi's big supermarkets. There were issues of irregular production. Unfortunately, in 2009 the situation became worse when the production ground to a halt and the women had no products.

Tei thought she should not discard the business opportunity since the products were still in demand and she had secured a market for them. She thought of quitting her job to become a full-time entrepreneur. Tei then consulted her lawyer about the kind of legal mode to adopt for her business. She however faced a legal dilemma of the type of business which would have the best legal advantages for her. She was not sure whether to start a sole ownership, a partnership or a limited company.

2.0 LEARNING OBJECTIVES

The General objective of case is to introduce the students to legal status facing Agri- Business as ongoing business. The specific objectives are discussing types of status in undertaking Agri-business like:-

- 2.1- Sole proprietorship.
- 2.2 - Registration Process.
- 2.3- Advantages and Disadvantages
- 2.4- Partnership
- 2.5- Registration Process
- 2.6- Advantages and Disadvantages of Partnership
- 2.7- Dissolution Process
- 2.8- Limited Companies
- 2.9- Registration Process
- 2.10-Advantages and Disadvantages
- 2.11-Distinction between a Partnership and Limited liability company.
- 2.12-Borrowing of company
- 2.13-Creating floating charge
- 2.14-Management of Company
- 2.15- Winding up.

3.0 DISCUSSION QUESTIONS

3.1 Why Agribusiness entrepreneurs prefer to conduct business in sole proprietorship?-

The learners will appreciate that most Agribusiness may start business as sole proprietorship because of the following reasons:-

- Registration is not complex.
- The starting of the business is informal.
- The business may not need complex legal requirements.

- The registration of the business will be under the business Names Act Cp.490 of the laws of Kenya.
- Starting of this type of business may not require statutory infrastructure.
- The success of business enhances self-esteem to the sole proprietor.
- The benefits of the business can be subject to inheritance.
- The sole proprietor has liberty to create legacy on his estate to his legatees.
- The sole proprietor can give power of Attorney to any donee to run his business on his behalf.

3.2 Why do Agribusiness entrepreneurs prefer to conduct their business as partners?

The Agri-business may appreciate to conduct their business in partnership because of the following reasons:-

- Registration process is simple and not complex.
- Registration process will be under the Registration of Business Names Act.
- The Partners may wish to have partnership Deed to indicate their share in Partnership.
- The deed of partnership need to be registered with the Registrar of Documents in the central Registry in Nairobi.
- All the partners in such business act as agents of each other.
- All the Partners in Agri-business share profits and losses equally.
- In case of death, bankruptcy of any partners the business is dissolved.
- In the process of Dissolution, the Court appoints the Receiver to wind up the Partnership business.
- Liability of the Partnership business like breach of contract, torts, tax liability goes to the partners severally.

3.3 WHY DO AGRI BUSINESS ENTREPRENEURS PREFER TO CONDUCT THEIR BUSINESS AS COMPANY?

The learners may appreciate that most business are conducted under the corporate entity because of the following reasons:-

Company is an artificial legal person and once it is incorporated passes the following distinguishing characteristics:-

- Independent corporate entity.
- Limited liability of its members.
- Perpetual or continued succession.
- Generally shares are easily transferable.
- Owns property separate from its members.
- Can enter into contract in its own name.

- Can sue in its own name. The essential feature of a corporation is that it is a legal person or entity separate from the members who compose it and act on its behalf .The point to note is that the corporation continues in existence irrespective of death or expulsion of any or all its members’ .Its independent existence and survival is known as ‘perpetual succession.’ The technical expression means that once the corporation is created by law. It will continue until it is destroyed, annulled or dissolved by law. Case of reference and discussion:-
Salomon V Salomon Co. Ltd 1897.

3.3 To what extent did legal personality question 3.1 and 3.2 apply to Azuri products?

- Azuri products as from the start were operating under sole proprietorship business.
- It experienced challenges as relates to competition and challenges as relates to liability and raising of working capital.
- Azuri products transforming to legal entity enhanced proper management, borrowing its capital borrowing from financial institution in its own capacity.
- Azuri products had capacity to employ its workers who were reporting to the company in their personal capacities.
- The managing Director of Azuri products was acting as Trustee of the company and had fiduciary relations to the company as by the Article of Association.
- Azuri products had legal capacity to enter into contracts and sue and be sued in its capacity.
- Azuri products had capacity to pay its statutory taxes in their own name.
- Azuri products were managed by the Article of Association and were conducting its business as by the object clause in the Memorandum of Association.
- Azuri products could own property in its own name.
- In case of competition Azuri products has capacity to merge into other legal entities during the same business to maintain their market prices.
- The managing Director of Azuri products is aware that the property in the name of the company cannot be subject of inheritance or creating legacy in case of testate succession.

3.4 To what extent are the corporate decisions independent from the directors?

Learners should be made aware that decisions of the company must be guided by the Article of Association in the Memorandum of the Association. Learners must note that any decision of the company must be ‘intra vires’ (within the ambit of authority) of object clause of the Memorandum of Association.

Further any decision which will be ‘ultra vires’ (outside the ambit of authority) will be regarded as nullity. Relevant case laws Ashbury carriage Co. 1875.

3.4.1 How company will get funds for its expansion?

The learners learn how company can legally get funds as provided in the capital clause in the memorandum of Association.

Minimum capital and floating of shares to members. Relevant case law Salomon V Salomon Co.Ltd 1897.

3.5.1 What benefits arise out of corporate entity?

Learners should learn that big business or local and multi-national conduct their business as corporate entities because of

- Corporate entity.
- Limited liability more especially civil in nature.
- Perpetual succession.
- Own property in its name. Such property is subject to succession.
- Capacity to enter into contracts in its own name.
- Liable for their workers wrongs of civil in nature refer to the principle of vicarious liability.
- Can benefit from its brand name as a part of intellectual property in form of trade mark, patent, copyright and geographical Indications.
- In case of a crime committed by the company the principle of “lifting the veil” will be applied because the company has no mens rea (guilty mind) actus rea (guilty action).
- For civil actions, natural persons hide within the veil and this is very important in conducting the corporate business.
- The international approach of corporate entities is undergoing transformation of Corporate Rescue to enhance continuity and discouraging winding up of corporate entities for example Chapter 13 Of United States Corporate Reform.

Target Audience

The case can be used for a broad range of audiences like undergraduate students in the course of cooperate governance, and business law.

The particular target audience here is agribusiness entrepreneurs of who range from certificate to undergraduate level.