

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD CAUSE NO. 193 OF 2023 (NSJ)

IN THE MATTER OF SECTION 92 OF THE COMPANIES ACT (2023 REVISION)

AND

MATTER OF KES POWER LIMITED



CONSENT ORDER

UPON IGCF SPV 21 Limited (the "**Petitioner**") presenting a winding up petition on 11 July 2023 seeking an order that KES Power Limited (the "**Company**") be wound up pursuant to section 92(e) of the Companies Act (2023 Revision) (the "**Companies Act**") (the "**Petition**")

AND UPON the Petitioner having issued a summons for directions dated 7 July 2023 (the "**Summons for Directions**") and the parties agreeing that paragraph 2 of this Order is made in respect of the Summons for Directions with the remaining directions to be addressed following the determination of the Strike Out Summons (defined below)

AND UPON Al Jomaih Power Limited and Denham Investment Ltd (the "**Respondents**") being members of the Company.

AND UPON the Respondents having issued a summons dated 28 July 2023 (the "**Strike Out Summons**") seeking *inter alia* (a) a declaration that the Petitioner is prohibited from presenting the

THIS ORDER was FILED by BEDELL CRISTIN of 18 Forum Lane, Suite 5305, 3rd Floor, Camana Bay, PO Box 1990, Grand Cayman KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Respondents whose address for service is that of its said Attorneys-at-law.

Petition pursuant to the terms of Schedule 4 of a Shareholders Agreement dated 15 October 2008 (as amended) (the "SHA"), (b) a declaration that the Petition has been presented in breach of the SHA, (c) an injunction restraining the Petitioner from prosecuting the Petition in breach of Schedule 4 of the SHA, (d) an order that the Company and/or the Petitioner shall exercise all its powers to procure the striking out or dismissal of the Petition as provided in Schedule 4, (e) an order that the Petition be dismissed pursuant to section 95(2) of the Companies Act, (f) an order that the Petitioner shall the Respondents' costs of and occasioned by the Strike Out Summons on the indemnity basis, to be taxed if not agreed, and (g) such further or other orders as to costs, relief, orders or directions as the Court thinks fit

AND UPON the Court's direction dated 8 August 2023 that the Respondents are required to be joined to the Petition prior to the hearing of the Strike Out Summons by consent or otherwise

AND UPON the Strike Out Summons being listed to be heard at 9 a.m., on Wednesday, 11 October 2023 before the Hon. Mr Justice Segal

AND UPON the Court's direction dated 17 August 2023 that the Summons for Directions be adjourned to be heard at 9 a.m on Wednesday, 11 October 2023 before the Hon. Mr Justice Segal

AND UPON the Petitioner and the Respondents having indicated, by the signature of their respective Counsel hereto, that they consent to the terms of this Order

BY CONSENT IT IS HEREBY ORDERED THAT

1. Without prejudice to their application to strike out etc. as aforesaid, the Respondents shall be joined to the Petition for the above purposes only at this stage.
2. The Company shall be treated as the subject matter of the proceedings but shall remain a party to it solely for the purpose of giving discovery and the proceedings shall be treated as

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an *inter partes* proceeding between the Petitioner as petitioner and the Respondents as respondents.

3. The Petitioner shall file and serve its evidence in response to the Strike Out Summons by no later than 18 August 2023.
4. The Respondents shall file and serve their evidence in reply by no later than 1 September 2023.
5. The hearing bundle, authorities bundle and skeleton arguments shall be filed and exchanged (where applicable) in accordance with B1.4(d) and B1.4(e) of the FSD Users Guide respectively.
6. The hearing of the Summons for Directions listed for 9 a.m., on Tuesday, 26 September 2023 shall be adjourned until 9 a.m on Wednesday, 11 October 2023 before the Hon. Mr Justice Segal.
7. Costs in the Cause.

Dated the 18th day of August 2023
Filed the 1st day of September 2023



THE HONOURABLE MR JUSTICE SEGAL
JUDGE OF THE GRAND COURT

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Approved as to form and content:



Dillon Eustace

Attorneys for the Petitioner



Bedell Cristin

Attorneys for the Respondents

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