



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMILARLTU DIVISION
WINDING UP CAUSE NO 13 OF 2015
IN THE MATTER OF HOMES SYSTEMS AND SERVICES LIMITED
AND
IN THE MATTER OF THE COMPANIES ACT.

JUDGMENT

1. The Petition herein was filed on 30th March 2015, by Liquid Telecommunication Kenya (herein “the Petitioner”), seeking for orders that, Holmes Systems and Services Limited (herein “the Company”) be wound up, under the provisions of the Companies Act (Cap 486) Laws of Kenya (herein “the repealed Act”) and the costs be awarded to the Petitioner.
2. It is averred that, the company is indebted to the Petitioner, in the sum of; Kshs. 2,927,837.26, in respect of services rendered by the Petitioner to the Company. That, a demand send to the Company for payment has not been honoured and/or complied with. Subsequently, a statutory demand dated 16th September 2014, was issued under, the provisions of; Section 220, of the repealed Act and served upon the company. However, twenty-one (21) days have elapsed without compliance.
3. That by failing to honour the demand for payment, and/or turning down the request for a meeting to resolve the matter, the Company has admitted its insolvency and in the circumstances, it is unable to pay its debt. It is therefore, just and equitable that it be wound up.
4. The petition was supported by the affidavit dated 20th May 2015, sworn by Caroline Katsiya, the legal manager of the Petitioner. She averred that, the Petitioner and the Company have been conducting business over a considerable period of time. That the company retained the Petitioner as a service provider of; telecommunication services.
5. The Petitioner issued invoices to the Company for payment but the company failed to regulate/settle the invoices, as evidenced by the unpaid copies of thereof produced herein, together with the statements of accounts and correspondences on payment.
6. She also produced a copy of; a demand letter dated 17th June 2014, showing an outstanding balance of; Kshs. 1,732,780.84, and a copy of the statutory notice issued under Section 220 of the repealed Act.
7. Upon considering an application filed by the Petitioner for service of the pleadings through substituted service, the court on 28th May 2015, issued an order that, the Company be served with the petition through, advertisement of the winding up cause in the Kenya gazette and in the Newspapers of National wide circulation.
8. The Petitioner also filed an application dated 9th July 2015, seeking to serve the summons by substituted service, by way of registered post and the petition be deemed to have been duly served upon the Company. The application was allowed vide an order dated 21st September 2015, issued by Honourable Deputy Registrar I.N. Baraza.
9. On 7th September 2016, the Honourable Deputy Registrar Nancy Makau, was informed that the Petitioner had complied with the orders of service issued on; 21st September 2015. The matter was then set down for hearing. Subsequently, the Petitioner’s witness; Ms Caroline Katsiya, formally presented an affidavit she swore, in support of the petition and the matter was set down for Judgment.
10. However, the judgment was deferred for the court, to confirm that, all the procedural steps had been taken in the matter. The matter was stood over to 3rd April 2019, for direction on the same. The court observed that, there was no evidence of service of the petition or advertisement and/or publications thereof as ordered. The petitioner sought for time to provide evidence thereof.

11. Pursuant thereto, the Petitioner filed an affidavit dated 17th April 2019, and annexed thereto, a copy of an advertisement of the petition, in the Kenya gazette dated; 27th November 2015, Vol.CXVII No. 130, L.N. No. 8858, and a copy of the advertisement of the petition carried out in the Standard Newspaper of 9th November 2015. I note the content of both advertisement and find that, the petition was properly served. However, there was no response thereto.

12. I have considered the evidence herein and I find that, the statutory provisions of section 219, of the repealed Act provides that: -

“A company may be wound up by the court if—

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- (d) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- (e) the company is unable to pay its debts;
- (f) the court is of opinion that it is just and equitable that the company should be wound up;
- (g) in the case of a company incorporated outside Kenya and carrying on business in Kenya, winding-up proceedings have been commenced in respect of it in the country or territory of its incorporation or in any other country or territory in which it has established a place of business”.

13. The company herein is said to be unable to pay its debts as and when they fall due. The provisions of section 220 of the repealed Act states that: -

“A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one thousand shillings then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company”

14. I note that, in the instant matter, the evidence produced of inter alia, unpaid invoices issued by the Petitioner and/or failure to respond to the statutory demand issued after the expiry of the period indicated therein, is clear evidence that, the company is not able to pay its debt to the Petitioner or provide security for the same.

15. Based on that evidence, I allow the petition by granting the orders as prayed, in that; Holmes Systems and Services Limited be and is hereby wound up by this order of the court. The costs are awarded to the Petitioner.

16. It is so ordered.

Dated, delivered and signed this 29th day of April 2020.

G.L. NZIOKA

JUDGE

In the presence of;

Delivered by email

..... for the Petitioner

..... for the Respondent

..... Court Assistant