



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**IN THE MATTER OF RURAL URBAN CREDIT FINANCE LIMITED**

**WINDING UP PETITION NO. 32 OF 2014**

**IN THE MATTER OF: MARINE POWER GENERATION COMPANY LTD**

**IN THE MATTER OF: THE COMPANIES ACT – SECTIONS 219F AND 211**

**ERIC MUGENDI M'BARINE.....1<sup>ST</sup> PETITIONER**

**MICHAEL T. MAINA.....2<sup>ND</sup> PETITIONER**

**WALLACE MUGENDI MURUNGI.....3<sup>RD</sup> PETITIONER**

**-VERSUS-**

**ANTHONY MURIITHI M'BARINE.....RESPONDENT**

**MARINE POWER GENERATION LIMITED.....NOMINAL RESPONDENT**

**RULING**

1. **ERIC MUGENDI M'BARINE, MICHAEL T. MAINA AND WALLACE MUGENDI M'BARINE**, collectively referred to as the petitioners filed this petition on 12<sup>th</sup> July 2014. They allege, by this petition that the respondent, **ANTHONY MURIITHI M'BARINE** has engaged in conduct which is oppressive to the petitioner, in the running of the company. What is before me is a Notice of Motion application dated **25<sup>th</sup> July 2019** filed by the nominal respondent, **MARINE POWER GENERATION LIMITED**. By that application the nominal respondent seeks the striking out of this petition. That prayer is based inter alia on the following grounds:

- 1. This matter was last in court for a mention for directions and fixing of a hearing date on 18<sup>th</sup> October 2017, when the petitioner failed to make appearance.*
- 2. The petitioners thereafter filed a Notice of Change of Advocate dated 19<sup>th</sup> February 2018, wherein the firm of Gichuki King'ara & Company Advocates came on record for the petitioners.*
- 3. That ever since the firm of Gichuki King'ara & Co. Advocates came on record for the petitioners on 19<sup>th</sup> February 2018, the petitioners have taken a back seat and no attempt to prosecute this suit has been made or step taken by the petitioners for a period exceeding 1 year since it was last in court.*
- 4. The previous Advocates by (sic) the petitioners further failed to set down the matter for hearing since it was filed in court in 2014. The matter has thus been in court for last 5 years without the petitioners taking any action to prosecute the matter.*
- 5. The delay in prosecuting the matter for over 4 years is inordinate and inexcusable on the part of the petitioner.*
- 6. It is apparent that the petitioners are no longer interested in the suit and the same only remains an unnecessary burden on the Nominal Respondent.*

2. I have considered the affidavit evidence and the submissions. It is trite that a court will strike out a case where there has been prolonged inordinate and unexplained delay. Is that the case here?

3. I beg to differ with the applicant's summary of the activities in this case. I will try to set out what action was taken, in this matter since the court's Ruling of 15<sup>th</sup> June 2016, by **Justice Ochieng**.

4. By that Ruling the learned judge directed the parties to address the court further to enable the court to give directions as to who the bona fide directors of the company were. Parties were therefore invited by the learned judge to file further affidavits on this issue. From 27<sup>th</sup> June 2016 to 20<sup>th</sup> March 2017 the court granted the parties adjournment to enable the parties file their necessary affidavits for the determination of the issue identified by the learned judge. However since parties were not agreed on whether the deponents of affidavits would be cross examined on 3<sup>rd</sup> April 2017 the learned judge made the following order:

***“The court reiterates that the case would proceed to full trial”.***

5. The matter was adjourned to 26<sup>th</sup> April 2017 for directions on the hearing and on that date a further date for directions was fixed for 26<sup>th</sup> April 2017. On that date the court did not sit and on 20<sup>th</sup> September 2017 when, because the petitioners failed to attend court the matter was fixed for mention, by the learned judge, for 18<sup>th</sup> October 2017. The court did not sit on that date. On 24<sup>th</sup> April 2018, because the learned judge was due to go on transfer the matter was listed before the deputy registrar who fixed a mention on 29<sup>th</sup> May 2018. No party appeared in court on that date.

6. From the above it will be seen that upto the year 2018 parties appeared before court from time to time. The petitioners are not entirely to blame for the non prosecution of this petition. It is for that reason I decline to accede to the application. I do however find that it is not healthy for a company to have a pending litigation, one as serious as this one of winding up of the company, outstanding for too long. It is for that reason I will give directions in this matter, on the hearing of the petition. However to ensure the matter is expedited I will give a time limit within which petition must be heard.

### **CONCLUSION**

I grant the following orders:

*(a) The Notice of Motion dated 25<sup>th</sup> July 2019 is dismissed with no orders as to costs.*

*(b) The petition shall be heard by both oral and affidavit evidence on a date to be fixed at the reading of this ruling.*

*(c) If this petition is not heard and concluded by 31<sup>st</sup> July 2020 this petition will stand as dismissed for want of prosecution. In the event it is so dismissed the costs of the petition shall be awarded to the respondents.*

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 27<sup>th</sup> day of APRIL, 2020.**

**MARY KASANGO**

**JUDGE**

### **ORDER**

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17<sup>th</sup> April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **27<sup>th</sup> day of April, 2020**

**MARY KASANGO**

**JUDGE**