



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS APPLICATION NO. E055 OF 2020

UKWALA SUPERMARKETS LIMITED

(IN LIQUIDATION).....APPLICANT/RESPONDENT

-VERSUS-

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION

OF WORLD CHRISTIANITY.....RESPONDENT/APPLICANT

RULING

1. Through the application dated 6th February 2020, the Applicant herein Ukwala Supermarkets Ltd (in Liquidation) seeks the following orders: -

1. Leave be granted for the applicant to proceed with Milimani CMCC suit No. 5646 of 2017 Ukwala Supermarkets Limited-versus- Holy Spirit Association for the Unification of World Christianity from where it has reached.

2. The parties therein to describe the plaintiff in the suit papers as; Ukwala Supermarkets Limited – In Liquidation, to disclose its prevailing status.

3. Costs of this application to abide in the outcome CMCC suit No. 5646 of 2017.

2. The application is supported by affidavit of the applicant's Liquidator **Mr. Peter Obondo Kahi** and is premised on the grounds that;-

a) The liquidator having been appointed through a court order of 20th June 2019.

b) There subsists a suit in the Chief Magistrate's Court at Nairobi, Milimani, to wit; CMCC suit No. 5646 of 2017 Ukwala Supermarkets Limited – versus- Holy Spirit Association of the Unification of World Christianity.

c) The suit has reached the hearing stage but was stood over on 19th November 2019 to allow this application be filed first.

d) It is in the interest of justice that the application be allowed as prayed.

3. The Respondent responded to the application through the replying affidavit of its Chairman, **Mr. Emmanuel Tanui** who confirms that there subsists a suit between the parties herein before the Chief Magistrate's Court being CMCC 5646 of 2017 which suit has reached the defence hearing stage.

4. He avers that the Defendant is apprehensive that the Applicant, having been put under liquidation, will be unable to pay the Defendant's costs of defending the suit. He therefore urges the court to exercise its discretion and make an order that the Applicant deposits security for costs before proceeding with the lower court suit.

5. The Respondent thereafter filed an application dated 28th February 2020 to actualize its prayer for security for costs in respect to the lower court suit citing its apprehension over the Applicant's ability to settle its costs of the suit in view of the fact that it has been put under

liquidation.

6. The applications were canvassed by way of written submissions which I have considered. On the issue for security for costs, I am of the humble view that the same should be pursued before the lower court which is seized with the hearing of the substantive suit. Be that as it may, I am not persuaded that the mere fact that the Applicant has been put under liquidation connotes that it will be unable to pay the costs of the lower court suit should judgment be entered against it. I therefore decline to grant the prayer for security for costs.

7. On the application for leave to proceed with the lower court suit, I note that the same is not opposed by the Respondent whose only apprehension was over the issue of security for costs of defending the suit.

8. Consequently, I allow the application dated 6th February 2020 with no orders as to costs.

Dated, signed and delivered via Microsoft Teams at Nairobi this 26th day of November 2020 in view of the declaration of measures restricting court operations due to Covid -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Waigwa for the Applicant.

Mr. Otieno for Wambola for Respondent

Court Assistant: Sylvia