



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & TAX DIVISION**

**INSOLVENCY PETITION NO. 11 OF 2017**

**ANTHONY OBIDULU.....APPLICANT**

**-VERSUS-**

**SANG JU PARK.....RESPONDENT**

**RULING**

1. This matter was initiated by a petition for insolvency of **Eagle Vet Kenya Limited** (the company). The petition was filed by **Ezekiel Onyango**. The company is under directorship of two directors namely **Ezekiel Onyango** and **Anthony Obidulu** (Anthony).

2. **Anthony** has filed a notice of motion application dated **15th May 2018**. He seeks the following orders:

**a. Pending hearing and determination of the insolvency petition there be a stay of proceedings in Chief Magistrate Milimani Case No. 3480 of 2018.**

**b. Pending hearing and determination of the insolvency petition, the company be restrained by an injunction from making payment to Sang Ju Park (Park) the respondent.**

The application is brought under Section 428 of the Insolvency Act. That section provides as follows:

(1) At any time after the making of a liquidation application, and before a liquidation order has been made, the company, or any creditor or contributory, may—

(a) if legal proceedings against the company are pending in the Court—apply to the Court for the proceedings to be stayed; and

(b) if proceedings relating to a matter are pending against the company in another court—apply to the Court to restrain further proceedings in respect of that matter in the other court.

(2) On the hearing of an application under subsection (1)(a) or (b), the Court may make an order staying or restraining the proceedings on such terms as it considers appropriate.

**BACKGROUND**

3. The company was incorporated on **9th September 2004** under the Companies Act. It is a company limited by shares. Initially the company had four directors/shareholders. **Anthony** one of those directors/shareholders held 44 shares. **Ezekiel Onyango** held 22 shares. **John Onger** held 1 share. **Park** held 33 shares. On **6th March 2007**, by a special resolution of the board, **John Onger** ceased being a director/shareholder of the company. **Park** consented to relinquish his position as a managing director of the company at a board meeting of **22nd January 2014**. It was agreed at that meeting that **Park** would be paid **Ksh 224,793,396** as settlement amount for his shareholding in the company. **Park** was paid **Ksh 210,000,000** in kind by transfer to him of a guest house which belonged to the company. **Park** however, alleges he is owed by the company **Ksh 17,793,396**. This is the amount that he has sued the company for in the Chief Magistrate Court Case No 3480 of 2018. It is that claim that **Anthony** seeks to stay.

**NOTICE OF MOTION DATED 15TH MAY 2018**

4. **Anthony** seeks as stated before to stay proceedings and an injunction restraining the company from making payment to **Park**. **Park's** learned advocate submitted that **Park** filed the case before the Chief Magistrate because he wishes to establish his position as creditor of the company. **Park** argued that **Anthony** has failed to show sufficient and justifiable cause why stay of the Chief Magistrate Court Case

proceedings should be granted.

**ANALYSIS**

5. The petitioner in this insolvency **Ezekiel Onyango**, stated in his petition that there is presently a deadlock between the only two remaining directors/shareholders that is himself and Anthony. Consequently, that the two directors/shareholders are unable to agree on how the company’s affairs are to be conducted. It is because of that, that Onyango petitioned for the liquidation of the company.

6. Bearing the above in mind and considering that in the light of directors who are unable to agree on the running of the company there is a real danger that the suit filed by park before the Chief Magistrates Court may not be defended well or at all. It is for that reason, that I find the prayer to stay the proceedings in the Chief Magistrates Court to be merited. It is my belief the circumstances such as this that the company finds itself is the reason Section 428 of the Insolvency Act was enacted. The granting of the prayers sought will ensure that the company is protected from having the case before the chief magistrate determined without a defence. This is in view of the fact there is disagreement between the directors/shareholders on the running of the company.

7. In conclusion, I grant the following orders:

- a. CMCC Milimani No 3480 of 2018 is hereby stayed pending the hearing of this Insolvency Petition or pending further orders of the court.**
- b. There shall be no orders as to costs to the notice of motion dated 15th May 2018.**
- c. Parties are granted liberty to apply in respect of the orders granted hereof.**

**DATED, SIGNED and DELIVERED at NAIROBI this 24<sup>TH</sup> day of JULY, 2019.**

**MARY KASANGO**

**JUDGE**

**Ruling Read and Delivered in Open Court in the presence of:**

**Sophie..... COURT ASSISTANT**

**.....FOR THE APPLICANT**

**.....FOR THE RESPONDENT**