



REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
WINDING UP CAUSE NO. 1 OF 2019
IN THE MATTER OF COMPANY ACT CAP 486 LAWS OF KENYA

AND

IN THE MATTER OF VOLUNTARY WINDING UP OF COMPANIES UNDER SECTION 219 OF THE COMPANIES ACT

AND

IN THE MATTER OF RAMMILLERS INVESTMENT LIMITED

MICHAEL CHIRCHIR KORIR..... PETITIONER

VERSUS

RACHEL MIAMI.....RESPONDENT

RULING

There is a pending Winding Up Petition for Rammillers Investment Limited dated 18th July 2019. The Petitioner filed a Notice of Motion dated 22nd July 2019 in which he now seeks for an interim order of injunction to issue against the respondent, for preservation of the movable and immovable assets of Rammillers Investment Ltd, pending determination of the Winding Up Petition. In the application the applicant avers that the company was incorporated in August 2016. The parties herein bought the company in the ratio of 60:40 in favour of the Respondent as of against the Applicant. The company was doing business of milling maize to flour of which began very well. However, a few months later problems cropped up after a few months when the Respondent who resides where the mills are located started to fire employees perceived to be associated with the Applicant. The applicant is currently locked out of the business. There are no periodical business updates given by the Respondent and she has incurred liabilities on behalf of the company without the knowledge of the Applicant. Since August 2016 no dividends have been remitted by the Respondent. Efforts to amicably resolve the dispute have borne no fruits and they have resolved to part ways. However, they are unable to agree on the genuine liabilities of the company and mode of sharing the company assets. As the court decides on the issue in the petition, the applicant avers that, it would be at the interest of justice that the company assets are preserved. A list of company asset is attached and their value given as 9.3 million shillings.

The said application is opposed by the Respondent who alleges that before Ramillers Investment Limited came to be, she had a company known as Radiloss Investment Limited. When the applicant got in, they agreed on

the share of 60:40% in favour of the Respondent as of against the applicant, in Ramillers Investment Limited. The applicant never remitted his 40% to Ramillers Investment Ltd. He only provided 700,000/- which was not 40% share in the company. The company, apart from milling maize, has other activities of which if stopped would affect the Respondent and the community at large. The respondent avers that the application does not meet the threshold for granting of an injunction. It has failed to establish a prima facie case with probability of success; has not established that if the orders are declined the applicant stands to suffer irreparable loss which cannot be compensated in monetary terms and that the balance of convenience tilts in favour of the Respondent. Respondent affirms that she is willing to compensate the applicant adequately if he succeeds in asserting his petition and that she'll be responsible for any liability incurred in absence of the applicant. She urged this court to dismiss the application.

The basic facts which are not in dispute in this matter are that the applicant and the Respondent jointly owns Rammillers Investment Limited at a share ration of 60% to 40% in favour of the Respondent as of against the applicant. Their relationship is now strained and have failed to agree on

genuine liabilities of the company and mode of sharing the company assets. They have however agreed to wind up the company. It is also not much in dispute that the Respondent is the one currently involved in management of the company. She resides within and have shut the applicant out of it. She is also singularly incurring liabilities for the company, which shows its running at a loss. Given these basic facts, the applicant's fear is reasonable that eventually he may lose his share in the company. He has therefore established a prima facie case with

probability of success. Save for the company, it is not known what else would make the respondent capable of compensating the applicant should he succeed in the petition. If the company is eventually wasted, and loses its assets in liabilities, the respondent may find herself unable to compensate the applicant. There is no evidence adduced to show that the company assets are growing. Failure to pay dividends is itself a red card or a red signal. The balance of convenience tilts in favour of the applicant as the Respondent resides where the company assets are and the applicant has no hand in them. Her position if the orders are granted is safe to that extent. I on the ground find the application merited and is granted. An interim order of injunction is

to issue against the Respondent, for preservation of the movable and immovable assets of Rammilers Investment Limited, pending determination of the Winding Up Petition.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 29th day of October, 2019.

Mr. Nyekwei for the Petitioner/Applicant

Ms Khayo for the Respondent

Ms Abigael - Court clerk