



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISCELLANEOUS APPLICATION NO. 314 OF 2015**  
**IN THE MATTER OF ANTOW TRADING COMPANY LIMITED**  
**AND**  
**IN THE MATTER OF THE COMPANIES ACT**  
**AND**  
**IN THE MATTER OF AN APPLICATION BY JACOB KIKURU NGOLETUM,**  
**MICHAEL LOBUIN NENEE, MAHMOUD CHEMWOR TARUS FOR AN ORDER**  
**CHALLENGING THE RESTORATION OF THE COMPANY IN THE REGISTER**  
**OF COMPANIES UNDER SECTION 339 OF THE COMPANIES ACT, CHAPTER 486 OF THE**  
**LAWS KENYA.**

**RULING NO.4**

1. The application dated 14<sup>th</sup> June 2017 was brought by the Interested Party, **SATO PROPERTIES LIMITED**.
2. It is an application for stay of the court order pursuant to which the Company, **ANTOW TRADING COMPANY LIMITED** is to be revived.
3. The applicant pointed out that the directors of the Company had voluntarily agreed to wind it up.
4. Thereafter, the resolution to wind-up the Company had been advertised in the *Gazette Notice No.8949 of 2007*.
5. This court had, on 29<sup>th</sup> May 2017 ordered that the Company be restored to the register of companies.
6. The applicant was dissatisfied with the order for the restoration of the company to the register of companies, and it has lodged a Notice of Appeal to challenge that decision.
7. It is within that context that the applicant has sought a stay of the restoration of the Company to the register of companies. It is the hope of the applicant that the restoration be put on ice until the appeal was heard and determined.

8. The Company said that it had already been restored to the register of companies, and that therefore, the court cannot be called upon to undo something which had already been done.

9. Secondly, the Company submitted that the applicant had failed to demonstrate that if the prayers sought were not granted, it would suffer substantial loss.

10. In those circumstances, the Company expressed the view that, although the court has a discretion to determine whether or not to grant an order of stay pending the determination of the applicant's appeal, the applicant had failed to meet the basic requirements for the grant of an order for stay.

11. The applicant has conceded that the Company had been restored to the register of companies on 16<sup>th</sup> June 2017.

12. In the light of that development, the applicant submitted that;

**“Therefore, the Applicant prays for an order suspending the corrigenda by which the company was so restored, pending the hearing and determination of the appeal”.**

13. While urging its application, the applicant stated that its appeal was arguable. That statement is premised on the fact that the resolution to strike-off the company from the companies register was made by all the directors including **JENEBY TOO**.

14. Thereafter, when Jeneby Too changed his mind, and sought the restoration of the company to the register, the applicant believes that that constituted an abuse of the court process.

15. The applicant perceives the restoration of the company to the register as being a design by some of the directors of the company, to squeeze money out of the applicant.

16. In the circumstances, the applicant indicated that the appeal would be pegged upon the fact that the restoration of the company to the register of companies was a breach of the Agreement between the applicant and the company.

17. The second limb upon which the applicant intends to argue its appeal was that the company had never met the requirements for its restoration to the register.

18. This court was told that the restoration of the company to the register gave a licence to the company to continue harassing the applicant.

19. As an example of the kind of harassment which the company would visit on the applicant, is the need for the applicant to defend itself against suits lodged by the company.

20. Secondly, the applicant said that it would be kept from developing and enjoying the property which it had purchased from the company.

21. Considering that the company and the applicant had agreed on the dissolution of the company, as a condition for the contract pursuant to which the applicant purchased the property from the company, it was the applicant's position that it was in public interest to grant the relief sought, so that the company was not allowed to benefit from its abuse of the court process.

22. In the case of **GATIRAU PETER MUNYA Vs DICKSON MWENDA KITHINJI & 2 OTHERS, APPLICATION No. 5 of 2014**, the Supreme Court noted, that in contrast to other interlocutory reliefs such as injunctions;

**“The concept of ‘stay orders’ is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light”.**

23. Two directors of the Company, being **MAHMOUD TARUS** and **JACOB KIKURU**, supported the application.

24. They reasoned that if the court did not stay the revival of the company, the applicant would suffer substantial loss and damage. That reasoning is premised on the ground that the revival of the company would defeat the express terms of the Agreement dated 16<sup>th</sup> May 2007.

25. Those two directors submitted that the application was intended to preserve the status quo as it existed prior to the grant of the orders for the revival of the company.

27. In support of their position, Tarus and Kikuru cited the decision of the Court of Appeal in **FREDRICK WAMBARI CHEGE Vs JAMES KARUME WANJEMA & 2 OTHERS CIVIL APPLICATION No. NAI. 338 of 2004.**

27. In that case the Court ordered that the status quo prevailing be maintained until the appeal was heard and determined.

28. The effect of the order was to ensure that the applicant, who had been in occupation of the suit land for many years, and who had planted 6 acres of tea, whilst cultivating the remaining 2 acres, should remain on the land.

29. The court expressed the view that it would be inequitable to deny the applicant of the use of the 6 acres of tea bushes, before the appeal was determined.

30. In my considered opinion, that decision can be distinguished from the facts in this case because the applicant was still in actual possession of the subject matter of the appeal, and the appellate court stopped the alienation of the said subject matter.

31. In contrast, in this case, the applicant has not demonstrated to this court that there was any other or further steps that still remained to be taken, before the court orders could take effect.

32. The court had ordered that the Company be reinstated into the Companies Register. The said reinstatement had already been done through a gazette notice published on 16<sup>th</sup> June 2017.

33. Therefore, I find that there is no basis in law for granting an order to stay something which had already been done.

34. I also find that the applicant has failed to demonstrate that it would suffer substantial loss if the court did not grant an order for stay.

35. In the circumstances, I find no merit in the application for stay of the revival of the Company.

36. In my considered opinion, the reinstatement of the Company to the Register of Companies does not, and cannot validate things which were allegedly done at a time when the company had been dissolved.

37. The company had not ever asked this court to declare as valid, the things which it did during the period preceding its revival.

38. In my Ruling dated 6<sup>th</sup> January 2017, I made the following observation;

**“The proprietary claims are pending in a separate case, which is still pending before the ENVIRONMENT & LAND COURT”.**

39. Therefore, the mere revival of the Company does not grant to the company any rights over the property **L.R No. 1870/1/2017.**

40. If any clarification was still necessary, I did state as follows in my Ruling dated 29<sup>th</sup> May 2017;

**“30. I am in no way making any determination on the ownership of the prime property.**

**31. But, it is important that I categorically state as I now do, that the reinstatement of the Company to the Register of Companies shall not, in this case operate as a means of restoring the prime property or any other property to the Company”.**

41. In the event, I reiterate my view, that the mere reinstatement of **ANTOW TRADING COMPANY LIMITED** to the Register of Companies cannot, of itself cause the applicant to suffer substantial loss.

42, Accordingly, the application dated 14<sup>th</sup> June 2017 is dismissed. The applicant will pay costs thereof to the Company.

**DATED, SIGNED and DELIVERED at NAIROBI this 23<sup>rd</sup> day of January 2018.**

**FRED A. OCHIENG**

**JUDGE**

**Ruling read in open court in the presence of:**

A.B. Shah for the Interested party (Sato Properties Ltd)

Mutai for Jeneby Too

No appearance for Attorney General

Njomo for Tarus & Jacob Ngoletum

Kabue for Nene

Collins Odhiambo – Court clerk.