



**REPUBLIC OF KENYA**

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

**WINDING UP CAUSE NO. 4 OF 2015**

**IN THE MATTER OF BRAND SAVVY LTD**

**AND**

**IN THE MATTER OF INSOLVENCY ACT 2015 LAWS OF KENYA**

**RULING**

1. Presented under the Repealed Companies Act (Chapter 486 Laws of Kenya) is this Petition seeking the Winding Up of Brand Savvy Limited (the Company) on grounds that the Company should be wound up.

2. The Company was incorporated on 7<sup>th</sup> November 2006 as Brand Savvy Communication Limited and then changed its name on 22<sup>nd</sup> November 2006 to its current name. It has three Shareholders with paid up shares as follows:-

- Eileen Kerebi Agwata .....45 shares
- John Fredrick Odhiambo Alogo.....45 shares
- Sarah Sando Were .....10 shares

3. Eileen Kerebi Agwata (the Petitioner) has sworn a Verifying Affidavit on 24<sup>th</sup> February 2015 in support of the Petition in which she deposes that she and Alogo had an intimate relationship which broke up in November 2008. With the breakup of that personal relationship, the affairs of the Company were affected. Disputes and differences cropped up.

4. So as to resolve a deterioration of Company business emanating from the differences, the Petitioner suggested some possible solutions which included:-

- i. Removing John Alogo from the payroll in January 2012.
- ii. The Petitioner resuming office with no salary and working alone when the Administrative Assistant left in July 2014.
- iii. Directors taking up more active roles in the running of the business.
- iv. Shareholders refinancing the Company to help settle its debts and give room for its recovery.

The other shareholders only accepted the first two options.

5. Disagreements persisted until July 2014 when a meeting of Shareholders was held and it is deposed by the Petitioner that the meeting resolved that the Company be valued and interested Shareholders bid to take up the shares of the Shareholders willing to exit. This was not followed through and later abandoned.

6. The evidence of the Petitioner is that the other shareholders began to meet in private and in November 2014, she was locked out of the office and the Landlord instructed not to allow her access, this notwithstanding that she was a Director of the Company. Things turned for the worse when Mr. Alogo communicated to the Company's customers that the Petitioner was neither a Director nor employee of the Company.

7. The Petitioner deposes that she and the other Shareholders can no longer agree on smallest of issues regarding the operations of the Company and that Company structures have irredeemably broken down.

8. Now, this is a Petition for the Court to Wind up the Company. The provision of Section 219 of the Repealed Act, sets out circumstances

in which a Company may be wound up by the Court. It provides:-

“A company may be wound up by the court if—

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- (d) the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;
- (e) the company is unable to pay its debts;
- (f) the court is of opinion that it is just and equitable that the company should be wound up;
- (g) in the case of a company incorporated outside Kenya and carrying on business in Kenya, winding-up proceedings have been commenced in respect of it in the country or territory of its incorporation or in any other country or territory in which it has established a place of business”. *(my emphasis)*

This Court is asked to find that it is just and equitable that the Company should be wound up.

9. As required by the Winding Up Rules (then existing), the Petition was advertised in the Standard Newspaper on 1<sup>st</sup> April 2015. There has been no opposition to the Petition and the affidavit evidence of the Petitioner is uncontroverted. That is what the Court has to work with.

10. It is evident that the relationship between the Petitioner and Alogo, the two major Shareholders who together own 90% of the shareholding is strained. The communication of 19<sup>th</sup> December 2014 from Mr. Alogo as Creative Director to the customers of the Company is testimony to this. In that communication he partly states:-

*“Bear in mind that Eileen Agwata is neither a Director nor employee of Brand Savvy Limited, and divulgence of this or any communication to her is a breach of trust between yourself/Studio Vertex Limited and Brand Savvy, and shall be handled as such”.*

11. Other evidence of the strained relationship is in Civil Suit No. 254 of 2015 (Brand Savvy Limited & 2 Others vs Brazen Alley & Another) filed in the subordinate Court in which the Company and other 2 Shareholders sue the Petitioner and her Company (Bragen Alley Limited). One feature of the suit is that the Plaintiffs therein seek to oust the Petitioner as Shareholder of the Company. The prayers are telling:-

- a) That this Honourable Court do issue a mandatory injunction directed to the 2<sup>nd</sup> Defendant to surrender the forty five (45) shares in the 1<sup>st</sup> Plaintiff and transfer the shares back to the 1<sup>st</sup> Plaintiff and in default thereof, the Registrar of Companies do remove the 2<sup>nd</sup> Defendant as a shareholder of the 1<sup>st</sup> Plaintiff from the records of the 1<sup>st</sup> Plaintiff held at the Registrar of Companies.
- b) That this Honourable Court do issue an order directed to the 2<sup>nd</sup> Defendants to render an account of all sums received by the 1<sup>st</sup> Defendant from the date of incorporation of the 1<sup>st</sup> Defendant to date.

In the meantime, the Court ordered that the Petitioner be removed as a signatory of the Company’s Bank Account No. 111170021 at GT Bank, Kimathi Street.

12. Whether or not the subordinate Court has jurisdiction to deal with Company matters is of course doubtful but the existence of the suit is testimony of the state of affairs at the Company.

13. On the uncontroverted evidence, this Court finds that the relationship of the Petitioner on the one hand and the other two Shareholders on the other has irredeemably broken down. The Shareholders themselves had contemplated one of the Shareholders exiting and the very spirit of the Subordinate Court proceedings is that the Petitioner should surrender her shares. Given this evidence, this Court has no reason to disbelieve the Petitioner when she says that they cannot agree on smallest of things and that the Company is dysfunctional.

14. In the circumstances, it may no longer be useful for the Company to exist and it is just and equitable to Wind up the Company. The orders I make are as follows:-

- (1) The Company Brand Savvy Limited be wound up.
- (2) The Official Receiver is appointed as the interim liquidator for purposes of winding up;
- (3) Costs of this Petition shall be borne out of the assets of the Company.

**Dated, Signed and Delivered in Court at Nairobi this 2<sup>nd</sup> day of August,2018.**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Mwongela h/b for Wandabwa for Petitioner

Elemesi for Official Receiver

Nixon - Court Clerk