



**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.3**

1. The petition before me is for the restoration of the company, **ANTOW TRADING COMPANY LIMITED**, to the register of companies.
2. The petitioner also asks for an order that the business, assets and property it owned, ought to revert to it.
3. Thirdly, the petitioner asks the court to compel the Registrar of Companies to advertise in the Kenya Gazette, the particulars of the orders which the court will have granted.
4. Finally, the petitioner asks the court to award it the costs of the petition.
5. The petition was supported by the affidavit of **JENEBY TOO**, a Director of the petitioner.
6. He deponed that the Registrar of Companies never sent any written communication to the petitioner, to inquire if the petitioner was still carrying on business or was still in operation.
7. Jeneby Too further deponed that the Registrar of Companies never informed the company about the circumstances which led to the dissolution of the petitioner.
8. And, in order to further emphasize the lack of any knowledge on the part of the said company, Jeneby

Too said that notices were published in the Kenya Gazette, indicating that there was an intention to dissolve the company.

9. The said notices in the Kenya Gazette did not cite the circumstances why the company was to be dissolved.

10. As far as Jeneby Too was concerned, the company had always met its obligations to the Kenya Revenue Authority.

11. In the circumstances, the company concluded that it was irregular for the Registrar of Companies to dissolve it.

12. The director expressed the view that the dissolution of the company was a calculated fraudulent attempt to defraud it of its property.

13. Having been struck off, the company was incapacitated and was thus unable to defend its ownership of the property **L.R. No. 1870/1/217**, Nairobi. That property had allegedly been fraudulently transferred to **SATO PROPERTIES LIMITED**.

14. In so far as the petitioner was concerned, the acts of its deregistration and dissolution were irregular, illegal, fraudulent and unlawful. Therefore, the petitioner asked the court to revive it, by directing the Registrar of Companies to restore it to the Register of Companies.

15. The petitioner was of the view that the interest of justice would be served by its revival, as that would enable to meet its obligations.

16. In particular, the petitioner indicated that it had an obligation to a Creditor, **HARUNANI SULEIMAN & COMPANY**, who it owed Kshs. 16,000,000/-.

17. However, the petition is opposed by one of the directors, **MOHAMUD TARUS**, who insists that the company was dissolved at the instance of its own directors.

18. Pursuant to the provisions of Section 339(3) of the Companies Act, the Registrar of Companies was not required to send letters to the company facing dissolution if it is the company itself or if any director of the said company, or if it is the secretary to the company that had requested for the dissolution.

19. In this case, the dissolution of the company was not at the instance of the Registrar of companies. The Registrar acted after being prompted. And the prompting appears to have come from the company itself.

20. Of course, it is now contended by Jeneby Too that the resolution which was the foundation of the dissolution was not authentic. On the other hand, Mohamud Tarus insists that the resolution was not only authentic, but that it had also been signed by Jeneby Too.

21. In my considered opinion, the Registrar of Companies was under no legal obligation to inquire into the authenticity of the resolution.

22. Upon receipt of the resolution, the Registrar was expected to publish in the Kenya Gazette, the fact that it was intended to wind-up the company.

23. A publication in the Kenya Gazette is deemed to be a notification to the whole world. Therefore, the company and its directors are deemed to have had notice of the intention to wind-up the company.

24. Of course, the notice was not necessary, in so far as it relates to the directors, because they are the persons who initiated the whole process of dissolution. The notice in the Kenya Gazette was intended to make it known to persons who could be affected by the dissolution, so that they could decide whether or not to take action about the intended dissolution.

25. In the result, I find that the basis of the petition is weak. It is premised on alleged lack of information, by the directors, that the company was to be wound up; yet the truth is that it is the company which initiated the whole process.

26. Nonetheless, I believe that the more fundamental question is not about the dissolution, or who initiated it. I say so because I have no reason that could bar a company which had been wound-up, from seeking to be reinstated to the Register of Companies.

27. In this case, there is a titanic battle over the ownership of a prime property, **L.R. No. 1870/1/217, NAIROBI**.

28. Whilst the said battle is before the Environment & Land Court, the company is of the view that unless it was revived, it would be denied an opportunity to put forward its case. I find that the concerns expressed on behalf of the petitioner are valid. The concerns which I make reference to are not about the claim of ownership, but about the opportunity to put forward its case.

29. In my considered view, there would be no prejudice occasioned to any person if the company was revived. I so find because **SATO PROPERTIES LIMITED**, which contends that there was a term in the Sale Agreement, which required **ANTOW TRADING COMPANY LIMITED** to wind-up, would still have an opportunity to make its case.

31. I am in the 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.

32. If the petition had been brought by Suleiman Harunani, an alleged creditor of the company, I would not have granted it. I so find because it does appear that by the time the said Suleiman Harunani was entering into the contract with Antow Trading Company Limited, the latter was not in existence. But I must emphasize that my said finding on this issue is orbiter, and does not stand in the way of the trial court arriving at a different decision, after receiving evidence from all the parties.

33. I now order that **ANTOW TRADING COMPANY LIMITED** be restored to the Register of Companies. However, the costs of the petition shall be borne by the petitioner in any event. I so order because, although the petition is successful, it would not have been necessary had not the petitioner originally sought the winding-up of the company. In effect, the decision to revive the company was an afterthought, for which the petitioner cannot expect any other person to pay costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 29<sup>th</sup> day of May 2017.**

**FRED A. OCHIENG**

**JUDGE**

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

*Mr. Koech-Oyamu for Mutai for the Petitioner*

*Njomo for Tarus*

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

*A.B. Shah for Kabue for Nenee & Ngoletum.*

*Collins Odhiambo – Court clerk.*