



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL AND TAX COURT
WINDING UP CAUSE NO. 1 OF 2015

IN THE MATTER OF:TWIN OAKS LIMITED

AND

IN THE MATTER OF COMPANIES ACT (CAP 486) LAWS OF KENYA

JUDGEMENT

1. Safepak Limited (herein “the petitioning creditor”) on 21st January, 2016, filed a Petition dated 30th December, 2015, against Twin Oaks Limited (herein “the Company”) seeking for orders that the Company be wound up under the provisions of the Companies Act, and that, the Official Receiver be appointed, the Provisional Liquidator of the Company. That such other order be made in the premises as the Court shall seem just.
2. The Company is said to have been incorporated in Kenya with the main objective of carrying on the business of “*importers, exporters, general merchants, international agents manufacturers, packers and repacks suppliers, makers, distributors, buyers, sellers and dealers in consumable articles of merchandise and trade of every kind and description*”.
3. The Petitioning Creditor’s case is that it supplied goods to the Company, the particulars whereof within the knowledge of the Company. As a result of non payment, the Company is indebted to the Creditor in the sum of Kshs.1,361,030,80, being an amount due and owing as at 30th September 2015. A demand notice was served on the Company on the 30th September, 2015, requiring the Company to pay or satisfy the said sum or part thereof or make any other offer to secure or compound the same but three weeks lapsed without the Company complying. Therefore, it is only just and equitable to allow the Petition to wind up the Company.
4. The Petition was supported by an Affidavit filed in Court on 22nd January 2015, sworn by Catherine Wangari Karanja, the Sales and Administrative Manager of the Creditor. Evidence was adduced to the effect that Dominic Mwenda Muinde, a Process server, served upon the Company copies of a winding up petition which was alleged received by a Manager of the Company, but who refused to give out his names and/or identity but accepted service by stamping on the copy retained by the Process Server and which was filed in Court.
5. On 6th April, 2016 a notice of the Petition was published to the Public in the Daily Nation newspaper. The notice was inviting any creditor or contributory desirous of opposing or supporting the Petition to appear in Court and attend to its hearing on 22nd April, 2016. A copy of the published notice was produced in Court marked “NWM1” annexed to the Affidavit dated 8th April 2016, sworn and filed by

the Process server. On 14th April, 2016 the firm of M/s Gichuru Mugambi & Co. Advocates filed notice of appointment on behalf of the Company. The Court record shows that Mr Gichuru appeared before the Deputy Registrar, whereupon, he allegedly told the Court that his client was willing to make a proposal to settle the debt. However, he did not attend Court on the subsequent dates when the matter was listed, despite service of the relevant notices.

6. I have considered the Petition in total and the supporting documents and I find that the Petitioning Creditor has attached to the Petition a copy of a demand letter sent to the Company to pay the sum demanded and there has been no compliance. Under Section 425 of the Insolvency Act of Kenya, 2015 (herein “the Act”) the High Court has jurisdiction to supervise the Liquidation of a Company registered in Kenya as herein and Section 424 (1) (e) of the Act tabulates the circumstances under which a Company may be liquidated by the Court. This includes inter alia, inability to pay its debts. Section 425 empowers a Creditor to apply to Court for the liquidation of the Company. In the instant case, the Company was notified of the Application to liquidate it and as aforesaid the Company appointed an Advocate who filed a notice of appointment, appeared once and vanished.

7. I therefore find that, there is no opposition to the Petition either by the Company or any Contributor pursuant to the advertisement of the Petition. Therefore, in exercise of the powers of the Court under Section of 427 of the Act, I order that an Interim Liquidation Order do issue in relation to Twin Oaks Limited; the Company herein.

8. I further direct that, in accordance with the provisions of Section 432(1) of the Act, within seven days of this liquidation order, in respect of the Company, the Company or the Petitioner shall lodge a copy of this order with the Registrar for registration and also lodge a copy thereof with the Official Receiver, for the appointment of a provisional Liquidator in respect of the Company.

9. I order that the costs of this Petition shall be borne by the Company.

10. Those then are the orders of the Court.

Dated, delivered and signed on this 29th day of June, 2017 at Nairobi.

G. L. NZIOKA

JUDGE

In Open Court in the presence of:

Mr Jelle for the petitioner

No Appearance for the Company

Teresia - Court Assistant