



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

WINDING UP CAUSE NO. 13 OF 2014

IN THE MATTER OF NETWORK RESOURCE LIMITED

IN THE MATTER OF THE COMPANIES ACT CHAPTER 486 OF THE LAWS OF KENYA

RULING

1. The **Notice of Motion** before the court is dated **30th December 2014** and is filed by the Creditor/Applicant pursuant to Rules 7 and 203 of the Companies (Winding Up) Rules, Order 1 Rule 10 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act. This application seeks to secure the following orders:-
 1. ***That this Honourable court be pleased to grant leave to the Creditor/Applicant to be substituted in place of the Petitioner M/s Consolidated Bank of Kenya Limited.***
2. ***That the petition filed on 14th June 2012 be amended to read CFC Stanbic Bank Limited, the Creditor/Applicant, as Petitioner.***
3. ***That costs of this application be provided for.***
4. The application is premised on the grounds set out therein and is supported by the affidavit of **Boniface Machuki** sworn on **30th Decembe 2014** together with its annextures.
5. The Applicant's case is that on 7th October 2011, the company applied to the Applicant Bank for an overdraft facility of Kshs. 3,500,000.00 and letters of credit facility of Kshs 10,000,000 secured by a Debenture dated 3rd November 2011 over the Company property. On 9th July 2012 the original petitioners M/S Consolidated Bank Limited advertised on the daily nation inviting all creditors to appear in the hearing of the petition herein filed on 14th June 2012. (*A copy of Newspaper cutting is exhibited at page 3 of the Applicant's exhibit*). On 12th July 2012 the Applicants instructed their then advocates M/S P M Wamae & Co. Advocates to enter appearance on behalf of the applicant, to wit, they filed a Notice of Intention to appear in petition and a list of parties attending the hearing of a petition. (*Copies of the said Notice and list are exhibited at page 4 and 5 of the exhibit*). The Applicant demonstrated that the company owed the bank under loan Account Number 0100000649826 Kshs.3,863,426.27 as at June 2012 and the debt continued to accrue interest at the rate of 24% p.a. As at 28th May 2013, the company owed the creditor/applicant Kshs 3,521,428.52. Extract of statement of account is exhibited on pages 4 to 9.
6. On March 2014 this cause came up for hearing of the petition upon which the original petitioner informed the Court that its debt has been fully settled. The Applicant now states that it is imperative for the applicant to be substituted in place of the Original petitioner to enable the creditor/applicant recover monies owed to it.

7. The application is opposed by the Affidavit in reply of **Mbalani Echaminy** and its annexures. The deponent states that he has the mandate and authority of the company to swear the affidavit as evidenced by the Resolution of the company of 18th July 2012 annexed and marked 'ME 2'. The deponent states that an application to wind up the company should be considered only when the company has shown that it is unable to pay its debts, yet no demand to pay any outstanding amount has been given by the Applicant. The Respondent states that they do not owe any debt to the original Petitioner, and in respect of the Applicant, he has remitted huge sums of monies to clear his loan amount, and my total indebtedness must therefore be subjected to proper accounting through proper channels. The deponent also disputed the correctness of the amount given by the Applicant as due and stated that a reconciliation and audit of accounts will be necessary before this court makes any orders that may be prejudicial to the company.
8. I have considered the application and opposition to it. The only issue for consideration is whether or not under the law cited by the Applicant, the said substitution is possible. What is clear to me is that the Applicant herein filed Notice of Intention to appear on petition on 13th July 2014 vide their former advocates M/s P. M. Wamae & Co. Advocates. A list of parties attending the hearing of petition was filed in court on 17th July 2012. The original petitioner therein M/s Consolidated Bank of Kenya Limited was listed as the first party while the Applicant was listed as the 2nd party to appear in the hearing of the petition. The company has since liquidated the debt owed to the original petitioner therein M/s Consolidated Bank of Kenya Limited, who have ceased to be a creditor in these proceedings. The Creditor/Applicant herein prays to be substituted as the Petitioner and prosecute the winding up cause.
9. I have considered the law cited by the Applicant. Under Order 1 Rule 10 this court has the jurisdiction to substitute parties and join parties as the need they arise. The overriding objectives under Section 1A, 1B and 3A of the Civil Procedure Act also mandates this court to do justice without delay and in the most cost effective way. Further, the substitution of the Applicant to be the Petitioner will not in any way embarrass the Respondent or cause the Respondent to suffer any prejudice.
10. It is in the interest of justice that the Applicant be allowed to petition against the company to enable it recover monies to it, as a creditor, of Kshs.3,521,428.52.
11. For the reasons foregoing, the application by the Creditor/Applicant herein dated 30th December 2014 is allowed as prayed with cost in the cause.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 29TH DAY OF MAY 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Mungumia for the Claimant/Applicant

Mr. Gichuhi for CFC Bank

Teresia – Court Clerk