



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 430 OF 2014**

**SKY VIEW BLOOMS LIMITED.....1ST PLAINTIFF**

**KANARO MIRITI.....2ND PLAINTIFF**

**VERSUS**

**NANCY WANGARI MAINA.....DEFENDANT**

**RULING**

**INTRODUCTION**

1. The Notice of Motion Application dated 6th May 2015 filed by the 2nd Plaintiff seeks the following orders:-
  1. ***A declaration that the dissolution of the company by the registrar is null and void;***
  2. ***A declaration that whatever action that will be taken in these proceedings be deemed to have been correctly taken;***
  3. ***The reinstatement of the company;***
  4. ***Any other such order be granted as the court deems fit.***
  5. ***Costs of this application.***
2. The application is premised on the grounds that:-
  1. ***That the Defendant/Respondent solely initiated the process of dissolution/winding up of the 1st Plaintiff and has fraudulently occasioned Gazette Notice number 6197 to be published on the 5th September 2014.***
  2. ***That the dissolution was effected without the consent of the directors and in violation of the company's article of association.***
  3. ***That due to the action of the Defendant/Respondent, the 1st Plaintiff/Applicant has now been illegally and contrary to the 1st Plaintiff's Articles of Association been listed among the companies that is dissolved, despite the fact that the issues raised in my prior application have not been heard and determined.***
  4. ***That the Defendant/Respondent in a bid to circumvent the course of justice and run away from liability for illegally dissolving the company and basically running down the company contrary to the companies Memorandum of Association and the Articles of Association have filed an application dated 28th January 2015.***
  5. ***That if the company is not reinstated, this court will be rubber-stamping and condoning an***

- injustice and the Defendant will have been issued with a run out of jail card as all issued in my application will not be determined.*
6. *That the Defendant/Respondent has not exposed the 2nd Plaintiff/Applicant to potential damage claims as she may be called upon to indemnify the company against any loss or liabilities as stipulated in clause 30 of the company/s articles of association.*
  7. *That it is in the interest of justice that the application be granted.*
3. In support the application the 2nd Plaintiff/Applicant **Kanaro Miriti** has sworn an affidavit on 6th May 2015 which expounds on the above grounds.
  4. The application is opposed by a Notice of Preliminary Objection and Grounds of Opposition filed in court on 29th May 2015 by the Defendant. The Respondent in his objection states that the application and the instant suit are without merit and lacks in substance, and that the derivative suit brought herein by way of the Plaintiff has abated by virtue of the dissolution of the company which is the subject matter of the suit. The Defendant annexed Gazette Notice Number 9274 dated 16th December 2014 in which the Registrar of Companies gazetted the dissolution of the 1st Plaintiff company. The Respondent therefore submitted that the company cannot be revived, and more so, without the participation of the Registrar of Companies in these proceedings.
  5. I have carefully considered the objection by the Respondent. It is clear that pursuant to the Gazette Notice Number 9274 dated 16th December 2014, the Plaintiff Company stood dissolved. The action of dissolution is that of the Registrar of Companies. An application to reinstate a dissolved company must of necessity include the Registrar as a party. In that regard the suit herein and this application cannot be sustained without the participation of the Registrar.
  6. The above notwithstanding, it is clear to me that the said company was dissolved in circumstances which are unclear and which appear to have the 2nd Plaintiff's rights. The Companies Act stipulates under Sections 171 to 175 circumstances in which voluntary winding up of a company can be done. The Applicant had all the rights to participate in those processes. The claims by the Applicant therefore appear genuine.
  7. In dismissing this application as i hereby do, I nonetheless grant the leave to the Applicant to amend the proceedings and join the Registrar of Companies to the suit and then to bring the same application for a re-consideration upon its merits with all relevant parties aboard.
  8. Each party shall bear their own costs.

Orders accordingly.

**DATED, READ AND DELIVERED AT NAIROBI**

**THIS 18TH DAY OF SEPTEMBER 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

M/s Mbonye for Plaintiffs

Mr. Maloba holding brief for Wangila for Defendant

Teresia – Court Clerk