



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

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**MISCELLANEOUS CAUSE NO. 12 OF 2014**

**IN THE MATTER OF PICASSO CHEMICALS LIMITED**

**AND**

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

**AND**

**IN THE MATTER OF AN APPLICATION TO RESTORE PICASSO CHEMICALS LIMITED'S  
NAME TO THE REGISTER OF COMPANIES UNDER SECTION 339 OF THE COMPANIES  
ACT**

**NEWTON OMBUNI::: PLAINTIFF**

**VERSUS**

**PICASSO CHEMICALS LIMITED ::::::::::::::: DEFENDANT**

**J U D G E M E N T**

1. By a Plaint filed herein on **12th January 2015**, the Petitioner **Newton Ombuni** petitioned this court for the following orders:-
  - a. ***That the name of Picasso Chemicals Limited be restored to the Register of Companies.***
  - b. ***The costs of this Petition be provided for***
  - c. ***Such other orders be made as this honorable court shall deem just to grant***
2. The Petitioner provided sole testimony for his case. The Petitioner's case is that he was an employee of Picasso Chemicals Limited on 24th May 2011 when the factory belonging to the company got burnt down. The said Picasso Chemicals Limited was a manufacturer and seller of adhesive paints and had a factory at Kariobangi Light Industries section, Kariobangi, Nairobi. During the accident aforesaid, the Petitioner sustained extensive burn wounds on the face, chest, upper and lower limbs which covered 19% of his body. The Petitioner also sustained inhalation burn wounds. Subsequently the Petitioner filed suit against the company through the firm of Messers J. O. Juma & Company Advocates. The company appointed the firm of Oyatta & Company Advocates to act for it. Vide an application dated 19th March 2014, the Company's counsel sought to have the said suit dismissed on the ground that the Defendant company herein was dissolved on 16th November 2012. The court allowed the said application and dismissed the suit with costs to the Defendant. The Petitioner is aware that the company was dissolved through Gazette Notice copies of which the Petitioner. The Petitioner believes that the process of

- dissolution of the company under Section 339 of the Companies Act (Cap 486) of the Laws of Kenya) was commenced at the instigation of the directors of the company to defeat justice and to avoid settling its liabilities. The Petitioner's case is that the directors of the Company procured its dissolution with a view to limiting their exposure to the company's creditors. The Petitioner urges that unless the dissolution of the company is overturned by this court, his claim against the Company will be rendered nugatory notwithstanding its merits.
3. The Petition is not opposed.
  4. On 3rd November 2015 the Petitioner provided oral evidence, which confirmed the particulars of his Petition. The Petitioner testified that he suffered extensive fire injuries while in the cause of employment with the Defendant. The Petitioner filed a civil claim for compensation. However, the company applied for the dismissal of the Plaintiff's suit on the grounds that the company had ceased business. The company was subsequently dissolved by the Registrar of Companies on 16th November 2012.
  5. The Petitioner's case is that the said dissolution was made with the sole purpose to ensure that the Petitioner was not paid his dues arising from the aforesaid fire accident. The dissolution was therefore premeditated and in bad faith, and the Petitioner prays that the company be returned to the Registrar of Companies.
  6. I have carefully considered the Petition. The only issue I raise for determination is whether this court has the discretion to return the company to the Registrar of Companies.
  7. From the evidence of the Petitioner, it is clear that the company applied for dissolution only for the purpose of escaping its liabilities, among them compensation owed to the Petitioner. If that is correct, which this court believes it to be, the action by the company was that of utmost cruelty, and was meant to deny a person who had already suffered serious fire injuries, and the only survivor of the fire tragedy, the only means of livelihood, that is, compensation for his injuries.
  8. I am satisfied that the company should be returned to the Register of Companies forthwith, so that it meets all its legal obligations not only to the Petitioner but to others who could be suffering in silence.
  9. The Plaintiff has proved his case on a balance of probabilities. I make the following orders:-
    - a. ***The Petition is allowed.***
    - b. ***The name of Picasso Chemicals Limited be and is hereby restored to the Registrar of Companies.***
    - c. ***This order shall be served upon the Registrar of Companies, and shall bind the Registrar of Companies upon receipt by the Registrar who shall act on its within 7 (seven) days of the receipt whereof.***
    - d. ***Costs of the Petition shall be for the Petitioner.***

That is the Judgment of the court.

**READ, DELIVERED AND DATED AT NAIROBI THIS 20TH DAY OF NOVEMBER 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

**No appearance for the Plaintiff**

**No appearance for the Defendant**

**Teresia – Court Clerk**