



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

WINDING UP CAUSE NO. 19 OF 2009

IN THE MATTER OF ELEGANCE INVESTMENT LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT, CAP 486 OF

THE LAWS OF KENYA

BETWEEN

ANTONY CHINEDU IFEDIGBO ::::::::::::::::::::;::::::::::::: PETITIONER

VERSUS

ELEGANCE INVESTMENT LIMITED ::::::::::::::;::::::::::::: 1ST RESPONDENT

JOYCE AKINYI OCHIENG ::::::::::::::::::::: 2ND RESPONDENT

J U D G E M E N T

1. By a **Petition** dated 7th July, 2009 and filed in Court on the same date, the Petitioner, **ANTHONY CHINEDU IFEDIGBO** petitioned this court praying that:-
 - a. *The ELEGANCE INVESTMENT LIMITED be wound up by the Court under the provisions of the Companies Act, Cap 486 of the Laws of Kenya and the assets be distributed in specie, that is, in accordance with the members' respective shareholding.*
 - b. *An interim liquidator be appointed and be given the full custody of the Company's property, management and running of the business of the Company known as DEEP WEST RESORT on property L.R No.209/9339 without any interference from the Petitioner and the 2nd Respondent pending the hearing and determination of the Petition.*
 - c. *That the 2nd Respondent be ordered to pay the costs of this Petition.*
 - d. *That such order may be made in the premises as shall be just.*
2. The 1st Respondent Company was incorporated in Kenya with the nominal share capital of

Kshs.100,000/= divided into 1,000.00 shares of Kshs.100.00 with the amount of the capital paid up as Kshs.200.00. The objectives of the Company were, *inter alia*, to carry on business of real estate developers and management property development, debt collectors, etc, as per the Company's Memorandum and Articles of Association. The Petitioner and the 2nd Respondent are the only shareholders and directors of the company, each holding one share.

3. The grounds upon which the Petition is based are stated in paragraphs 5 to 25 of the Petition.
4. In opposing the Petition the 2nd Respondent has filed an **affidavit** dated **21st September, 2011** and filed in Court on **27th September, 2011**. The 2nd Respondent also on **21st September, 2011** filed **Notice** to cross examine the Petitioner.
5. On 23rd April, 2012 with the leave of this court parties agreed to dispense with the Petition via written submissions and the court reserved the Judgment for 20th June, 2012. In that Ruling the court stated:-

“In my view this court would not render adequate justice to the matter without further evidence from the parties . . . The filed submissions do not contain any information which may help the court in that regard . . .”

The court declined to render a Judgment on the matter and directed the parties to provide oral testimony which could be subjected to cross examination. On 13th November, 2012, the 2nd Respondent filed a Supplementary List and Bundle of Documents. However before the matter could be listed for hearing the oral evidence of the parties, Mr. Oluoch for the 2nd Respondent informed the court in the presence of M/s Ng'ania for the Petitioner that the Petitioner had been deported to his home country Nigeria. With that information it became clear that the envisaged oral evidence would not be available, and the court directed the Counsel to file further submissions in addition to those already filed. I will therefore determine this Petition on the strength of the pleadings and the written submissions.

6. I have carefully considered the Petition and the opposition to it. I have established as matters of fact that there are only 2 directors and shareholders in the Company, and which parties were at one stage husband and wife. These are the Petitioner and the 2nd Respondent. They are the only shareholders in the 1st Respondent Company. It is also on record that the relationship between the Petitioner and the 2nd Respondent is so bad that they cannot sit down to transact the business of the 1st Respondent Company. The bitterness between the two parties is evidenced in the affidavits in support and in opposition to the Petition. It is clear that the business of the Company will continue to suffer. Now it has also emerged that the Petitioner has been deported to his home country Nigeria. Nobody knows when the Petitioner shall be back. This court can only imagine how the 1st Respondent Company will be run or is being run. If it is being run, then, obviously the Petitioner has no control in the way its business is being transacted. If it's not being run, then under the law it has no business being in existence. However, what is clear to me from the record is that the relationship between the Petitioner and the 2nd Respondent is so bad that the most optimistic person cannot revive it.
7. The only issue I raise herein is whether this court has the jurisdiction to grant the Petition. The general jurisdiction is conferred by Section 218 of Companies Act, Cap 486.

Section 218 “The High Court shall have jurisdiction to wind up any company registered in Kenya.”

Section 219 provides circumstances in which a company may be wound up by the court. The relevant circumstances to this case are Section 219, where:-

(b) Default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.

(d) The number of members is reduced in the case of a private company, below two . . .

(f) The court is of opinion that it is just and equitable that the company should be wound up.

8. I think all substitutions (b), (d) and (f) of Section 219 apply in this Petition. I have looked at the filed Annual Returns contained in the 2nd Respondent's Supplementary List and Bundle of Documents. The last Annual Report filed for the 1st Respondent Company was on 22nd November, 2011 for the year 2011, while the last Account/Statement for the said company was for the year 2012. The 1st Respondent Company has not filed Annual Returns for the years 2012 and 2013, and there is no likelihood that it will be done for the year 2014. The statement of account is also pending for the years 2013 and 2014. It is also clear that the Respondent Company is not holding the statutory meetings as is required under the Act.
9. As for Section 219 (d) there is no doubt that with the deportation of the Petitioner from Kenya the number of members of the Company has been reduced to below two, which will make it impossible for the Company to transact its business. This leads me to Section 219 (f) which states that if the court is of the opinion that it is just and equitable, the company be wound up. I totally agree that the justice of this matter demands that the Company be wound up by this court so that its assets may be salvaged by the process of this court.
10. It has been pointed out by the 2nd Respondent that there are several suits or cases in court involving the Petitioner and the 2nd Respondent, and that the 1st Respondent Company should not be wound up while those cases are still pending. I have considered that submission. My answer to it is that with the Petitioner deported to his home country, there is no knowing when the said suits will be concluded, if ever. However, more importantly, under Section 223 of Cap 486, an Interested Party has the liberty to go to the relevant court, or to come to this court, for an order staying those other suits until the Petition is concluded. The 2nd Respondent has not sought any such stay order.
11. The upshot of the foregoing is that this Petition succeeds, and I grant prayers as follows:-
 - a. ***The 1st Respondent ELEGANCE INVESTMENT LIMITED be and is hereby wound up by court under the provisions of the Companies Act, Cap 486.***
 - b. ***The assets of the 1st Respondent Company shall be distributed in specie, that is, in accordance with the members' respective shareholding.***
 - c. ***I hereby appoint the Official Receiver in Bankruptcy to be Official Receiver for Winding Up purposes under Section 230 of Cap 486.***
 - d. ***Each party to bear own costs of the Petition.***

That is the Judgement of the court.

DATED, READ AND DELIVERED AT NAIROBI

THIS 19TH DAY OF MAY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Havi for Petitioner

No appearance for 2nd Respondent

Teresia – Court Clerk