

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

WINDING-UP CAUSE NO. 27 OF 2012

IN THE MATTER OF CONCEPTS AND BEYOND LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT CHAPTER 486

OF THE LAWA OF KENYA

R U L I N G

1. The Petition of Consolidated Bank of Kenya Ltd (hereinafter “the Petitioner”) was filed on 25 October 2012. It seeks the winding up of the company **Concepts and Beyond Ltd** (hereinafter “the Company”) under the provisions of **section 219 (e)** of the *Companies Act, Cap 486, Laws of Kenya*. The Petitioner also seeks that it be paid out of the assets of the Company, on a priority basis, its debt of Shs. 774,081.40. The Petitioner noted that the Company was indebted in the above amount as a result of a loan advanced to the Company pursuant to a Letter of Offer dated 13 May 2011, such offer having been accepted by the Company. The facility was advanced at an interest rate of 21% per annum which the Petitioner could vary at its sole discretion from time to time without necessarily informing the Company. The Petitioner noted that it had honoured its obligation and released the said funds to the Company in order for it to service a Local Purchase Order from Nairobi Bottlers Ltd. Despite warning and letters of demand, the Company had been unable to pay the said debt.
2. The Petition was served upon the Company and a Notice of Appointment of Advocates was filed by Nzioka & Co., on 26 November 2012. It is noted that the advocates for the Petitioner advertised the said Petition for hearing on 29 November 2012, in the Kenya Gazette of 23 November 2012 under Gazette Notice No. 17,005. On that day, before the Hon. Deputy Registrar of this Court there was no appearance for the Company and this matter was placed for hearing before Mutava J. on 29th November 2012. Again on that day, Mr. Githui appeared for the Petitioner but there was no appearance from Nzioka & Co. for the Company. The Court directed that the Petitioner was to be allowed 30 days in which to file written submissions as regards the Petition and the same would be mentioned on 24 January 2013 for the purposes of taking a judgement date. Unfortunately, on that date, the Court was not sitting and it has taken until 7 June 2013 for this matter to come before this Court.
3. The Petitioner’s submissions were filed herein, as directed, on 22 January 2013 along with the Petitioner’s list and bundle of documents. In this connection, I have perused the copy of the letter of offer made by the Petitioner to the Company and dated 22nd July 2011. I note that the same was accepted by **Noah Nasrali** and **Paul Abanga** on behalf of the Company on the same date. I have also noted the copy of the letter of demand dated 2nd July 2012 as well as the copy of the Notice to Wind-up the Company. The Petitioner has also produced a copy of the Official Receipt dated 13 November 2012 from the Government Press as well as the Official Receipt from the Nation Media Group Ltd for the advertisement of the Winding-up, run in the Daily Nation issue dated 15 November 2012. The Petitioner attached to its submissions a copy of *Winding-up Cause No. 43 of 2003* being in the matter of the **Ruaraka Printing Press Ltd**. As the learned lady Judge observed in that Petition, in quoting *Winding up Cause No. 29 of 1999 Re Echuka Investments Ltd*:

“..... Where a company owes the creditor debt which entitled it to a winding up order

and only the precise amount of debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely.”

4. In this matter, no defence has been offered by the Company. There is not even been any denial of the debt nor indeed that the monies were advanced by the Petitioner under the said Letter of Offer dated 22 July 2011. I have noted that the securities in respect of the loan comprised (a) Letter of Set-Off (b) Letter of Deposit and (c) Letter of Undertaking from Nairobi Bottlers Ltd. The facilities were offered to the Company as an invoice discounting facility in the amount of Shs. 1.5 million. As far as this Court is concerned, the Petitioner has provided adequate proof of the debt. Accordingly, I grant the Order that the Company be wound up under **section 200** of the *Companies Act*. This Order will be served upon the Official Receiver of the Republic of Kenya who shall file herein a report on the affairs of the Company within 6 months from the date hereof. The Petitioner will also have the costs of this Application.

DATED and delivered at Nairobi this 13th day of June 2013.

J. B. HAVELOCK

JUDGE