REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

WINDING-UP CAUSE NO. 11 2013

IN THE MATTER OF THE COMPANIES ACT

(CAP 486 OF THE LAWS OF KENYA)

IN THE MATTER OF WINDING-UP OF BUFFET PARK LIMITED

AND

IN THE MATTER OF A PEITION BY A MINORITY SHAREHOLDER

R U L I N G

1. What is before this Court is the Notice of Motion by the Petitioner herein, one **George Mbichire** dated 4th June 2013. Fairly obviously, it is brought under the provisions of **Rules 5 (2) and 7 (2)** of the *Companies Winding-Up Rules* and **Order 41 Rules 1 and 2** as well as **Order 51** of the *Civil Procedure Rules, 2010*. The Application seeks a whole range of prayers but initially that the present directors of Buffet Park Limited (hereinafter "the Company") be restrained by injunction from basically dealing with the affairs of the same. The Respondents are detailed as **Gitonga Gathua (Chairman), Ndegwa Nderitu (Finance Director), Peter Kirianji (Human Resources Director), Patrick G. Muya (Customer Service Director) and Peter Wachai (Director)**. The Application also asks that pending the hearing and determination of both this Application and the Petition, that this Court be pleased to appoint an Interim Liquidator for the Company. Thereafter, the Petitioner set out what it saw as the powers that this Court should give to the Interim Liquidators, which I found confusing, as it had only prayed for one Interim Liquidator to be appointed. The prayers went on to detail that this Court should fix the remuneration of the Interim Liquidators and then, in the alternative asked the court to appoint an Official Receiver for the Company. The Petitioner also prayed that copies of the (any?) Order made herein should be served upon the aforesaid directors and by prepaid registered post on the Company. Quite extraordinarily, the Petitioner then asked that he be given liberty to apply to vary or discharge "this Order" upon giving not less than 7 clear days' notice in writing by his advocates on record.
2. The Petitioner based his Application on three grounds as follows:

> **"(a) The Petitioner/Applicant's has a strong prima facie case with a probability of success for relief under Section 211 of the Companies Act or for a winding up order under Section 219 of the said Act.**
>
> **(b) The affairs of Buffet Park Limited have been and are still being grossly**

misconducted and mismanaged and that the funds and assets of Buffet Park Limited are in grave danger of misappropriation and misapplication.

(c) Unless Interim Liquidators or Receivers are appointed in the first instance exparte there is grave danger that the books of account and other relevant records of Buffet Park Limited will either be destroyed or altered or otherwise tampered with and the funds and assets of Buffet Park Limited will either be removed or otherwise alienated so as to render them untraceable".

The Application was supported by the Affidavit of the said **George Mbichire** dated 4th June 2013. The deponent traced the history of the Company, its incorporation as well as its objects. He noted that initially there were 6 shareholders, of which he was one, each allocated 80 shares in the Company. He was also the Finance Director of the Company between the years 2001 and 2006. He observed that the Company had expanded and that, at the date of the last filed Annual Returns, each member now held 2200 shares. He maintained that from late 2010, he was totally excluded by the management and Board of Directors of the Company from the day-to-day and general running thereof. He had received no notice of any meetings and had been denied access to the financial statements and other documents of the Company. He noted that, again since late 2010, he had been denied the payment of any dividends and/or bonuses.

3. **Mr. Mbichire** went on to estimate the value of the Company today at Shs. 600 million and noted that it had acquired 20 acres of land at Oloitokosh, Kajiado District, owned a building in Nairobi West in which the Company's second restaurant was located as well as the initial restaurant, the Buffet Park at Hurlingham, Nairobi. The deponent then went into considerable detail as to his purchasing a truck and the Company standing in as his guarantor. He accused his fellow directors of the Company who, instead of supporting him, alleged that the said guarantee issued by the company was improperly acquired and indeed forged. However, he had been acquitted of any criminal offence in this connection on appeal to this Court. Then followed a long saga as to how the deponent felt he had been mistreated by his fellow directors and shareholders. The Company had engaged in various activities without his approval including a project in Thika and a bed-and-breakfast operation near Masaba Hospital, off Nong Road, Nairobi. The deponent wound up his affidavit by stating the following in support of his Application that the Company be wound up:

"a. The Company and the Directors' failure to honour the Articles of Association as evidenced failure to call me for all or the many meetings have been excluded before taking the drastic actions they have taken over the years without any notice.

b. I was excluded from the participation in the Management of the affairs of the Company.

c. There is lack of probity with which the Directors of the Company are and have since late 2010 been carrying on the affairs of the Company.

d. There are suspicious circumstances surrounding the management of the affairs of the Company by the said Directors.

e. There is total breakdown of the relationship between the members and the Directors of the Company and I.

f. The virtual enmity, existing between the Equity owners and the animosity and indifference visited on me by the said members and Directors, the trust and confidence reposed by me in the members and the Directors of the Company/Respondents has totally broken down and has ceased to exist.

g. I can get no relief at a general meeting of the shareholders of Company as the rest of the members/Respondents own a large majority of the shares

therein and the Articles of Association advocate the use of shares as a method of voting on all issues in controversy.

h. The said members and Directors/Respondents have clearly ganged up against me to essentially make my stay at the Company untenable.

i. In winding up of the Company, after payment of all its liabilities, there would be a surplus available for distribution amongst its shareholders.

j. In the premises it is just and equitable that the Company be wound up by this Court.

k. The affairs the Company are being conducted in a manner oppressive to me and that while it would be just and equitable that the Company should be wound up, to do so would unfairly prejudice me".

Finally, **Mr. Mbichire** sought an order for the immediate freezing of the bank accounts of the Company with Barclays Bank of Kenya Ltd as well as with Equity Bank Ltd.

4. The Replying Affidavit dated 26th June 2013 of the Chairman of the Company, Mr. **Gitonga Gathua** is a voluminous document which goes to 208 pages. The salient features of the Replying Affidavit were that, during the period when the Petitioner served as Finance Director of the Company, it was not achieving its growth targets and the decision to replace the Petitioner was taken at an Annual General Meeting. The deponent enumerated the circumstances as regards the relationship between the other shareholders and directors of the Company and the Petitioner. He related how the Petitioner had on various occasions obtained personal credit facilities in the name of the Company. He noted that sometime in April 2005, the Petitioner had forged the signatures of the directors of the Company on a Guarantee and Indemnity Form in order to obtain credit facilities from CFC Stanbic Bank to purchase a truck registration number KAT 346R. The Petitioner had defaulted on the loan and the Bank made demand on the Company in relation thereto. Criminal charges were also proffered as against the Plaintiff who was duly convicted and sentenced to serve 3 years on 14th November 2010.
5. The deponent then went on to say that vide a Special General Meeting of the Company held on 4th November 2006, the Petitioner was suspended from being a director of the Company. To this end, he attached a letter dated 7th November 2006 to his said Affidavit but, interestingly enough and as picked up by the Petitioner in his Replying Affidavit, that letter was addressed to a Mr. George Ndegwa Gikuhi not the Petitioner. Thereafter, the deponent attached to his Replying Affidavit minutes of five meetings of the Company including the Annual General Meetings of the 2009, 2010 and 2011 as well as the minutes of 2 Special General Meetings held on 8th October 2011 and 23rd August 2012. On a perusal of those minutes, it is plain that the Petitioner attended the Annual General Meetings for 2009 and 2010 and the Special General Meeting held on 23rd August 2012. It was interesting to note that at the latter meeting the Petitioner's Letter to the Company dated 26th June 2012 was discussed, in which the Petitioner had demanded payment of dividends in arrears. Minute 3/08/12/EGM reads:

"The chair highlighted the content of the letter to the members that Mr. Mbichire had written a letter to Buffet Park demanding payment of dividends in arrears. However, Buffet Park as a civil liability owed against CFC Stanbic bank of Kshs. 1,477,206.40 as at 22nd February, 2007. It is alleged that Buffet Park members passed a resolution to allow borrowing of the amount referred therefore in a letter dated 22nd February, 2007 from Njoroge Regero & CO. Advocates, the lawyer of CFC Stanbic Bank to Buffet Park.

The members agreed that they did not pass such a resolution to borrow any funds from CFC Stanbic Bank and that the liability they are alleged to owe CFC Stanbic Bank was a fraudulent act by Mr. George Mbichire.

The members passed a resolution therefore, that Mr. Mbichire will not be paid any dividends by Buffet Park until and when such the case is cleared. The members further agreed to seek legal advice from the company's lawyer and Mr. Musindi was directed by the members to research on the case and give the members a legal advice on the matter."

Mr. Gathua concluded his Replying Affidavit by stating that he felt that the Petitioner should abide by the resolutions of the shareholders of the Company to pay up his liability to CFC Stanbic Bank and then exit the Company by offering his shareholding for sale, if he felt that he could no longer do business with the other members. The deponent was of the opinion that the Application and the entire Petition was premature as the parties had not exhausted the avenue of arbitration as provided for under clause 31 of the Articles of Association of the Company.

6. In a Supplementary Affidavit sworn on 28th June 2013, the Petitioner stated that he had been a founder member and a director of the Company from 2001 to 2006. He stated that there was no evidence of his replacement as a director because of bad performance. The Petitioner stated that he was aware of a cheque signed by the Company officials namely Mr. Gathua and Mr. Ndegwa for Shs. 426,552/-which was the amount received by the Company upon his behalf from the Lion Insurance Company(?) in compensation for the repairs that he had carried out on his truck that had been involved in an accident. Further, the Petitioner noted that there had been no appeal against the Judgement of **Justice Mbogholi Msagha** in which he had been completely absolved of from any wrongdoing and/or obligation regarding the alleged loan that the Petitioner was supposed to have received from the CFC Stanbic Bank. He further maintained that the Respondent had failed to produce annual audited accounts indicating the financial position of the Company, its assets and liabilities. He also strenuously denied that he had brought the Company to its knees – there was no proof of embezzlement. Further, the Petitioner had not had explained to him why he had not been paid any dividends in respect of his shares from 2010 to 2012. He maintained that the deprivation of dividends, as alleged by the Respondent, was on the basis of the dismissed criminal allegations and/or charges and such was a classic case of double jeopardy in view of the fact that the criminal case was dismissed and that he was acquitted and absolved from any wrongdoing. Finally, the Petitioner referred to the incorporation of Buffet Properties Ltd of which he was the only shareholder in the Company not involved. He maintained that Buffet Properties Ltd was formed as a decoy to siphon money from the Company as was evident from the "December Accounts" (from which I understood that he was referring to the bank statements for that month exhibited to the Replying Affidavit). He reiterated that, in his opinion, the Company was being raided by the majority of its shareholders at his expense because of a misguided understanding that he owed the Company monies. It was for such reasons that the Petitioner sought Orders from this Court that the Company's bank accounts be frozen and that a manager/receiver and/or liquidator be appointed to manage the affairs of the Company until it was finally wound up and/or audited accounts of stock was taken with a proper valuation being done and that he should be "allowed to take what rightfully belongs to me".
7. In his submissions before Court on 2nd July 2013, Mr. Echugi for the Petitioner repeated the Orders that were being sought by the Petitioner as above. Counsel maintained that from late 2010 to date, the Petitioner had been totally and suddenly excluded from the operations of the Company. He had not received annual accounts and he had not received any notice of any meetings, A.G.M. or E.G.M. He noted that it had been agreed that 30% of the profit of the Company would be shared out amongst the members as dividends but the Petitioner had received no dividends since 2010, whereas the other shareholders had helped themselves. Counsel drew the attention of the Court to the Judgement of **Justice Mbogholi Msagha** at Exhibit G. M. 7 to the Affidavit in support of the Application. It was quite clear from that Judgement that his client had been fully exonerated of the criminal charges brought against him. Mr.Echugi maintained that the issues now being raised by the Respondent in this connection were conclusively determined by that Judgement. He also observed that a lot of money had been taken from the Company to Buffet Properties Ltd which is a totally different company. 12 out of the 13 members of the Company were members of Buffet Properties Ltd, the only exception being the Petitioner, who was unaware of this company. Counsel further observed that it had been maintained in the Replying Affidavit,

that the Company no longer operated its restaurant in Hurlingham yet the Petitioner had recently visited the restaurant premises in that connection to find it still in operation. Further, in counsel's view, the Petitioner had shown that there was a danger of misappropriation and improper use of Company money which had led to the current Application being filed. No reply had been received from the Company to the Petitioner's letter dated 26th June 2012, although Counsel did admit that his client had attended the meeting of the Company in August 2012.

8. Referring to the various meetings of the Company, Mr. Echugi submitted that the copies of minutes of meetings attached to the Replying Affidavit showed that apart from one meeting, the Petitioner was not in attendance. He had missed out on the payment of dividends and bonuses. He was last paid piecemeal in 2008. The directors of the Company were being paid Shs. 400,000/- quarterly. The Petitioner was paid Shs. 100,000/- in 2012 by a cheque covering his bonus and partly for dividend. All the shareholders, except for the Petitioner, had received dividends. The Petitioner was not a shareholder of Buffet Properties Ltd. In counsel's opinion, the matter before this Court was a clear case of fraud on the minority. What had been shown before this Court would justify the Petitioner obtaining an injunction in the normal way. The Replying Affidavit clearly showed that there had been a fraudulent divergence of monies to Buffet Properties Ltd. Counsel submitted that the appointment of an interim liquidator would ensure fair dealings within the Company and the proper use of Company funds. He referred this Court to the Court of Appeal case of **Leisure Lodges Ltd v Shretta Civil Appeal No. 10 of 1997 (unreported)** more particularly the judgement of **Tunoi JA**. Counsel felt that the situation in that case was similar to the position here.
9. Mr. Musundi, in reply for the Respondents, pointed to a number of facts for which there had been no explanation from the Petitioner. Firstly, there was no evidence as to any monies been paid to him by the Company in relation to a claim paid out by the Lion of Kenya Insurance Company Ltd as regards an accident to the Petitioner's said lorry. The loan facility at CFC Stanbic Bank had not been arranged or agreed to by resolution of the Company. In the evidence in the subordinate court in the criminal matter as brought against the Petitioner, the document Inspector had confirmed the forging of the signatures to the alleged Company resolution. As a result, the directors of the Company had lost faith with the Petitioner and he had left its services. However, from time to time, he had interfered with the Company's affairs as per the letter of warning that was addressed to him by the Company's advocates dated 17 March 2008 (Exhibit "GG 4"). Counsel noted from the minutes exhibited to the Replying Affidavit, that the Petitioner had attended most of the General Meetings of the Company and consequently he could not come to this Court to say that he was not involved in the operations thereof.
10. It was quite clear to Counsel that the Petitioner's main complaint was that he was not receiving his dividends and hence wanted the Company wound up. The bone of contention as between the Petitioner and the Respondent, was that CFC Stanbic Bank loan had not been paid up. The directors of the Company could not obtain any credit facilities as their names had been forwarded by CFC Stanbic Bank to the Credit Reference Bureau. Mr. Musundi maintained that the Orders being sought by the Petitioner cannot be made, as the Company was liquid. The loan account with Barclays Bank of Kenya Ltd for the purchase of the Nairobi West property was being serviced out of the rents being received for that property. There was no evidence of fraud as against the Company. As regards Buffet Properties Ltd, paragraph 20 of the Replying Affidavit explained the position with regard to the incorporation of that company. The 12 members of Buffet Properties Ltd were contributing to that company by instructing that the payment of their dividends from the Company be paid to it. Counsel commented that the financial statements of the Company for the year ended 31st December 2012 were under audit and would soon be available for the benefit of shareholders, including the Petitioner. Counsel noted that the restaurant business at Hurlingham had been terminated by the landlord of the premises that the restaurant occupied. Further, there was no danger shown in the Petitioner's Affidavits as to the wastage of the Company's assets. Finally, counsel noted that the Articles of Association of the Company provided that disputes between shareholders should be referred to arbitration. On the part of the Respondents, they would be happy to see this matter so referred. In a brief rejoinder, Mr. Echugi referred to the minutes of the Company's Annual General Meeting of 21st April 2012 in which they had been mention of Oloitikosh property. He queried why the same would be mentioned at the Meeting, if it was not part of the Company. Further, there was mention of the Company's interest in property at

Naivasha and Thika plus an Investment Policy. He maintained that the Respondents were determined to hide the affairs of the Company from the Petitioner. As regards the loan from CFC Stanbic Bank, counsel referred to the Judgement of **Justice Msagha Mbogoli** in which the Judge had confirmed that the amount of been paid.

11. There is no doubt that the authorities cited to this Court by the Petitioner being **Leisure Lodges Ltd v Shretta** (supra) is the definitive case as regards appointment of provisional liquidators by the provisions of **section 235** of the *Companies Act*, one of the provisions relied upon by the Petition herein. The finding of **Shah JA** (as he then was) at page 10 of his Judgement in that case is indicative:

> **"I see no reason why the superior court, in an appropriate case when circumstances so warrant, cannot appoint a person other than the official receiver, to act as a provisional or interim liquidator. But I would hasten to add that such an appointment can only be made when the court, on the material before it, is convinced that the assets of the company ought to be preserved pending winding up proceedings. Whilst the courts are to go by what the Act prescribes the court cannot lose sight of the fact that in appropriate cases the courts are duty bound to see to it that justice is administered, within the confines of the law, as to preserve the rights of the minority shareholders. I would hasten to add that if justice so dictates and the Act allows it, a provisional liquidator, or an interim liquidator can be appointed."**

Similarly, and as pointed out by counsel for the Petitioner, the Judgement of **Tunoi JA** (as he then was) also proved useful to this Court. The learned judge recorded that the respondent in that appeal deponed to an affidavit which detailed that unless an interim liquidator was appointed immediately, the current management, which was entirely drawn from the majority shareholders, would take away, waste or steal the assets of the appellant company to the detriment of the minority shareholders and creditors. The Petitioner's counsel would have this Court consider that the position in this matter before this Court was similar to the **Leisure Lodges'** situation. However, **Tunoi JA** at page 9 of his Judgement in that Appeal had this to say concerning the appointment of a provisional liquidator:

> **"The purpose of making the appointment is to preserve the company's assets and to prevent the directors from dissipating them before a winding up can be made – see Pennington's Company Law, 4th Edition, at page 867 where the learned author says:**
>
> **"It has been said that a provisional liquidator will only be appointed if the company is the petitioner or if it consents to the appointment, or if the company is clearly insolvent, or if it is obvious to the court that a winding up order will be made. These dicta show the court's reluctance to pre-judge the issue between the petitioner and the company by appointing a provisional liquidator before the hearing of the petition, but it has also been held that the court's power to appoint a provisional liquidator is not there is an interest of the public to be protected …."**
>
> **Obviously, the appointment of a provisional liquidator of a company before the winding-up, is a drastic step fraught with grave consequences to the company and any decisions in this respect are not lightly made by the court due to the serious consequences that normally flow from such an order. But there is nothing to prevent the court from appointing a provisional liquidator in a fit case conserving the interests of the company, its business and the wishes of the shareholders".**

12. I have reviewed the Affidavit evidence before this Court as regards the two Affidavit sworn by the Petitioner and the Replying Affidavit sworn by the Chairman of the Company. I note that the Petitioner is only one out of 13 shareholders of the Company and feels that he has been hard done by, so far as the management of the same is concerned. To my mind, he has made two major points with regard to the appointment by Court of an interim liquidator and indeed a Receiver for winding up the Company in due course. The first is that he has not been paid dividends and/or bonuses to which he was entitled as a shareholder. Secondly, he accuses the management of the

Company from diverting Company funds to the company known as Buffet Properties Ltd. The excuse for not paying dividends and/or bonuses as given by the Respondents, is that monies are owed to CFC Stanbic Bank in relation to a loan made to the Company on the authorisation of the Petitioner and of which there is no evidence of the same having been repaid. The Management proposed and it seems to have been accepted by the other shareholders save the Petitioner, that the latter's dividends/bonuses should be retained by the Company to ensure that the CFC Stanbic loan is covered. No evidence has been put before this Court from CFC Stanbic Bank as to what is the exact position in terms of the said loan. The Petitioner relies upon the Judgement of my learned brother **Mbogholi Msagha J.** in *HC Criminal Appeal No. 653 of 2010* and delivered on 12th June 2012 in which he stated:

> **"He obtained a loan from Stanbic bank upon a guarantee by the company but which was disowned by the other directors of the company. The loan was intended to buy a truck. When the issue of guarantee was raised the bank repossessed the truck and sold it. As a commitment, the appellant had paid Kshs. 1.6 million as a deposit. Upon the sale of the truck the bank recovered all the money that it had advanced to the appellant. That recovery and satisfaction of the entire sum, released the appellant from any obligation to Stanbic Bank. The issue of obtaining by false pretences therefore could not arise."**

13. In their turn, the directors of the Plaintiff rely upon the proceedings before the Subordinate Court. Indeed, I have perused those proceedings and from the evidence before the Subordinate Court, there is a clear admission by the Petitioner that there was a hire purchase agreement entered into between the Company and the Bank. Insurance was taken out in the name of the Company with Royal Insurance Company Ltd. This would explain that when the lorry was involved in an accident, the Petitioner lodged a claim and the claim cheque was issued by the insurance company in the name of the Company. Leaving aside the question of the criminal charges, I found it interesting that the learned Magistrate recorded the Petitioner as saying at page 108 of the transcript of the proceedings before the Subordinate Court:

> **"After the truck had an accident, this money took long to come on 27/10/06. It was repossessed by Stanbic Bank. Since it still had a balance, Stanbic wrote to the Buffet Park demanding the payment of outstanding debt amounting to Kshs. 4,979,297.80 through a letter dated 9/10/96 PExhibit 19. After the Bank wrote to the company my fellow directors and share holders denied to conspiring against me and said they were not aware of the transaction. Their aim is to avoid the payment demanded by Stanbic Bank demanded for payment from Buffet Park because the truck was registered in the name of Buffet Park limited as per the log book Pexhibit 9."**

There would seem to be some discrepancy as between the finding of my learned brother **Mbogholi Msagha J.** as to the sale of the truck providing sufficient monies to recover all that had been advanced to the Petitioner and the Petitioner's own words that after repossession and sale by Stanbic Bank, there was still a balance of the loan outstanding. To my mind therefore, there was little wonder that the Directors of the Company were expressing caution that monies could still be owed by the Company to the said Stanbic Bank.

14. As regards the diversion of monies away from the Company to Buffet Properties Ltd, the Petitioner relied upon copy statements for December 2012 that he had obtained from Barclays Bank of Kenya Ltd exhibited to the Supporting Affidavit as "LM 4". Those statements revealed over 40 payments of varying amounts made to Buffet Properties Ltd in the month of December 2012 alone. Such are of some concern to this Court when one bears in mind that the Chairman of the Company, in his Replying Affidavit, never responded to the allegations of misappropriation of Company funds to Buffet Properties Ltd other than to say at paragraph 20 of the Replying Affidavit:

> **"20. THAT some members of the Company are also members of Buffet**

Properties Ltd and their dividends are, on their own orders, paid as they are paid up capital in Buffet Properties Limited."

To my mind, such is a paltry excuse to evidence that no less than 40 payments had been made in one month alone out of the Company's account with Barclays Bank of Kenya Ltd., Hurlingham Branch to Buffet Properties Ltd. The other matter that does not ring quite true, emerging from the Replying Affidavit, is that the deponent thereof, the Chairman of the Company at paragraph 29 thereof details:

"29. THAT the current statements of the accounts reveal a healthy financial state of affairs been conducted on a daily basis as a going concern for servicing the loan account, receiving rent for the payment of suppliers, service providers and other statutory obligations and it would cause imminent death to the company if the orders sought are granted at this stage."

15. The said Chairman noted that the Company's restaurant business at Hurlingham had been closed down as a result of the expiry of the lease of the restaurant premises. He also noted that the Company's restaurant business at Nairobi West had been leased out to a third party and that the rent was paying and servicing the loan taken from Barclays for the purchase of the Nairobi West property by the Company. It seems strange to this Court that with the restaurant businesses closed that there is any reason to pay suppliers or indeed for the Company to have so many bank accounts. If its only source of income was the collection of rent from the Nairobi West property as the Chairman would have this Court believe, then why are there so many transactions in relation to the Company's bank accounts? It seems to me that the Chairman and his fellow directors have sought to deprive this Court of a considerable amount of information in relation to the activities of the Company, particularly when one takes into account the contents of the minutes of the Annual General Meetings and Special General Meetings which refer to investments in a plot, activities of the Company in land at Naivasha, a project in Thika quite apart from the land in Kajiado District held in the name of Oloitokosh Ltd.
16. However, taken all in all, I am of the opinion that the activities of the Company may be severely curtailed by the appointment of a provisional liquidator. As I see it, the Petitioner's main concern is to be kept informed of the Company's activities and that he should be paid his outstanding dividends and bonuses as a shareholder. To this end, he attended more Annual and Special General Meetings of the Company than his counsel would have the Court believe. However, I believe that he has been quite right to bring to the attention of this Court the anomalies in relation to the operation of the Company as at the present time. However, the parties have chosen their own forum as regards disputes between the Company on the one hand and any of its members etc. on the other as per clause 31 of the Articles of Association. It seems to me that rather than allow the Petitioner's Application dated 4th June 2013, the affairs of this Company are best dealt with by reference to arbitration. In their submissions, counsel for both parties have concurred with this course of action.
17. Accordingly, I dismiss the Petitioner's said Application but with no order as to costs. I direct that the parties should agree upon a single arbitrator to be appointed within 30 days from the date hereof. In default of such agreement, and in accordance with the provisions of Clause 31 as above, each party shall nominate his and their own arbitrator for the matters in dispute between them, to be determined.

DATED and delivered at Nairobi this 16th day of July, 2013.

J. B. HAVELOCK

JUDGE