



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
WINDING UP CAUSE NO. 39 OF 2010
IN THE MATTER OF THE COMPANIES ACT (CAP 486)
OF THE LAWS OF KENYA
AND
IN THE MATTER OF THE WINDING UP DAIRY WORLD LIMITED
J U D G E M E N T

1. By a Petition dated 29th October 2010 the Petitioner moved this court praying that the Dairy World Limited be wound up by the court under the provisions of the Companies Act and that the costs of the Petition be provided for out of the assets of the company in priority.
2. The Petitioner provided the following facts about the Company, the basis of which the said Winding Order is being sought:-
 1. Dairy World Limited (hereinafter called the Company) was incorporated on the 27th September 2006 pursuant to the provisions of the Companies Act, Cap 486.
 2. The registered office of the company is situated at Marakwet House, Elgeyo Marakwet Road, Kilimani. L.R. No. 2/544 and 545 in Nairobi in the Republic of Kenya and its registered postal address is 39698-00623, Nairobi, Kenya.
 3. The authorized share capital of the company is Kshs. Ninety Thousand (Kshs.90,000) divided into Nine hundred (900) shares of Kshs. One Hundred (kshs.100) each.
 4. The main objectives for which the company was established are *inter-a-alia* as follows:-
 - i. **To carry on business as and to act as principals or agents for the importation of and dealers in imported foodstuff of every type and description from all parts of the world.**
 - ii. **To act as agents and intermediaries of and canners, bottlers and dealers in imported foodstuffs and fruit drinks (both natural and artificial) of every description and in that connection to set up wholesale and retail outlets, distribution networks, factories and other facilities and systems for the processing, preparation, handling and retail of imported foodstuffs and drinks.**

iii. **And to carry out any other business as listed in the company's memorandum of association and to exercise the powers attendant to the said objects as listed in the company's memorandum of association.**

5. The company is indebted to the Petitioner in the sum of Kshs.12,766,408.00 (Shillings twelve million, seven hundred and sixty six thousand, four hundred and eight and zero cents) as at 18th June 2010 with additional interest at 16.25% per annum, being the amount due by the company in respect of overdraft facilities advanced by the Petitioner to the company.
6. On the 28th of June 2010 a demand letter was served upon the company through registered post calling upon the company to pay the said sum within twenty one days after service failing which the Petitioner would move the court for the winding up of the company.
7. More than three months have now passed since the demand was made but the company has refused and neglected to pay or satisfy the said sum.
8. The company is insolvent and unable to pay its debts.
9. In the circumstances it is just and equitable that the company should be wound up.
3. The Petition was served upon the company through substitutional process after the leave of this court, but there is no evidence on record that the company ever responded to the Petition.
4. On 1st November 2013 the Petition came up for hearing. The Petitioner was represented by Mr. Charles Kanjama while the company was not represented. Upon perusing the affidavit of service filed in court on 1st November 2013, I was satisfied that the Company was served with the Hearing Notice of the Petition, and so I allowed Mr. Kanjama to proceed in the absence of the representation of the Company.
5. The Petitioner filed its list of documents on 30th September 2013 on which the Petitioner relied during the hearing. Those documents were produced by the Petitioner's sole witness M/s Stella Muli who testified that she is the Legal Manager at the Fidelity Commercial Bank Limited. The bank had given loan and overdraft facilities to the company amounting to Kshs.8,500,000/=. The company defaulted in the repayment thereof and despite being given notice to repay the same, the company has not been able to do so. She testified that the Company was insolvent and should be wound up under the Companies Act Cap 486 Laws of Kenya.
6. I have carefully considered the Petition. The issue before the court is to determine whether or not the Company is insolvent. I am not able to do that except on the evidence provided by the parties. The Company, despite being served has opted not to come to court and defend the Petition. I would therefore not be able to know whether or not the Company had a defence. However, the Petitioner has testified about the Companies' indebtedness and supported that testimony with documented evidence contained in its list of documents. I have carefully considered the Petitioner's testimony and the documents in support of the same. I am satisfied that the Petitioner has proved its case for the orders sought herein, that is, that the company be wound up and its assets be used to repay the debt of the Petitioner which at 28th June 2010 stood at Kshs.12,766,408/= and costs in priority.

Having satisfied myself that the Petition is merited, and having noted that the Company has since ceased trading, I am satisfied that under Section 220 of Cap 486 the prayers sought are merited.

7. In the upshot I enter Judgement as follows:-
 - a. **That Dairy World Limited be and is hereby wound up by the court under the provisions of the Companies Act.**

- b. **The costs of this Petition shall be paid to the Petitioner out of the assets of the company in priority.**
- c. **The Petitioner shall appoint a Liquidator for the Company to be approved by the court.**
- d. **The matter shall be mentioned on 4th December 2013 for the approval of the said Liquidator by the Court.**

DATED, READ AND DELIVERED AT NAIROBI

THIS 11TH DAY OF NOVEMBER 2013

E. K. O. OGOLA

JUDGE

In the presence of:

Kanjama for the Petitioner

No appearance for the Contributor

Teresia - Court Clerk