



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
WINDING UP CAUSE NO. 1 OF 2011

IN THE MATTER OF BEIJING KENYA COMPANY LIMITED
AND
IN THE MATTER OF THE COMPANIES ACT, CAP 486 OF THE LAWS OF KENYA

BETWEEN

DR. ZHAO XIAO HUA PETITIONER
VERSUS

BEIJING KENYA COMPANY LIMITED RESPONDENT

R U L I N G

On 28th January, 2011, the Petitioner appeared before the Hon. Judge Azangalala under a certificate of urgency and after being heard ex-parte her application dated 27th January, 2011 was certified urgent and fixed for hearing inter parties on the 8th February, 2011.

A week later, on the 4th February, 2011, the respondent appeared before the same judge also under a certificate of urgency. After being heard ex-parte the respondents application dated 4th February, 2011 was certified urgent and fixed for inter parties hearing also on the 8th February, 2011.

Therefore on the 8th February, 2011 both parties appeared before this court for the hearing of their respective applications inter parties. In the process, the respondent company argued that its application dated 4th February, 2011 should be given priority and be heard prior to that of the petitioner dated 27th January, 2011 on the basis that it is made under the Arbitration Act No. 4 of 1995 as amended by the Arbitration (Amendment) Act 2009 and is for stay of proceedings under section 6 of the Arbitration Act.

On her part the petitioner argued that the respondent's application was served upon her at the time of hearing (i.e on 8th February, 2011) whereas there was no prayer for dispensation of service and since the petition was served upon the respondent it did not file any reply and whereas the petition was certified urgent, the same should be heard first as the assets held by the respondent are being wasted.

The petition is basically for the winding up of the respondent company which is a company incorporated under the Companies Act (Cap 486 of the Laws of Kenya). The petitioner and one Dr. Charles Jakaji Sangalo are the sole directors and shareholders of the company respectively holding 70 and 30 percent of the shares. The reasons given for the petition include that a quorum to enable the company transact business cannot be attained as there exists a dead lock between the two directors. As such, the company has not held an annual general meeting as required by the Companies Act. Further, the petitioners' co-director has solely taken the control of the company finances, corporation seal and vital documents of the company to the exclusion of the petitioner for his own personal benefit thereby

undermining the essence of incorporation and separate legal personality.

The company's application dated 4th February, 2011 is for a stay of all the proceedings in this cause pending reference of that dispute to arbitration pursuant to clause 32 of the Company's Articles of Association and in accordance with section 6 of the Arbitration Act 1995 as amended by the Arbitration (Amendment) Act 2009.

Clause 32 of the Company's Articles of Association provides for reference to arbitration of differences arising in the running of the affairs of the company.

The petition herein is a reflection of the differences existing between the petitioner and her co-director in the control and running of the company's affairs and since it was the intention of the two directors to have differences and/or disputes relating to the company referred to Arbitration it would be prudent for the company's application to be heard in priority to the petition by the petitioner. To that extent, the application dated 4th February, 2011 is hereby fixed for hearing on 15th March, 2011. The hearing of the petition will be held in abeyance as it would invariably be dependant on the outcome of the company's application.

That is the order of this court.

J.R. KARANJA
JUDGE

(Read and signed this 15th day of February, 2011 in the presence of Mr. Gicheru and Mr. Barasa)