



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION

WINDING UP CAUSE NO. 31 OF 2009

IN THE MATTER OF SIFA INSURANCE BROKERS COMPANY LIMITED

AND

IN THE MATTER OF COMPANIES ACT

RULING

1. It is common ground that a petition in this cause was filed on 5th October 2009 to wind up Sifa Insurance Brokers Company Limited (the debtor/applicant herein).

That petition was presented by Monarch Insurance Company Limited as a creditor claiming the sum of Kshs 5,577,984.65 being the balance of the initial debt of Kshs 8,811,754.40 and being the decretal sum in a judgment obtained by the petitioner in Nairobi HCCC 168 of 2005. A winding up order was issued on 3rd November 2010.

2. Sifa Insurance Brokers Company Limited have now filed a notice of motion dated 14th October 2011 praying that the winding up order be set aside on grounds that it has paid the balance of Kshs 5,577,984.65. It also prays that the Registrar of Companies “be ordered to deregister the winding up order” against the company.

3. The application is grounded on the facts set out in the motion and summarized above and on the annexed affidavit of Paul Gogo sworn on 4th October 2011. Annexure “PG2” thereto is an acknowledgement by Monarch of the payment by the applicant of Kshs 5,577,984 on 27th June 2011. That aspect of payment is thus not contested.

4. On the hearing of the motion, grounds of opposition were filed by the petitioner’s lawyers but in respect of a separate debt of Kshs 8,885,709 owed to another creditor Madison Insurance Company Limited. It was submitted that this latter creditor entered an appearance in the winding up cause and supported the winding up of the applicant. As its debt is then still pending, the orders sought are unwarranted and would not be in the interests of justice.

5. I have formed the following view of the matter. The record of the court clearly confirms that Madison Insurance Company Limited entered an appearance in support of the petition after the cause was advertised and gazetted. As a creditor who has entered appearance, it is entitled to audience. As a creditor whose debt of Kshs 8,885,709 detailed in the affidavit on record of Minza Kasha sworn on 26th January 2010 is owing, it would be prejudiced if the winding up order were set aside merely because the debt of the petitioning creditor has been paid.

6. There is another reason why the present application is on a quicksand. There were other proceedings in a separate winding up cause in Nairobi WC 38 of 2005 against the applicant but which were overtaken when the winding up order here was made on 3rd November 2010. If the applicant succeeded here by setting aside that order, this court would be effectively giving it a clean bill of health, when by its own silence, it does not contest owing the other creditor the sums aforementioned. It would reopen the litigation for the affected creditor to institute or revive the winding up proceedings in WC 38 of 2005 aforementioned. That would fly in the face of the courts mandate and overriding objective to do substantial justice to the parties.

For those same reasons, this court cannot order the Registrar of Companies to deregister the winding up order of 3rd November 2010 from his records at the Companies Registry.

7. For all the above reasons, I dismiss the debtor's/applicant's notice of motion dated 14th October 2011 with costs to the appearing creditor (Madison Insurance Company Limited).

It is so ordered.

DATED and DELIVERED at NAIROBI this 11th day of November 2011.

G.K. KIMONDO
JUDGE

Ruling read in open court in the presence of

No appearance for the Debtor/Applicant.

Ms Olouch for Maundu for the Creditor.