



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS) Winding Up Cause 10 of 2007**

**JOHN MWANGI WAGAKO.....PLAINTIFF**

**VERSUS**

**NYAKIO INVESTMENTS LTD.....DEFENDANT**

**RULING ON DIRECTIONS**

The application before the Court is by a Notice of Motion dated 28<sup>th</sup> April, 2010, and is brought under Rule 7 of the High Court (Winding Up) Rules. By the application, the Petitioner herein seeks two orders –

1. *That the Petitioner be allowed to file a supplementary affidavit in support of the petition herein.*
2. *That if prayer 1 (above) is granted, the affidavit supporting this application be deemed to be the supplementary affidavit filed and served upon the Respondent.*

The application is supported by the affidavit of John Mwangi Wagako, the Petitioner himself, sworn on 28<sup>th</sup> April, 2010. It is based on the following grounds –

- (a) *That on 15<sup>th</sup> December, 2009, this Honourable Court appointed the Official Receiver the interim liquidator of the Respondent company.*
- (b) *That in law, the interim liquidator is required to act impartially.*
- (c) *That since its appointment, the Official Receiver has acted in a partisan manner in that he has served as the agent of the majority shareholders who control the Respondent.*
- (d) *Under Section 236 of the Companies Act, unless another person is appointed a liquidator, the Official Receiver serves as a liquidator.*
- (e) *That in the event of a Winding Up order being made in this case, the majority shareholders will continue to mismanage the assets of the Respondent through the Official Receiver and defeat the object of Winding Up which is paying creditors and sharing the net assets amongst the shareholders according to their respective shareholding.*

Upon reading the supporting affidavit of the Petitioner, I note that some serious allegations of impartiality have been levelled against the Official Receiver, and it is imperative that this application be disposed of expeditiously. After hearing Dr. Kuria for the Petitioner, Mr. Kahuthu for the Respondent and Mrs. Koech for the Official Receiver, I make the following directions –

- (i) *Prayers 1 and 2 of the application are hereby granted as prayed.*
- (ii) *The Respondent company be and is hereby granted leave to file and serve a replying affidavit to the Petitioner's affidavit sworn on 28<sup>th</sup> April, 2010 to demonstrate why the Official Receiver is suitable for appointment as a liquidator in the event that a Winding Up order is made. The said affidavit be filed and served within 14 days from today.*
- (iii) *The Official Receiver be and is hereby granted leave to file and serve a replying affidavit within 14 days.*
- (iv) *The Petitioner be at liberty to file and serve supplementary affidavits in response to the affidavits filed pursuant to directions (i) and (ii) above, within 7 days of service of the said affidavits.*
- (v) *Mention on 25<sup>th</sup> June, 2010 to confirm compliance and for further directions.*

Orders accordingly.

Dated and delivered at Nairobi this 28<sup>th</sup> day of May, 2010.

**L. NJAGI**  
**JUDGE**