

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Winding Up Cause 18 of 2004

IN THE MATTER OF KWAMATINGI

FARMERS' CO-OPERATIVE SOCIETY

PLAINTIFF

VERSUS

IN THE MATTER OF CO-OPERATIVE SOCIETIES ACTDEFENDANT

JUDGMENT

The petition of Erastus Wahome *t/a* Lenana Chemicals shows that the petitioner supplied goods and services to the amount of Kshs.966,000 on or about 1998 and 2000 and obtained judgment for Kshs.966,000/= plus interest at the rate of 20% p.a. And that by garnishee proceedings recovered Kshs.213,000/= only. The balance has not been paid.

The petitioner seeks order for the winding up of the said KWAMATINGI Farmers' Co-operative Society Ltd. may be wound up by the court under the provisions of the Co-operative Society Act, Cap.485.

In replying affidavit, the society admits that goods were purchased on credit but later payment was made.

On 1/7/2004 = Kshs.200,000/=

On 9/12/2004 = Kshs.235,000/=

On 19/8/2005 = Kshs.400,000/=

Total - **Kshs.835,000/=**

It is also admitted there have been financial difficulties in the society but as at 27/4/09, the balance outstanding is Kshs.2,102,700/=. Regarding the winding up of a company by the court, Section 219 (e) provides that the company may be wound up by court if it is unable to pay its debts. The debt must be exceeding the sum of one thousand shillings and notice of filing petition is served upon the company demanding payment of the sum due and the company has for 3 weeks (21 days) thereafter neglected to pay.

In this case it is admitted that payment was not made because of financial difficulties. The debt of the society arose out of a decree of court. To-date, 27/4/09, a sum of Kshs.2,102,700/= is still unpaid. There is no evidence that the debt owing to petitioner is such as stipulated by the Section 76 of Society Act (Settlement of disputes).

Also Section 95 (1) provides that Cap.486 Companies Act other than those referred in Section 64 and 71 of this Act, Cap.486 shall not apply. However, Section 220 contains definition of liability to pay debt is applied.

Upon considering the petitioner's case, it is true there is no dispute that the decree was made in December 1998. The amount was admitted but no payment was made. The petitioner has been kept out of his money all this time. It is clear that this debt is admitted but not paid.

I find that the petitioner has been denied justice. I therefore order that since the procedure of winding up the society is complicated, judgment in sum of Kshs.2,102,700/= less admitted Kshs.835,000/=, which comes to Kshs.1,367,700/=, plus interest as ordered as at date of payment be entered in favour of plaintiff against defendant with costs and interest until payment in full.

Orders accordingly.

In the interest of justice to petitioner, I apply inherent powers of court to make the orders above.

DATED and DELIVERED at Nairobi this 22nd day of May 2009.

JOYCE N. KHAMINWA

JUDGE