



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 155 of 2003

SAMEX TRADING AGENCIES.....PLAINTIFF

VERSUS

BLOCK HOTELS LTD.....DEFENDANT

**CHRISTOPHER CHEGE MWANGI OFFICIAL RECIEVER AND MANAGER OF BLOCK
HOTELS LTD**

RULING

This Court delivered a ruling in this matter dated 22nd day of February, 2008. The background information of the matter is noted at page 1 of the ruling. In brief, it is noted that the plaintiff decree holder applicant had sued the defendant claiming Kshs 990,956/=, costs and interest. It is further noted that the claim does not appear to have been uncontested and judgment had been entered by consent of Counsels of both parties on 16.7.03 for the amount claimed of Kshs 990,956/=. The bill had been taxed exparte on 5.3.04 at Kshs 103,140.00. It is noted that since then the plaintiff decree holder had not been able to realize the fruits of its judgment allegedly because the defendant judgment debtor had been placed under receivership. The fact of receivership is what forced the applicant decree holder to present an application by way of chamber summons brought under section 242 and 310, of the Companies Act and Rules 5(2) and 107(3) Of the Companies Winding up rules and Section 3A of the Civil Procedure Act and all other enabling provisions of the law. Prayer 1 sought leave of Court, to join the official receiver to the proceedings. Where as prayer 2 sought an order compelling the official receiver and liquidator upon such being joined, to the proceedings, he be compelled to pay the applicant the decretal sum together with the interest.

The application was argued inter parties. At page 9 of the ruling line 4 from the bottom the court, observed that *“that the court is satisfied that it is procedurally seized of the matter”*. At line 2 from the bottom on the same page it is observed that *“procedural satisfaction leaves the issues of locus standi and the merits of the application to be dealt with. The issue of locus standi arises as a result of the official receiver contending that the has no authority to appear for the named defendant. The basis for the official Receivers’ objection is found in the papers annexed to the replying affidavit. He contents that vide certificate of change of name No. 14035 vide an entry made on 1.11.1991 on entity known as Block Hotels Management changed their names to Block Hotels Ltd. Vide the same certificate and by an entry made on 3.7.1996 the same changed the name back to Block Hotels Management Ltd. The Debentures in favour of KCB had not been executed while the entity was still under the name of Block Hotels Ltd. It was executed on 15.12.1994. it therefore follows that as at 3.7.1996 when the entity changed the name to Block Hotels Management Ltd the debenture executed in favour of KCB was still in force. This being the case then it means that there is no way this entity which had changed name on 3.7.96 could have used the*

same names to enter into transactions with the plaintiff in 2002 in order to give rise to the proceedings whose judgment is sought to be enforced in 2003.

.....as at the time he was appointed Official Receiver on 2nd October, 2003. The entity for which he act was still known by the name and style of Block Hotels Management Ltd to the present day. He went on further to depone that at the time, the entity, he represents changed the name from Block Hotels Management Ltd, there was another entity known by the name United Hotels Ltd which changed its name to Block Hotels Ltd on 3.7.96 vide certificate No. C10987 on 3.7.96. The Official Receiver does not know the status of the said entity as at 2002 and 2003 when events herein were set in motion, or the current status of the same entity, as at the time the application subject of this ruling was presented. But he is sure that he is not an official Receiver for Block Hotels Ltd.

At page 11 line 7 from the bottom, the Court, went on to state:-

“The sum total of the official Receivers arguments is that he does not act for Block Hotels, but Block Hotels Management Ltd and as such he is wrongly sought to be brought on board herein. Whereas the sum total of the applicants arguments is that the two entities are one and the same thing more so when it is evident that they share the same address and fax number and the court, had been informed that they had been placed under receivership almost at the same point in time that the current official receiver was appointed. That as per the documentations presented the said official receiver and agents have held themselves out as appearing or representing the interest of the judgment debtor and as such they are the proper persons to be called upon to make good the indebtedness of applicant”.

It is against the above set out observations that this court deferred the merits of the ruling until the parties supplied the following.

- (1) Documentation as to the status of the entity which changed the name from United Hotels Ltd to Block Hotels Ltd on 3.7.96 as at :-
 - (a) the time the goods giving rise to the decree herein were supplied.
 - (b) As at the time the plaintiff came to court on 19.2.2003.
 - (c) As at the time judgment and decree were passed. As at the time the applicant came to court, to seek a joinder of the current official Receiver.
- (2) Documentation as to whether the said entity is under Receivership and if so information as to when it was placed under Receivership, reason for placing it under receivership and who the official receiver are.
- (3) Since the court, has noted from the documentation displayed herein that the address and fax machine number appearing on the order documents for the goods subject of these proceedings by Block Hotels Ltd is the same as that of Block Hotels management Ltd under receivership, the court, to be supplied with the legal link between the two entities.

In response to those inquires, the official receiver filed a replying affidavit sworn on the 6th day of May 2008 and filed the same date. Vide paragraph 3 there of, the said official Receiver, deponed that he had read and understood the content of this courts ruling of 22.2.2008. Vide paragraph 4 there of he deponed that he relies on the replying affidavit sworn and filed by him as well as the documentation annexed. Vide paragraph 5 that the relationship between Block Hotels Ltd was that the former was created as an overall supervisory and management company of the latter and its subsidiaries. Vide paragraph 6 thereof that the two entities were initially housed in the same premises hence similarity in address and fax numbers. Vide paragraph 7 that the management arrangement could at the time Block Management went into Receivership. Vide paragraph 8, that the status of what was United Hotels Ltd at all times requested is unknown to him as the same remained under the control of its Directors including one Ketan Somaia. Vide paragraph 9 thereof that he has no control of information outside what he was already stated about

Block Hotels Ltd and is not aware whether or not it is under receivership.

The defendant on the other hand put in an affidavit sworn by Counsel on 28th day of April, 2008 and filed on 29th April, 2008. Vide paragraph 6 thereof a list of documents is annexed. The documents annexed comprise the following:-

- (i) *Certificate of change of name (Block Hotels Management Ltd changes its name to Block Hotels Ltd issued on 1st November 1991.*
- (ii) *Certificate of change of names (Block Hotels Ltd changes its name to Blocks Hotels Management Ltd issued on 3rd July, 1996.*
- (iii) *Certificate of change of name (United Hotels Ltd changes its name to Block Hotels Ltd issued on 3rd July 1996.*
- (iv) *Block Hotels Ltd purchase Order/Requisition forms dated 15th may 2002.*
- (v) *Block Hotels Ltd purchase Order/Requisition forms dated 17th may 2002.*
- (vi) *Copy of cheque drawn by Block Hotels Ltd in favour of Samex Trading Agencies dated 3rd January 2003.*
- (vii) *Deed of appointment of Receivership and Manager dated 2nd October 2003 appointing Christopher cheque as Receiver and Manager of Block Hotels Management Ltd.*

Due consideration has been made to this latest information and considered it in the light of the earlier information as well as the request of information made by the court in its ruling of 22nd February 2008, and the court, makes a finding that the new documentation does not answer the inquiries made by the court. The annexures made by Counsel for the defendant are not new. They had already been annexed by the official Receiver earlier on.

What the court, had sought to know was whether Block Hotels Ltd still exists to date as an entity of its own, and secondly if the same is under Receivership of the official Receiver sought, to be joined to these proceedings for purposes of the decree herein.

As noted in the earlier ruling the decree herein is against Block Hotels Ltd. The application dated 24th July, 2006 by way of chamber summons subject of the earlier partial ruling as well as this ruling had sought reliefs against, the official Receiver. Prayers 1,2 thereof read:-

- “(1) That this honourable Court be pleased to grant leave to join the official Receiver as a party to this Court.*
- (2) That this honourable Court, be pleased to issue an order directing the official Receiver, and liquidator, (who is an officer of the Court) to pay to the applicant, within fourteen (14) days from the date of the making of the order pursuant to the order by consent recorded on 16.07.2003 the applicants whole claim of Kshs 1,242,886/= plus accrued interest thereon at the rate of 12% per annum with effect from and including 16.07.2003 until payment in full and together with all accrued interest.*
- (3) That costs of the application be provided for”.*

Applying these prayers to the facts displayed herein, this courts understanding of what it was expected to do for the applicant is that:-

- (1) The Court, was to join the official receiver to the proceedings.

(2) After joining the said official receiver, to the proceedings then go ahead and order the said official receiver to pay over to the applicant the decretal sum specified.

This being the case, it follows that in order to succeed, it was imperative upon the applicant to demonstrate to this court:-

(a) That the defendant Block Hotels Ltd is under Receivership.

(b) That the official Receiver who is sought to be joined to the proceedings is the official Receiver for Block Hotels.

The defendant and the official Receiver has laid before the court documents which show that the entity placed under Receivership and in respect of which the official Receiver named is responsible for, is an entity called Block Hotel Management Ltd. Indeed there is evidence that at one time Block Hotels management Ltd was known as Block Hotels Ltd after change of name effected on 1st November, 1991. Thereafter on 3rd July 1996 the same entity changed its name from Block Hotels Ltd to block Hotels Management Ltd. At the same time as Block Hotels Ltd was changing its name to back to Block Hotels Management Ltd, another entity known as United Hotel Ltd, changed its name to Block Hotels Ltd. The legal link between United Hotels Ltd Block Hotels Ltd and Block Hotels management Ltd has not been provided.

The transaction giving rise to the Plaintiffs claim took place in the year 2002 on the letter heads of Block Hotels Ltd. It is therefore not clear as to whether the documentation on the transaction relating to the claim herein were made, belonged to Block Hotels Ltd before it changed to Block Hotels Management Ltd or it was stationary belonging to the entity which had called itself United Hotels Ltd and changed to Block Hotels Ltd.

It was therefore necessary for the Court, to be availed the creating instruments as well to enable the Court, know how the new entities were to relate to the old entities in terms of assumption of liability for the old entities. In the absence of the creating instruments mentioned above, and proof that Block Hotels is under Receivership and, who is the Receiver for block Hotels Ltd, by the defendant judgment debtor herein, there is no way this Court, can grant the orders sought by the applicant against the official Receiver.

For the reasons given above the application dated 24th July 2006 and filed on 26th July 2006 is refused. The Plaintiff/applicant decree holder has to carry out further inquiries to establish the existence or non existence of the defendant and if in existence in what form and under whose control before moving to execute the decree against them.

(2) The Respondents to the application will have costs of the application.

DATED, READ AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2008.

R.N.NAMBUYE

JUDGE