

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Winding Up Cause 22 of 2006

IN THE MATTER OF UNITED INSURANCE COMPANY LIMITED

RULING

On 21st October 2008, this court directed the parties to this winding up cause to proceed with the hearing of the same by way of submission. The company that is sought to be wound up is United Insurance Company Limited (*hereinafter referred to as the company*). The petitioner concluded presenting his submissions on 27th October 2008. When Mr. Munge for the statutory manager stood up to make his submissions, Mr. Ngunjiri for the contributors objected to the statutory manager being granted audience to make his case before the court. Mr. Ngunjiri submitted that the statutory manager was not a petitioner, a creditor, a contributor or a debtor of the company to entitle him to make submission either in support or in opposition to the petition for the winding up of the company. He submitted that the statutory manager was the agent of the petitioner and therefore he cannot be granted an audience independent from that of the petitioner. He maintained that in the petition, the statutory manager was a busybody who did not have any cause of action to advance in the winding up cause.

On his part, Mr. Munge for the statutory manager maintained that the statutory manager had audience in the petition in view of the fact that he entered appearance. He submitted that under **Rule 29** of the **Companies (Winding up) Rules**, any person who files notice of intention to appear during the hearing of the winding up cause has audience before the court either to support or oppose the petition. Mr. Munge relied on two decided cases, namely **Nairobi HC Winding up Cause No. 25 of 2005, In the matter of Insight Technologies Limited** and **Nairobi HC Winding Up Cause No. 12 of 2001, In the matter of Nairobi Conveyors Limited** in which Kasango J held that any party who has filed notice to appear in a winding up cause must be afforded a right of audience before the court. Mr. Munge submitted that the contributors had made several allegations against the statutory manager and it would only be just and fair for the said statutory manager to be granted an opportunity to answer the allegations made against him.

I have carefully considered the objection raised by Mr. Ngunjiri for the contributors and the response made thereto by Mr. Munge for the statutory manager. **Section 29(1)** of the **Companies (Winding Up) Rules** provides as follows:

“Every person who intends to appear on the hearing of a petition shall serve on the petitioner or his advocate at the address stated in the advertisement of the petition, notice of his intention to do so.”

It is common ground that the statutory manager filed notice of his intention to appear during the hearing of this petition. The thrust of Mr. Ngunjiri’s objection to the statutory manager’s right of audience is that the statutory manager was not a petitioner, creditor, contributor or debtor of the company. The plain reading of **Section 29(1)** of the **Companies (Winding Up) Rules** clearly shows that any person who has an interest in the winding up cause may file notice of his intention to appear during the hearing of the petition. The said rule does not specify the capacity of such person that has filed notice of his intention to appear during the hearing of the petition.

Although it is conceded that Mr. Ngunjiri has a point when he argued that the court should guard against allowing busy bodies to have right of audience during the hearing of the petition, I think the correct legal position was as postulated by Kasango J. in **In Re Insight Technologies Limited [2006] eKLR** when she held that under the said **Rule 29** of the **Companies (Winding up) Rules**, the court had discretion to allow anyone who seem to be connected with the company audience and right to make submissions either in

support or in opposition to the petition. The fact that such a party has not filed a replying affidavit does not disentitle or preclude such a party from having audience before the court.

In the present petition, it is evident that the contributors of the company have issues in the manner in which the statutory manager has run the company since he was appointed by the petitioner. It is just and fair to allow the statutory manager to address the court regarding the said allegations made against him by the contributors of the company. The contributors would not be prejudiced the statutory manager's appearance since they will have an opportunity to challenge any issue that would be raised by the said statutory manager that is adverse to their case.

I therefore find no merit with the objection raised by the contributors. Their objection is disallowed. The statutory manager shall have right of audience before this court. He shall have the right to present his submissions, either in support or in opposition to the petition.

DATED at NAIROBI this 27th day of OCTOBER, 2008.

L. KIMARU

JUDGE