

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 547 of 1999

KENYA BUS SERVICES (MSA) LTD.PLAINTIFF

VERSUS

C.M.C. MOTORS GROUP LTD.DEFENDANT

R U L I N G

C.M.C. Motors Group Ltd., the defendant herein, applied for leave to continue with the proceedings against Kenya Bus Services (Mombasa) in Liquidation, the 1st defendant in the counter-claim and other proceedings as are necessary. The application is by way of summons under rules 5(2), 7(2) and 203 of the Companies (Winding Up) Rules and under section 228 of the Companies Act. The summons is supported by the affidavit of Christopher Agnelo Diaz.

When the application came up for interpartes hearing, Mr. Kariuki, learned advocate argued the case for the defendant. The learned advocate pointed out that the defendant's application has fulfilled the requirements under rule 203 of the Winding up Rules hence this court should exercise its discretion in its favour. Mr. Amoko, learned advocate for the 2nd, 3rd, 4th, 5th and 6th Defendants urged this court to reject the application on the ground that there is no material presented to this court to support it.

I have considered the oral submissions tendered by learned counsels from both sides. I have also considered the grounds set out on the face of the summons and the facts deponed in the supporting affidavit. The law is quite explicit under Section 228 of the Companies Act that no proceedings shall be preferred or prosecuted against a party which has been ordered to be wound up unless leave is granted. The discretion to grant leave is wide save that sufficient cause must be shown. It is not denied that Kenya Bus Services (Mombasa) Ltd was ordered to be wound up. The defendant states that it is stuck in that it needs to continue with the proceedings against the party in liquidation. It further states that it needs to amend its reply to defence before the commencement of the hearing and can only do so with leave of court. After anxiously considering the reasons given to seek for leave, I am convinced that the grounds given are sufficient. There is need for the defendant to amend its pleadings which cannot take place unless leave is given. I allow the application dated 12th March 2008 as prayed.

Dated and delivered at Mombasa this 6th day of October 2008.

J. K. SERGON

J U D G E

In open court in the presence of Mr. Noorani for the 2nd – 6th Defendants and Miss Muyaa h/b Kariuki for the applicant.