



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

Winding Up Cause 29 of 2006

IN THE MATTER OF UMOJA SERVICE STATIONS LIMITED

AND

IN THE MATTER OF A PETITION BY MINORITY SHAREHOLDERS

RULING

The application is a Chamber Summons dated 18th December, 2007 and expressed to be brought under Order XXV rules 1 and 6 of the Civil Procedure Rules. It seeks an order that the Petitioners herein do deposit Kshs.2 million as security for the Respondents' costs. The grounds for the application are briefly that, the Petitioners have involved the Respondents in various suits and various applications in various courts and as a consequence the Respondents have incurred over Kshs.800, 000 by way of costs in defending themselves.

The Applicants to the Winding Up Cause filed a notice of preliminary objection to the instant application in which they raise two grounds.

- 1. That the application is incurably defective and incompetent.**
- 2. That the application is otherwise an abuse of the court process.**

When the application came up for hearing the court directed the parties to argue the preliminary objection first.

Mr. Kingara for the Applicants/Petitioners in the Winding Up Cause, who are the Respondents in the instant application argued that Order XXV rule 1 of the Civil Procedure Rules does not apply to a Winding-up cause. Counsel submitted that under the Winding-up rules of the Companies Act, there were no provisions allowing a party to the Petition to apply for security for costs.

Dr. Kamau Kuria, leading Mr. Ndegwa for the Respondents, who are the Applicants in the instant application, invoked rule 203 of the Companies Rules and submitted that where no rule is provided for under the Companies Rules, the ordinary rules of the court applied. Dr. Kamau urged the court to find that rule 203 of the Companies Act fills whatever gaps there may be in the Companies rules and that therefore, the court should invoke the said provisions in order to apply Order XXV of the Civil Procedure Rules to require the Petitioners to give security for costs to the Respondents as applied for in the application. Dr. Kuria submitted that this court has inherent jurisdiction to order security for costs in favour of the Applicants. Dr. Kuria urged that the Respondents had been saddled with costs which are not provided for.

I have considered the preliminary objection raised by the Petitioners. There is no dispute that the instant Winding-up Cause has been brought by minority shareholders of the Company against the other shareholders and or directors of the Company. The Company has property and is capable of meeting the costs that may arise out of the instant proceedings. The Respondents have not said or alleged that the Company is incapable of meeting the costs of this suit. The instant application cannot have been brought in good faith. The order sought to have the Petitioners provide security for costs to members of the same company is untenable. The reason for so stating is not only because the rules under the Companies Act do not contemplate and or recognize such an application; it would be defeating the very essence of the Companies Act to require shareholders of a company who are dissatisfied by the manner in which the company is being run personally meet the costs incidental to the filing of such a cause. That would be against the spirit of the Act itself and would also work to defeat the very purpose for which the Act was enacted. It would also discourage aggrieved parties, such as the minority shareholders who have brought this cause, from ever exercising their rights under the Act due to the threat or prospect of being required to meet costs when in the first place they were not acting to benefit themselves but to benefit the company. The company is a legal entity recognized by law. It should meet its own costs including those involved in a case of this nature.

For this reason I find merit in the preliminary objection raised by the Petitioners herein. I do uphold the objection and strike out the application dated 18th December, 2007 accordingly.

Dated at Nairobi this 14th day of November, 2008.

LESIT, J.

JUDGE

Read, delivered and signed in presence of:

Mr. Wambugu holding brief Mr. Kingara for the Applicants/Petitioners

Lutta holding brief Dr. Kamau Kuria for the Respondents

LESIT, J.

JUDGE