



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Civil Appli 713 of 2008

IN THE MATTER OF DINERS FINANCE LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF THE COMPANIES ACT, (CAP 486) LAWS OF KENYA

AND

IN THE MATTER OF THE BANKING ACT, CAP 488 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR RELEASE OF LIQUIDATOR

R U L I N G

The application is an ex parte Originating Notice of Motion dated 26th September, 2008. It is expressed to be brought under section 247(1) of the Companies Act, Rules 183 (a) and 192 (1) and (2) of the Companies (High Court) Rules.

It seeks orders namely:

- (i) THAT the Deposit Protection Fund Board be released as the Liquidator of Diners Finance Limited (in Liquidation).**
- (ii) THAT a Certificate of Release be granted to The Deposit Protection Fund Board discharging it as a liquidator of Diners Finance Limited (in Liquidation).**
- (iii) THAT the costs of this application be provided for.**

The application is premised on grounds namely:

- (a) The winding up of Diners Finance Limited (in liquidation) has practically been concluded.**
- (b) A Release Order is necessary in order to formally conclude the said winding up process.**
- (c) The Liquidator has complied with all the necessary legal requirements for the grant of a**

Release Order as provided by Law.

(d) The Liquidation will needlessly be protracted if the Release Order is not granted.

The application is supported by the affidavit dated 26th September, 2008 sworn by KAKAI CHELOTI, the Director of the Deposits Protection Fund Board.

Miss Maina argued the application. Counsel reiterated what has been deponed to by Mr. Cheloti in the supporting affidavit.

I have considered the content of the supporting affidavit together with the submissions by counsel. The little background of this application is that Diners Finance Limited (in liquidation) was duly licensed by the Government of Kenya to carry on banking business under the Banking Act. The said bank became insolvent and The Deposit Protection Fund Board appointed under section 35 of the Banking Act to liquidate it.

The Liquidator has to show that it has distributed a final dividend to the Creditors and that it has adjusted the rights of the Contributors. It must also show that it has caused a report of the Accounts to be prepared and that it has issued a Notice to Creditors and Contributors to inspect the said accounts, if they so desired and to raise any objections they may wish. The liquidator must also show that it has given Notice to the Creditors and Contributors of its intention to apply for release.

I have noted that the Liquidator has complied with the requirements of section 247(1) of the Companies Act.

Section 247(1) of the Companies Act stipulates as follows:

“When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.”

I see a Notice to Creditors and Contributors was published in the Standard Newspapers of July, 7th 2008 informing them of the liquidator’s intention to apply for release and informing them of their right to raise any objection they may have to the granting of the said release. The Notice also informed the two parties that a summary of all receipts and payments in the winding up was ready for inspection by them. That notice was also published in the Daily Nation of July 7th, 2008. The period given for the inspection of the accounts and for raising objection to the release of the liquidator has since passed. No objections have been received from either creditors or contributors.

Mr. Cheloti in his supporting affidavit deposes that, save for the Release Order, the winding up of the Diners Finance Limited is practically concluded.

Having considered the application, and there being no objection to the release order applied for herein, and being satisfied that the Liquidator/Applicant has accomplished its role under section 35 of the Banking Act and has complied with the requirements of section 247 of the Companies Act, the Originating Motion dated 26th September, 2008 be and is hereby granted in terms of prayer (i) and (ii).

The costs be in the cause.

Dated at Nairobi, this 7th day of November, 2008.

LESIIT, J.

JUDGE

Read, signed and delivered, in the presence of:

Mr. Wetangula holding brief for Ms. Maina for the Applicant

LESIIT, J.

JUDGE