



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Winding Up Case 1 of 2006

MICHAEL BARASA WAFULA =====PETITIONER

V E R S U S

MOSES KASHONGA

DIONYSIUS NYAGAH

DEMOTECH BOREHOLE SERVICES LTD =====RESPONDENTS

R U L I N G

The petitioner has sought leave to file a verifying affidavit that would comply with the Companies (Winding Up) Rules.

The verifying affidavit which is on record was filed in court on 14/8/2006, which is the very same date when the petition was filed in court.

As a verifying affidavit ought to be filed within 4 days after the petition was filed, the petitioner has realized that there is a real risk of the verifying affidavit being struck out. Therefore, he now asks that the verifying affidavit on record be deemed as withdrawn, and that he be given leave to file a compliant one.

If the leave sought is granted, the petitioner asks that such verifying affidavit as he would be permitted to file, should thereafter be deemed as having been filed within the period prescribed under Rule 25 of the Companies (Winding Up) Rules.

It is the petitioner's explanation that his advocate had misinterpreted the rules, hence the decision to file the verifying affidavit contemporaneously with the petition.

Although the respondents were duly served with the application, they did not file any documents in answer thereto. They also did not attend court when the matter came up.

In the circumstances, the application was un-challenged.

In the case of **MICROSOFT CORPORATION VS MITSUMI COMPUTER GARAGE LTD &**

ANOTHER, MILIMANI HCCC NO.810 OF 2001, the Hon. Ringera J. (as then was) had occasion to give consideration to the purposes for which a verifying affidavit was deemed necessary.

I appreciate the fact that in that case, the learned judge was applying his mental faculties to the issue of verifying affidavits within the context of Order 7 rule 1 (2) of the Civil Procedure Rules. However, I hold the considered view that the verifying affidavits which are filed in Winding-Up causes, serve, in principle, the same goals as those filed in civil actions governed by the Civil Procedure Rules.

The Hon. Ringera J. said;

“ The broad purpose of the verifying affidavit is thus to verify the contents of the plaint.”

In the same way, a verifying affidavit in a winding-up cause is supposed to verify the contents of the petition.

In my considered view, the respondents cannot be prejudiced if the petitioner was granted leave to file an affidavit to verify the petition. Accordingly, the verifying affidavit of the petitioner, Michael Barasa Wafula, which was sworn on 9/8/2006 is struck out, but the petitioner is granted leave to file a fresh verifying affidavit within 10 days from today.

The costs of the application dated 13/6/2007 are to be borne by the petitioner in any event.

Dated and Delivered at Kitale, this 24th day of January, 2007.

FRED A. OCHIENG

JUDGE