



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC CIV APPLI 7 OF 2006**

**IN THE MATTER OF: THE COMPANIES ACT CHAPTER 486**

**LAWS OF KENYA**

**AND**

**IN THE MATTER OF: AN APPLICATION OF FUEL & LUBRICANT**

**LTD FOR LEAVE TO INSTITUTE SUIT**

**BETWEEN**

**FUEL & LUBRICANT LIMITED .....PLAINTIFF/APPLICANT**

**VERSUS**

**KENYA UNITED STEEL CO. LTD.**

**(UNDER LIQUIDATION) .....DEFENDANT/RESPONDENT**

**R U L I N G**

The applicant herein, Fuel & Lubricant Ltd, took out a motion pursuant to section 228 of the Companies Act (Cap.486 Laws of Kenya) in which it prayed for leave to institute a suit against the Respondent herein namely Kenya United Steel Company Ltd (under liquidation). The motion is supported by the affidavit of Faiza Banji sworn on 1<sup>st</sup> July 2006.

It is averred by Faiza Banji a director of the applicant that the applicant supplied to the Respondent with diesel and petrol amounting Kshs.1,243,584/17 in the period between 28<sup>th</sup> January 2003 and 28<sup>th</sup> August 2003 on credit. He attached to his affidavit copies of the Sales Invoices and statements. The Respondent so far has not settled the debt despite demand notices being served upon the company in liquidation.

The applicant further avers that the Respondent went into liquidation before paying a single cent. A copy of the official search at the registrar of companies is attached to the support of the aforesaid fact. In that search, the Registrar of companies states that Kenya United Steel Co. Ltd was placed under receivership on 20<sup>th</sup> September 2005 at the instance of Kenya Commercial Bank.

I have taken into account the submission made by the applicant's Counsel. I have also considered the material placed before this court. what is clear is that under the provisions of Section 228 of the Companies Act, the applicant must obtain leave from this court to enable it institute a suit against a company under liquidation or receivership.

In the end I allow the notice of motion as prayed. Costs of the motion to abide the outcome of the intended suit.

Dated and delivered at Mombasa this 13<sup>th</sup> day of February 2007.

J.K. SERGON

J U D G E

In open court in the absence of the parties.