



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

Winding Up Cause 41 of 2000

IN THE MATTER OF NATIONWIDE ELECTRICAL INDUSTRIES LIMITED A N D

IN THE MATTER OF COMPANIES ACT

R U L I N G

The Chamber Summons herein, under Sections 165, 167 and 168 of Companies Act, Cap. 486, Laws of Kenya, dated 27/7/04 seeks the following orders that:

1. That Kenneth Muiru Mwangi of Muiru Kandia & Company Certified Accountants be appointed and allowed to examine the books of Accounts of Nationwide Electrical Industries Limited.
2. Valuation of the company assets be conducted by Tysons Limited and the valuation fees be paid by the company.
3. Costs be in the cause.

Supported by an Affidavit by Motichand Virpar Shah, the application is on the grounds, inter alia; that:

- (a) M/S Corporate Registrars who are the Company Secretaries of the company have categorically stated that without a Court Order they cannot allow the Petitioners appointed Accountants and Auditors to inspect and examine the company's books of accounts;
- (b) To be able to determine the true and current value of the company it is imperative that an up to date valuation of the company be done.
- (c) The Applicants do not know the status of their company under the prevailing conditions.

In opposition, the Respondents aver, inter alia, that the grounds stated in support of the application do not even remotely come under Sections 165; 167 and 168 of Cap. 486 and the entire application is therefore incompetent at the very outset; that the grounds do not give a true account of the proceedings in the matter; that the applicants do not make out a proper case for the grant of the prayers sought; that through the Annual General Meeting, the company has provided full disclosure of its financial position in its published Accounts; it is not true that the applicants do not know the status of the company as they have been supplied with copies of the Company Accounts; Minutes of all the proceedings of the general meetings; been allowed to peruse the Minute Book and the Members Register and have attended Company meetings, that the company has Patel, Shah & Joshi as its appointed auditors and there is no need for the court to appoint other firms to go through the company records in the absence of allegation

that the accounts have been falsified and/or the auditors have been in complicity in this act, it is against the Company's Articles of Association and Cap. 486 that the Company supplies company books to parties not sanctioned by the members of the company; the application is an abuse of the court process and should be dismissed with costs.

I have carefully perused the pleadings in this application, the provisions of the Companies Act, Cap. 486, Laws of Kenya; and the submissions by Learned Counsel for both sides, and I have reached the following findings and conclusions.

The applicants herein are minority shareholders in the company and the evidence before me is that despite what the Respondents aver, the applicants right to know the status of the affairs of the company have been thwarted by the oppressive majority shareholders.

It is sad to think of the impact of the submissions by counsel for the Respondents that "the Accounts of the company are open only to the Directors." Each and every shareholder should have access to the accounts of his company. This is the dictate of both the law and internal democracy and transparency in all body corporate and associations. Else, the Directors can use the company as their own tool to the detriment of the minority or individual small shareholders.

The point is very well made in this Court's Ruling, vide Njagi J, that "winding petition should not be granted if there are other or alternative remedy".

The question is how would the members know what other alternative remedy exists in the absence of full disclosure of the affairs of the company?

A transparently managed and operated company has no cause to fear or worry over investigations.

The evidence before me shows that the applicants herein have good reasons for requiring the investigation – to equip themselves with the full status of the company prior to deciding whether winding up is the only remedy.

All in all, and for the above reasons, I rule as under:

1. Grant prayer Nos; 1 and 2 of the application herein.
2. Cost of this application to be in the cause.

DATED and delivered in Nairobi, this 19th Day of June, 2007.

O.K. MUTUNGI

JUDGE