



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Winding Up Cause 7 of 2004**

**IN THE MATTER OF SIRIKWA MOTORS LIMITED**

**AND**

**IN THE MATTER OF THE COMPANIES ACT, CAP 486**

**EUNICE VAN DOORNE.....PETITIONER**

**J U D G M E N T**

There has been considerable delay in preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

The Petitioner, EUNICE VAN DOORNE, has sought in the petition herein an order that the Company, **SIRIKWA MOTORS LIMITED**, be wound up by the court under provisions of the Companies Act, Cap. 406; that such other order be made as the court shall deem just and expedient; and that the costs of the petition be paid to the Petitioner out of the assets of the Company in priority. The Company was duly served with the petition. It never filed any affidavit in opposition; the petition is therefore unopposed.

Only the Petitioner testified. I have considered her testimony. In the year 2001 the Petitioner took her motor vehicle registration No. KUU 663, make Isuzu Trooper to the Company's garage for repairs. The repairs required were to the front-wheel drive. After about two weeks the Petitioner learnt that her said motor vehicle had been seen being driven by a stranger in Kapsabet town. She then went to the Company and expressed her concern. The Company told her that it would look into the matter. But it did not take any action.

Subsequently the Company told the Petitioner that it had given her car to another customer in replacement. The Company promised the Petitioner another car. As happened, the Company never gave the Petitioner another car. Eventually the Petitioner formally demanded the value of her car from the Company, KShs.350,000/00. As the Company never paid her the sum, she brought this petition. The Company is no longer in operation.

The Petitioner never reported to the police what amounted to theft of her car by the Company. She explained this by the fact that she knew some of the directors of the Company, one of whom is her elder brother.

Under section 219 of the Companies Act, Cap. 486 this court has jurisdiction to wind up any company registered in Kenya where, *inter alia*, the company is unable to pay its debts. In the present case, I am satisfied that the Company is indebted to the Petitioner in the sum of KShs.350,000/00, the same being the value of the Petitioner's motor vehicle that was unlawfully appropriated by the Company. I am further satisfied upon the Petitioner's testimony that the Company has been unable to pay the aforesaid debt owed to the Petitioner.

In the event, I will allow the petition and make the winding-up order sought. I hereby direct that the Company, **SIRIKWA MOTORS LIMITED**, be wound up forthwith. I will also award the Petitioner costs of this petition, the same to be paid out of the assets of the Company. There will therefore be judgment accordingly.

**DATED, SIGNED AND PRONOUNCED IN OPEN COURT**

**THIS 17<sup>th</sup> DAY OF AUGUST, 2007**

**H. P. G. WAWERU**

**J U D G E**