



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

**Winding-Up Cause 2 of 2006**

**IN THE MATTER OF DOGRA ENGINEERING COMPANY LIMITED.**

**AND**

**IN THE MATTER OF THE COMPANIES ACT CAP 486 LAWS OF KENYA**

**R U L I N G**

The company has moved this court by chamber summons seeking the striking out of the winding up petition. The application is brought under rule 5 (2) and 203 of the Companies (Winding up) Rules and Order 6 Rule 13 (1)(b), (C ) and (d) and Order 30 Rule 1 and 2 of the Civil Procedure Rules.

The application is based on the ground that; the purported petition is an abuse of the process of court in that it has been filed while there is a suit pending in court filed by the petitioner against the Directors and share holders of the company relating to the very issues raised in the petition; the petition has been brought in bad faith as the petitioner is a long serving director of the company and is therefore a party to mis conduct alleged against the other directors, the petition is therefore scandalous frivolous and vexatious; the petition is defective in that, (a) there is no compliance with Rule 10 of the Companies (Winding up) Rules, (b) there has been no compliance with Rule 25 of the Companies (Winding up) Rules; the verifying affidavit does not comply with the provisions of Evidence Act or Civil Procedure Rules.

The company exhibited papers relating to the other suit filed by the petitioner, namely HCCC NO. 633 of 2005. MANMOHANN SING DOGRA – DOGRA ENGINEERING COMPANY LIMITED AND THREE OTHERS. In that suit the petitioner has raised exactly the complaints raised in the present petition. In HCCC No. 633 of 2005 the petitioner, who is the plaintiff thereof, filed a chamber summons in that suit seeking injunctive orders to stop the company adopting minutes of 20<sup>th</sup> May 2005, stopping the appointed directors from conducting the affairs of the company and stopping the directors from submitting minutes of 20<sup>th</sup> May to the Registrar of companies.

The grounds upon which that application was based are the same as the grounds upon which the present petition is brought. The petitioner/plaintiff in HCCC No. 633 of 2005 failed to obtain the injunction sought and it seems proceeded to file this present petition.

In the opposition to the application to strike out the petition, petitioner argued that the civil procedure rules do not apply to winding up cause and that the court should instead of striking out, stay the petition pending determination of the civil suit.

The argument that Civil Procedure Rules do not apply to winding up petition ‘**holds water**’, but even if it does the courts are always ‘**clothed**’ with power to stop abuse of its process. The petitioner undoubtedly abused the process of this court in having failed to obtain injunctive orders proceeded to file a petition for winding up, on the same grounds he failed to obtain an injunction. In other words the petitioner wants a second ‘**bite**’ over the same issues. The court in its ruling over the injunction application stated:

**“There is nothing so serious here to warrant such drastic steps or orders to stop the affairs of the company, or impede its smooth operation. At best, if the applicant’s allegations turn out to be true at trial he can be compensated by way of damages. This is one of those cases that should go to trial and be decided on evidence.”**

As it turns out the petitioner did not wait for trial but instead filed the present petition. That is abuse of the court process and on its own the petition would be struck out.

This application will also succeed in regard to reliance of Rule 25 of the Companies (Winding up) Rules. That rule requires that every petition be accompanied by a verifying affidavit which:

**“.....shall be sworn and filed within four days after the petition is presented.....”**

The verifying affidavit was filed along side with the petition, in contravention of the aforesaid rule, which requires it be sworn and filed within four days after presentation of the petition.

Rule 10 of the Companies (Winding up) Rules requires:

**“All orders, summonses, petitions, warrants or other documents of any kind in any proceedings and certified copies thereof shall be sealed.”**

The petitioner’s petition was not sealed, after presentation, and it therefore falls fowl to that rule.

The petitioner would therefore fail for failing to abide by Rule 25 and Rule 10, as aforesaid.

The court, in view of matters stated herein before, does hereby strike out this petition with costs to the company. The company is also awarded costs of the chamber summons dated 17<sup>th</sup> February 2006.

**MARY KASANGO**

**JUDGE**

Dated and delivered this 24<sup>th</sup> day of July 2006.

**MARY KASANGO**

**JUDGE**