



Leopard Management Limited v Reach Logistics (K) Ltd & another (Miscellaneous Application E1074 of 2024) [2025] KEHC 3615 (KLR) (Commercial and Tax) (24 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E1074 OF 2024**

H NAMISI, J

MARCH 24, 2025

BETWEEN

LEOPARD MANAGEMENT LIMITED APPLICANT

AND

REACH LOGISTICS (K) LTD 1ST RESPONDENT

REGISTRAR OF COMPANIES 2ND RESPONDENT

RULING

1. By Notice of Motion dated 19 December 2023, the Applicant herein seeks the following prayers:
 - i. That Reach Logistics (K) limited, the 1st Respondent herein, which was dissolved vide Gazette Notice No. 579 dated 23 January 2023 be restored to the Register;
 - ii. That costs of the Application be provided for
2. The Application is premised on the following grounds:
 - i. The Applicant herein instituted suit against the 1st Respondent in Milimani CMCC No. 1710 of 2019;
 - ii. Vide Gazette Notice No. 579 dated 23 January 2023, the 1st Respondent was dissolved.
 - iii. Despite the existence of the suit, the 1st Respondent failed to notify the Registrar of Companies, the 2nd Respondent herein, of the same;
 - iv. The 1st Respondent failed to notify the Applicant of its intention to get dissolved;
 - v. The move to dissolve the 1st Respondent was made in bad faith with the sole aim of defeating the lower court suit, MCCC No. 1710 of 2019;



- vi. The 1st Respondent acted fraudulently by taking steps towards dissolution well aware of the pending litigation
 - vii. Equity shall suffer no wrong without remedy
 - viii. It is in the interest of justice that the orders sought herein are granted.
3. The Application is supported by an Affidavit sworn by Emiel Klein, a Director of the Applicant in which he avers that the suit against the 1st Respondent was instituted on 23 June 2022 vide an Amended Plaint. The 1st Applicant entered appearance on 17 August 2022 through the firm of M/s Coulson Harney LLP Advocates and filed a Statement of Defence dated 12 September 2022. On 11 May 2023, the Applicant's Advocates were served with an application dated 17 March 2023, and this is how the Applicant came to learn of the dissolution of the 1st Respondent.
 4. The 1st Respondent filed a Replying Affidavit in which he avers that his Advocate repeatedly informed the lower court that the suit was incompetent and a non-starter given the striking out of the 1st Respondent from the Register. The matter was mentioned several times to allow the Applicant herein time to consider the submissions by the 1st Respondent's counsel and consider withdrawing the suit. When it became apparent that the Applicant would not withdraw the suit, the 1st Respondent was compelled to file an application to strike out the suit. The Application was heard and allowed on 24 November 2023.
 5. The 1st Respondent gave a chronology of events leading to its dissolution. The process began on 4 March 2022 with a meeting and resolution. Following its application to the Registrar, a notice to the general public was published vide Kenya Gazette No. 11211 dated 16 September 2022. The 1st Respondent was finally struck out on 20 January 2023.
 6. The 1st Respondent denied the allegations of fraud or bad faith, noting that the application to amend the Plaint in the lower court matter was made after the process of dissolving the 1st Respondent had already begun. The 1st Respondent averred that prior to its deregistration, the company was not trading and had no assets to its name.
 7. The 2nd Respondent does not oppose the Application.
 8. The Application was canvassed by way of written submissions.
 9. The Applicant's submissions began with an interesting comparison with Field Marshall Herman Goring's suicide following the Nuremburg trials. The Applicant submitted that just like the Field Marshall, the 1st Respondent herein pulled a similar trick on lady justice by secretly dissolving the company to circumvent claims by creditors.
 10. The Applicant made reference to sections 917 and 918 of the [Companies Act](#). It was the Applicant's contention that the fact that the Application by the 1st Respondent to be struck off has not been presented before the Court either by the 1st Respondent or the 2nd Respondent implied that there something was amiss. The Applicant argued that under section 900(1)(c) of the Act, the 1st Respondent was required to serve the application upon a prospective or contingent creditor. The Applicant referred to the case of Davy -vs- Pickering [2017] EWCA Civ 30. It was the Applicant's contention that the preponderating motive for dissolving the company was a pre-emptive strike in anticipation of the company being joined into the proceedings in the lower court.



11. The 1st Respondent argued that the Applicant has laid no basis for the restoration of the 1st Respondent to the Register. They argue that a company can only be restored if it failed to comply with the provisions of section 898 to 903 of the *Companies Act*.
12. The 1st Respondent distinguished the Davy -vs- Pickering case (supra) from this one by pointing out that in the former case, the court's decision to restore the company to the register was based on the fact that the company's director made the decision to apply to be struck off after receiving the complaint.
13. It was the 1st Respondent's submission that looking at the sequence of events, the Applicant was not a creditor of the 1st Respondent. They relied on the case of Stonegate Securities -vs- Philip Howard Gregory [1979] EWCA where it was held that a prospective creditor is a creditor in respect of a debt which will certainly become due in the future, either on some date which has already been determined or on some date determinable by reference to future events.

Analysis & Determination

14. For a clearer understanding of the sequence of events, I will reproduce the same hereinbelow:
 - i. 4 March 2022 – meeting held by the 1st Respondent and resolution passed to dissolve the company
 - ii. 23 June 2022 – 1st Respondent enjoined in the suit in the lower court vide Amended Plaint;
 - iii. 17 August 2022 – 1st Respondent entered appearance
 - iv. 12 September 2022 – 1st Respondent filed Statement of Defence in which paragraph 12 states, “The jurisdiction of the Honorable Court is not admitted as the Defendant has been dissolved pursuant to sections 27, 28 and 63 (1) of the *Companies Act*, 2015.”
 - v. 16 September 2022 – Publication to general public of the Notice of Intention to dissolve
 - vi. 20 January 2023 – Company was struck out
 - vii. 17 March 2023 – 1st Respondent's Notice of Motion seeking to strike out the suit against the 1st Respondent
 - viii. 24 November 2023 – Ruling on the Application. Application allowed and case struck out.
 - ix. 19 December 2023 – Applicant instituted these proceedings.
15. Section 916(1) provides as follows with respect to application to Court for restoration of a company to the register:

An application may be made to the Court to restore to the Register a company—

 - (a) that has been dissolved after being liquidated under the law relating to insolvency;
 - (b) that is taken to have been dissolved following administration under that Act; or
 - (c) that has been struck off the Register—
 - (i) under section 894 or 895; or
 - (ii) under section 897, whether or not the company has in consequence been dissolved.



16. Under section 916(2), such an application may be made by, inter alia, a person with a potential legal claim against the company. In this regard, the Application herein is properly before this Court.
17. On striking off a company on a company's application, section 897(1) and (2) of the *Companies Act* provides as follows:
- (1) On application by a company, the Registrar may strike the name of the company off the Register.
 - (2) Such an application is effective only if it—
 - (a) is made on behalf of the company by its directors or by a majority of them; and
 - (b) contains such information (if any) as is prescribed by the regulations.
18. Section 900(1) provides as follows:
- A person who makes an application under section 897 on behalf of a company shall ensure that, within seven days after the day on which the application is made, a copy of the application is given to every person who at any time on that day is—
- (a) a member of the company;
 - (b) an employee of the company;
 - (c) a creditor of the company;
 - (d) a director of the company;
 - (e) a manager or trustee of any pension fund established for the benefit of employees of the company; or
 - (f) a person of a class prescribed by the regulations for the purpose of this paragraph
19. From the Replying Affidavit, it is discernible that the resolution to dissolve the company was made in March 2022. A copy of the said resolution (CR19) is annexed thereto. The publication of the notice of intention to dissolve was done in September 2022. However, there is no indication of when the Application envisaged under section 897 was made by the 1st Respondent to the 2nd Respondent. No copy of the same is provided to shed some light. What is clear though is that from the moment the 1st Respondent was served with the Amended Plaint and entered appearance, the 1st Respondent knew that the process of dissolution was ongoing. Counsel for the 1st Respondent alluded to this, thus necessitating the mentions before the lower court to accord the Applicant time to consider their case. It is evident from the material placed before this Court that no copy of the application for dissolution was served upon the Applicant, who was a creditor as defined at section 893 of the Act.
20. The provisions of Section 918 of the Act empowers the court to order a company to be restored to the register if;-
- (a) the company was struck off the Register under section 894 or 895 and the company was, at the time of the striking off, carrying on business or was in operation;
 - (b) the company was struck off the Register under section 897 and a requirement of sections 898 to 903 was not complied with; or
 - (c) in any other case, the court considers it just to do so. (emphasis added)



21. In this instance, the 1st Respondent failed to comply with the provisions of sections 900(1)(c).
22. In view of the foregoing, the Notice of Motion dated 19 December 2023 is allowed as follows:
 - a. The Registrar of Companies is hereby directed and ordered to forthwith restore the 1st Respondent, Reach Logistics (K) Ltd, to the Register of Companies;
 - b. This order shall be served upon the Registrar of Companies for action;
 - c. Costs of the application are awarded to the Applicant.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF MARCH 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Mr. Ndeto H/B E.K. Mutua.....for the Applicant

Ms. Wangila H/B Mr. Deya.....for the 1st Respondent

N/A.....for 2nd Respondent

Libertine Achieng.....court Assistant

