



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISCELLANEOUS CAUSE NO. 377 OF 2018**

**IN THE MATTER OF SAFE PRODUCE SOLUTIONS LIMITED COMPANY NO. CPR 2014/148917**

**AND**

**IN THE MATTER OF SECTION 530, 531 & 532 (1) B OF THE INSOLVENCY ACT 2015**

**AND**

**IN THE MATTER OF AN APPLICATION FOR AN ADMINISTRATION ORDER BY THE DIRECTORS OF SAFE PRODUCE SOLUTION LIMITED APPLICATION FOR AN ADMINISTRATOR**

**IN THE MATTER OF AN APPLICATION FOR AN ADMINISTRATION ORDER BY A DIRECTOR OF SAFE PRODUCE SOLUTIONS LIMITED**

**NAOMI MUTHONI MWANGI.....APPLICANT**

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

1. **SAFE PRODUCE SOLUTION LIMITED** (the Company) is a Limited Liability Company incorporated under the Companies Act. The two shareholders are **NAOMI MUTHONI MWANGI** (hereinafter Naomi) and **GRACE MUENI NYAA**. They each have 500 shares in the Company. The main objective of the Company is to trade in fresh horticultural and vegetable produce.

2. Naomi has filed a Notice of Motion seeking *inter alia* for the appointment of an insolvency practitioner as an Administrator to manage the affairs of the Company; and an order of the directors of the Company to be restrained from managing the Company's affairs save as directed by the Administrator.

3. The application is supported by the Affidavit of Naomi. She deponed in that Affidavit that the Company has sought financing in the form of overdraft. She stood as guarantor of the Company for Kshs. 10 million. She further has advanced credit facilities to the Company; but she failed to give details of such credit facility. That the Company has failed to service several loans, failed to pay salaries for the last 3 months.

4. Naomi therefore deponed that it has become apparent that the Company is unable to service its financial obligations and that is in the Company's and the creditor's best interest that the Court does appoint an Administrator.

5. The Insolvency Act under Section 531 provides the conditions of making administration order, which are:

*a) That the Company is or is likely to become unable to pay its debts; and*

*b) That the administration order is reasonable likely to achieve an objective of administration.*

The Court must be satisfied those two conditions are met before making an administration order.

6. On the whole, I find the present application fails to meet the threshold of Section 531. The application is scanty in details of the Company's inability to meet its debt. What the applicant, Naomi, has attached is documents showing just normal trading of a Company. She attached her guarantee for the Company, guaranteeing the Company's indebtedness with the cooperative Bank. There is no evidence that that facility she guarantee has been called in by the bank. Naomi also attached various board resolutions resolving that the Company obtain financing. Again, nothing unusual there.

7. Naomi attached three letters from Co-operative Bank demanding immediate payment of outstanding amounts. One such letter dated 27<sup>th</sup> July 2018 demanded settlement of Kshs. 5,951,089 by the Company. Another letter dated 27<sup>th</sup> July 2018 demanded settlement of Kshs. 635,832.23. The third letter is dated 30<sup>th</sup> July 2018 and it made a demand for Kshs. 368.50.

8. Even though Naomi presented these documents as evidence of the Company's indebtedness she failed to prove that the Company is unable to pay its debt, which is a precondition of ordering administration under Section 531.

9. Naomi's Co-director/Shareholder, Grace Mueni Nyaa, was served with the application as ordered by the Court. She did not participate in the hearing but she failed objection to the application which although it raised factual issues, unsupported by an Affidavit, in my view it is so telling that I think it justifies this Court making reference to it as follows:

***1. That there exists NRB HCCC NO. 200 of 2018 (Milimani) filed by the same applicant herein and an order given dated 4<sup>th</sup> July 2018 and therefore the filing of this suit is an abuse of Court process.***

***2. That the co-director herein, Grace Mueni Nyaa has reported the applicant at the Athi River Police Station under OB No. 47/17/5/2018 with theft by servant that is pending under investigation if the Company is in unmanageable debt, which is denied, then she is the author of the same and cannot turn to Court with dirty hands.***

10. Those objections, in my view, give an impression of directors/shareholders who are in disagreement. Their disagreement is such that Naomi has been reported to the police on a complaint of theft by servant. Even there those disagreement that is not a basis of making an order for administration.

11. On the whole, **the application by Naomi is unmerited. Accordingly as provided under Section 533, the powers of the Court on application for administration, I hereby dismiss the application by Notice of Motion (undated) filed in Court on 22<sup>nd</sup> August 2018. There shall be no orders as to costs.**

DATED, SIGNED and DELIVERED at NAIROBI this 16<sup>TH</sup> day of MAY, 2019.

MARY KASANGO

JUDGE

Judgment Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE APPLICANT

.....FOR THE COMPANY