



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

WINDING UP CAUSE NO. 12 OF 1995

IN THE MATTER OF MADHUPAPER INTERNATIONAL (KENYA) LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT

R U L I N G

1. By a Petition dated 27th March 1995 Samuel Njoroge Muchiri, William Wokabi Karanja and Joseph Monoru Muturi Petitioned this Court for the winding up of Madhupaper International Limited but some paragraphs of that Petition referred to the company sought to be wound up as Madhupaper International (Kenya) Limited.

2. This Court by its Judgment of 6th March 2006 made an order for Madhupaper International (Kenya) Limited to be wound up under the provisions of the Companies Act. It is many years ago, now 13 years later. Although there were intimation that the company intended to appeal the order of winding up it is not clear whether that appeal was ever filed.

3. Before Court and for consideration is a Notice of Motion dated 4th June 2018. It is filed by the Official Receiver. In the application the Official Receiver seeks orders that:

i. The Managing Director of Madhupaper International Limited do file a statement of affairs of the company with the Official Receiver.

ii. The Court do issue a warrant of arrest against the Managing Director of Madhupaper international limited, Samuel Kamau Macharia and the Officer in Charge of Station (OCS) Central Police Station Nairobi do facilitate the arrest.

iii. That the Court be pleased to extend the time within which to gazette the winding up order and convene a creditors meeting.

4. It is important to state that the Official Receiver had filed an application seeking exactly the orders sought in the present application which was dated 3rd May 2017. The Official Receiver withdrew that application, before Court, on 10th May 2018. It is not clear why the Official Receiver would re-file a duplicate of an application that was withdrawn.

5. The main opposition raised by Samuel Kamau Macharia, in his Replying Affidavit of 19th September 2018, is that the Judgment, herein, wound up Madhupaper International (Kenya) Limited but that he is a majority shareholder and Executive Chairman of a company known as Madhupaper International Limited and not Madhupaper International (Kenya) Limited that was wound up on 6th March 2006.

6. On my perusal of the Court file I came across a letter dated 1st November 2006 written by the Official Receiver to this Court. That letter stated:

“Dear Sir

RE: WINDING UP CAUSE NO.. 12 OF 1995

MADHUPAPER INTERNATIONAL LTD (IN LIQUIDATION)

I wish to draw to your attention to the winding up order made on 6th day of March 2006.

*The matter is titled as “**MADHUPAPER INTERNATIONAL LIMITED**” while the specific Court order (no. 1) makes a winding up order of “**MADHUPAPER INTERNATIONAL (KENYA) LIMITED.**”*

The anomaly in names is inherent from the Petition dated 14th June 1995 that was presented for the winding up. Perhaps inadvertently this anomaly was not brought to the attention of the Judge at the time of making of the order.

I have perused the relevant Companies Registry file No. 14461 (reopened as C. 10/85) and noted that by a special resolution dated 16th May 1977 and filed on 24th May 1977 the company’s name was changed from Madhupaper International (Kenya) Limited to Madhupaper International Limited. This position was confirmed by Certificate of change of name signed by the deputy Registrar of Companies dated 31st July 1985.

It is my considered opinion that the two sets of names do not refer to the same entity. Kindly make the necessary rectification to enable me proceed expeditiously with the winding up order.”

7. Although, when that file was placed before a Judge with that letter, direction were given for the Official Receiver to move the Court appropriately, to date no application has been made to correct the supposed anomaly.

8. It would follow that the application dated 4th June 2018, in view of what is stated above is misconceived. No orders can be made as sought against Madhupaper International Limited or against its Directors when the Judgment of this Court of 6th March 2006 wound up Madhupaper International (Kenya) Limited. Why the Official Receiver has continued to be so misguided for so long is not clear.

9. That as it may be, the application dated 4th June 2018 for the reasons set out above is dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH day of MAY, 2019.

MARY KASANGO

JUDGE

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

Sophie.....COURT ASSISTANT

.....FOR THE PETITIONERS

.....FOR THE COMPANY