



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

WINDING UP NO. 1 OF 2011

AFRICA OIL TURKANA LIMITED1ST PETITIONER

AFRICA OIL CORPORATION2ND PETITIONER

AFRICA OIL KENYA BV3RD PETITIONER

VERSUS

0903658 B. C. LTD SUPPORTING CREDITOR

VERSUS

INTESTATE PETROLEUM COMPANY LIMITEDRESPONDENT

AND

MAOSA KENGARA MONENA1ST CONTRIBUTOR

ERICKL PATRICK ADERO OLBAT2ND CONTRIBUTOR

MOSES ONYANO OMBOYO3RD CONTRIBUTOR

LUCY MUTHONI GATIMO4TH CONTRIBUTOR

EDWARD KINGS ONYANCHA MAINA5TH CONTRIBUTOR

RULING

By the three similar demand notices dated 29/9/2016, the 5th contributor wrote to the applicants/petitioner as follows;

“ Take Notice that if payment and remittance of Kshs 98.987 (Kenya Shillings Ninety Eight Thousand Nine Hundred and Eighty Seven) is not made you Africa Oil Turkana Ltd and received by me Edward Kings Onyancha Maina, at Equity Bank Limited A/C Number 0310191727074 Kenyatta Avenue Nakuru Branch upon the expiry of the Mandatory Statutory period of three (3) weeks, I Edward Kings Onyancha Maina shall without any tinge of any further recourse to you, m/s Africa Oil Turkana Limited present a winding up cause (Petition) under Section 219 of the said same Companies Act Chapter 486 (Copy Section 219 of Companies Act Chapter 486 attached) for orders to winding up against you M/S Africa Oil Corporation at your own risk as to cost and legal consequences.”

This prompted the applicants to file this application dated 24/10/2016 to seek interalia orders stopping the 5th contributor from filing such winding up petition and further that the sum of Kshs 115,925/- be released to the Petitioner/Applicants. The application is supported by the sworn affidavit of Donald Machanga together with the attached annexures.

The dispute between the applicant as well as the 5th contributor has had a long paper trial.

Its clearly on record that the petitioners paid Kshs 278,863 in favour of the intended party being the taxed costs. The sum of Kshs 115.925 was awarded to all the contributors of intestate as ordered on 2/7/2013. The 5th Contributor demanded the whole amount but the court wrote to him to make the necessary formal application as there were other stakeholders. Warrants of attachment were taken up by the 5th contributor against the applicants which prompted them to pay to the auctioneers the sum of Kshs 278,863 in settlement thereof. Its therefore the opinion of the Petitioner that the threat of Winding up the petitioner is purely a blackmail yet the issue of costs has been settled.

This application is not opposed. The 5th contributor has opposed the same by filing written submissions dated 5th December 2016. This of course is not procedural.

An application by law is opposed through grounds of opposition or by a replying affidavit or by an objection on points of Law but not written submissions. Be it as it may I have perused the lengthy submissions submitted by the 5th Contributor and in my view the same essentially reinforces what is already factual on record. The same simply reiterates earlier applications which this court has determined and are pending for appeal by the 5th Contributor. Infact the same goes on to make strange prayers like jailing the lawyer acting for the petitioner for 2 years and imposing a penalty of Kshs 15 million and to be barred from legal practice for 15 years!

Having stated above I am satisfied that the decree of the taxing master was satisfied by the applicant when they remitted the money in court and infact when ahead to pay again the auctioneers who had been instructed by the 5th Contributor. Actually there seemed to have been double payment.

What then was the benefit of issuing demand notices to Winding up the petitioners who had paid their liability?

The same was purely malicious and reckless by the 5th Contributor. There was no apparent cause. Already his auctioneer was paid by the petitioner under duress. The decretal sum was already in court yet the 5th Contributor saw it fit and proper to embarrass the petitioners/applicants.

Secondly and fundamentally I find the action by the said 5th contributor antagonistic and disrespectful of the counsels on record. Lawyers are mouth pieces of their clients and it is utterly inappropriate for a litigant to abuse, cojole and disrespect them. These are professionals and to insinuate that they should be jailed or otherwise without any valid reasons or procedure is an agfront to the rule of law.

Further the notices are malicious. The 5th Contributor has not shown in anyway that the petitioners have not been in a position to pay their liabilities least of all that they have paid twice. Infact he should have contested the application by way of affidavits if any.

In the premises I shall allow the application dated 24/10/2016 in terms of prayers 3, 4, 5 and 6 th thereof.

Delivered this 14th day of February 2017.

H.K. CHEMITEI

JUDGE

In the presence of:

Onyancha for the 5th Contributor present

Court Assistant – Kirong