



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI COURT
COMMERCIAL & ADMIRALTY DIVISION
WINDING UP CAUSE NO. 24 OF 2012
IN THE MATTER OF PYRETHRUM BOARD OF KENYA STAFF SUPERANNUATION
SCHEME
AND
IN THE MATTER OF THE RETIREMENT BENEFITS (MINIMUM FUNDING LEVEL AND
WINDING UP CAUSE OF SCHEME) REGULATION 2000
IN THE MATTER OF THE RETIREMENT OF BENEFIT ACT NO. 3 OF 1997
RULING

1. After hearing the parties in the instant Petition which was commenced by the Retirement Benefits Authority (“ the Authority”) pursuant to the Retirement Benefits Act No. 3 of 1997 and the regulations made thereunder as well as under the now repealed High Court (Winding Up) Rules, Hon. Lady Justice F. Amin on 1 December 2016 exercised her discretion in favour of the Petitioner and ordered that the Respondent scheme, the Pyrethrum Board of Kenya Superannuation Scheme, be wound up.

2. The court however declined to grant the Petitioner another specific relief for the appointment of one Robert Alfred Odongo as the liquidator of the Respondent Scheme. Rather the court stated and held as follows:

“[30] As to the appointment of a liquidator. That decision is premature at this stage. The court would need to hear further submissions as to [sic] then who should be appointed and why that is the best person for the job. The court is disinclined to make the order sought on the evidence currently before it’s due to his proximity to the disputes. It may be that in the circumstances of this case, a more independent liquidator is more appropriate”.

3. As it were, the parties did not agree on an independent liquidator. As it were too, the court seemed to have shut out the application to have Mr. Robert Alfred Odongo appointed as the liquidator.

4. It is now over five months since the liquidation order was made and process is yet to kick off.

5. The Petitioner is back to court, drumming support for the same Robert Alfred Odongo. The Respondent will hear none of it, or is it him? Little has however been done by the Petitioner to allay the doubts and fear expressed by the court when it disinclined to appoint the proposed individual as the liquidator. Little too has been done by both parties to settle on an independent liquidator. There is need consequently to

have a liquidator in place.

6. The basic duty of a liquidator is to wind up the affairs of the entity being wound up, collect in and realize any of the entity's assets, make appropriate distribution to creditors and, where there is a surplus, to the members in this case the beneficiaries of the Scheme. I am aware that the current terrain advocates for the appointment of qualified liquidators hence the recourse to insolvency practitioners.

7. However, the liquidator in all instances once appointed is an officer of the court, answerable and accountable for all his actions to the court. It is now clear that the court is obliged to consider whether any particular liquidator is qualified and in my view, the qualification and competence of the liquidator must be viewed in the circumstances generally of the case and particularly of the entity to be wound up.

8. While the Respondent has submitted that the official receiver in the circumstances of this case will be up to the task, the Petitioner is not of the same view. According to the Petitioner the liquidation process will be untidy if a person not well versed in pension issues is appointed. The Petitioner roots for the individual it had originally proposed but which proposal the court deemed unfavourable by reason of some perceived "proximity to the disputes". The court actually preferred "a more independent liquidator" to the one proposed by the Petitioner. The Respondent Scheme on the other hand roots for the Official Receiver.

9. I did not hear any of the parties to suggest that the official receiver may not be or is not an independent liquidator. I also believe he is. The qualifications of the office of the official receiver are also relatively impressive. I see no need to rehash the same here. More critically, a liquidator appointed under the Retirement Benefits (Minimum Funding Level and Winding - up of Schemes) Regulations, 2000 would be obliged to operate and execute his duties with the Petitioner herein, literally, also superintending him. Regulation 5(8) of the Retirement Benefits (Minimum Funding Level and Winding Up of Schemes) Regulations 2000 stipulates as follows:

"The Liquidator appointed pursuant to the Winding- up order issued under these Regulations shall give the Authority such information as the Authority may from time to time require and shall, whenever he intends to apply to the court for instructions report to the Authority who shall be entitled to be heard in person or by a representative at any such application and may itself make an application to the court in reference to the winding up process."

10. Evidently, the Petitioner will still have a deeper role to play in the liquidation process, including moving the court where necessary without any appointed liquidator raising an issue.

11. I am satisfied that the official Receiver would not be disqualified under Regulation 8 of the Regulations. I see no reason why the liquidation process ought to be delayed any further through the lack of a liquidator. I need not allow the parties to go shopping for another liquidator.

12. In the result, I make the following orders;

a) The official Receiver is hereby appointed as the Liquidator of the Respondent Scheme being the Pyrethrum Board of Kenya Superannuation Scheme with powers to liquidate the Scheme pursuant to and under the provisions of the Retirement Benefits (Minimum Funding Level and Winding-up of Schemes) Regulations 2000 and all relevant insolvency laws.

b) Liberty, to either party, to apply.

13. Orders accordingly.

Dated, signed and delivered at Nairobi this 12th day of May, 2017.

J.L.ONGUTO

JUDGE