



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Miscellaneous Application 377 of 2002**

**IN THE MATTER OF UNI-TRADE PRINTERS LIMITED**

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

**RULING**

1. By a Ruling delivered on 9 February 2012, Musinga J, (as he then was) ordered the removal of **Charles Gaithuma Munge** as the manager of Uni-trade Printers Ltd (hereinafter “the Company”) and directed that another manager should be appointed for the Company. The learned Judge further ordered that the said Mr. Charles G. Munge (hereinafter “CGM”) along with Mr. Peter Icharia Munge (hereinafter “PIM”) should agree upon the appointment of a new manager for the Company and notify the Court within 10 days of the delivery of the said Ruling. It is now apparent from the Notice of Motion dated 4 May 2012 as filed by PIM that both he and CGM, who are both directors of the Company, have been unable to agree on a person to be appointed as Manager of the same. PIM has put forward the name of one **Kwengu Apell Alloys** (hereinafter “Mr. Alloys”) to be appointed as manager but CGM has neither consented to such appointment nor raised any objection thereto. As a consequence, the said Application dated 4 May 2012 seeks the appointment of Mr. Alloys as the Manager of the Company or, in the alternative, the Official Receiver. The Application also seeks further orders that CGM do deliver to the Registrar of Companies, as well as to this Court, within the 14 days, an abstract showing all receipts and payments relating to the Company since CGM’s appointment as manager on the 29th July 2002.

2. The Application is brought under sections 353 and 354 of the Companies Act and is based on the grounds firstly, that Musinga J in his said Ruling as above, had directed that CGM and PIM, as directors of the Company, should appoint a Manager therefore. Secondly, CGM having said neither “yes” nor “no” to the appointment of Mr. Alloys was ordered to obey the Court’s Order as above. Thirdly, it was imperative that a manager be appointed for the Company as soon as possible in terms of the Court’s Order. Fourthly, in order for the new manager to discharge his duties, it was essential that CGM should furnish a Status Report as to his management of the Company since July 2002. The Application was supported by the Affidavit of PIM sworn on 4 May 2012. Therein the deponent related his attempts to have a manager appointed for the Company in terms of correspondence with CGM. Although PIM had suggested the name of Mr. Alloys, CGM through his advocates had not nominated anyone for the position but had, instead, suggested that the 2 advocates acting for CGM and PIM in this matter should be appointed as co-managers for the Company. The deponent also noted that he had requested to be furnished with the said Status Report under cover of a letter from his advocates to CIM’s advocates dated 16 March 2012 but the Status Report had been forthcoming. PIM requested the Court to intervene as necessary.

3. CGM responded to the Application by swearing a Replying Affidavit dated 9 November 2012. I note that prior to the filing of that affidavit, PIM had filed a Notice of Motion dated 5 of October 2012 seeking an order committing CGM, a company known as Highway Dynamics Ltd and a co-director of CGM’s in the company, one **Alice Muthoni Munge** to civil jail for a period of 3 months for contempt of court. Leave had been granted for such application by Musinga J. on 4 October 2012. That Application is yet to be heard and determined. However, in his said Replying Affidavit, CGM noted that PIM had given no reason as to why his Nominee Mr. Alloys should be appointed as the manager of the Company. CGM observed that he had put forward an alternative name or names as managers of the Company being the

respective advocates for CGM and PIM but had received no response to that suggestion. CGM also confirmed that a Status Report had been requested of him but since that time, PIM had lodged a fresh suit being *HCCC No. 274 of 2012* seeking accounts and/or his share of the assets owned by the Company. In CGM's view for him to detail a Status Report would be an abuse of the Court's process bearing in mind the filing of the fresh suit as above. CGM also detailed that he had complied with the Companies Act but that PIM, without authority of the Company, had held himself out as the Managing Director of the same. He also alluded to the fact that PIM had continued to harass tenants in properties which did not belong to the Company.

4. PIM's submissions as regards the Application were filed in court on 30 January 2013. After detailing the Orders sought by the Application before Court, the submissions summarised the facts and the history of this matter. PIM noted that that CGM admitted this Court's Order requiring the appointment of a manager for the Company. PIM had suggested the appointment of either Mr. Alloys or the Official Receiver as such. CGM had not given any reason not to appoint either of PIM's nominees. The Court was then referred to **section 353** of the *Companies Act* under which this Application is brought. PIM's submissions continued as follows:

**“My Lord, under Section 353 of The Companies Act, a court Appointed Manager is required to make Returns of The Company showing Receipts and Payments. Since his Appointment as Manager, the Respondent has not made any such Returns. Instead, he attempted to illegally transfer the suit property being L.R. No. NAIROBI BLOCK 72/1221 and 1196. In the Ruling of the court made on 9/2/2012, the Honourable court reiterated this fact and stressed the need for a court appointed Manager to make such Returns. Indeed for any Manager to take over the Management of the company, the Returns are necessary and important documents to shade light on the status of the company. Indeed without such Returns, the appointed Manager will be unable to commence/perform his duties. Consequently, we submit that an order for a statement of Affairs of the Company must issue alongside the order for appointment of Management of the company. This is to give effect to section 353 of The Companies Act”.**

5. CGM filed his submissions herein on 26 February 2013. Like his co-director's, he outlined the Orders sought by the Application. CGM detailed that by letter dated 6 March 2012, he had proposed the appointment of Messrs. Juma and Mogeni, the advocates for PIM and himself as joint managers of the Company. He had received no response to that communication. Further, he accused PIM for not laying any foundation as regards the proposed appointment of Mr. Alloys in terms of detailing the latter's qualifications or attaching his curriculum vitae so as to have a basis for his appointment. CGM noted that in the said Ruling of Musinga J. the Judge had directed the appointment of a neutral party not merely PIM's nominee. With regard to the prayer that he do furnish a Status Report and/or accounts for the Company during his tenure as the manager thereof, CGM felt that the same was misplaced in view of the fact that PIM had already filed another suit, which was still pending before Court, seeking 50% of the value of the Company. Thereafter, CGM referred this court to **HCCC No. 29 of 1985 Uhuru Highway Development Ltd v. Central Bank of Kenya & 3 Ors** wherein the Court was faced with an application for appointment of managers for the plaintiff company and it had been supplied with 9 Curricula Vitae thus being able to chose one of the 9 individuals as manager. CGM was not aware why the Application had not been brought with more detail so as to assist the Court in its appointment bearing in mind the inability of PIM and himself to agree upon the appointment of a manager for the Company.

6. The application before my learned brother Musinga J. involved the issue of an injunction to stop CGM, as manager of the Company (by consent), from disposing of the Company's property more particularly those parcels of land known as Nairobi Block 72/1221 and 72/1196. CGM's removal as manager was so ordered and an injunction issued to prevent any or further disposal of any of the Company's properties. My learned brother in his said Ruling referred specifically to section 353 of the Companies Act in which a court appointed manager (which CGM was) is required to make returns showing receipts and payments for the Company. The Judge noted as a fact, that CGM, as manager of the Company, had not made any such returns to date. He also noted that CGM, as manager, did not seek the consent of his co-director PIM before commencing the process of the sale of the aforementioned Company's properties. As a result, the learned Judge noted that where a court appointed manager is not

serving the interests of the Company, such manager may be removed and another one appointed. It is perhaps unfortunate that my learned brother did not take the opportunity of appointing another manager for the Company at the time of his said Ruling, as such appointment may have had the result of avoiding the current Application before this Court and the delay which has ensued.

7. **Section 353** of the *Companies Act* provides for the delivery to the Registrar of Companies of the accounts of the receivers and managers of a company. **Section 354** of the *Companies Act* provides for the enforcement of the duty of receivers and managers to make such returns and file such accounts. It is apparent from the Ruling of Musinga J. that CGM failed to make any such returns as required by the Act during his tenure as the manager of the Company from the date of his appointment on 29 July 2002. Accordingly, I have no hesitation in now so ordering CGM that he must make such returns and file such accounts with the Registrar of Companies for the period 29 July 2002 up to the date of his removal as per the said Ruling – 9 February 2012. Such returns and the filing of accounts shall be made within 3 months of the date hereof or CGM will suffer the penalties therefore as provided by the Act and the law.

8. It is quite obvious that despite the request in the said Ruling dated 9th February 2012 that CGM and PIM should jointly, as directors of the Company, appoint a manager for the Company, this has not been achieved to date. Accordingly, and with reference to **Order 41 rule 1** of the *Civil Procedure Rules, 2010*, I hereby appoint the Official Receiver as the manager of the Company with immediate effect. In making such appointment it seems to me that CGM has made the point that he and indeed this Court have no information in relation to the qualifications and professionalism of Mr. Alloys whose name has been put forward by PIM. Further, I am of the belief that Messrs. Juma and Mogeni, as busy practising advocates, will not have the time to devote to the affairs of the Company. In my opinion, the Official Receiver is the appropriate entity to take over the operations and management of the Company bearing in mind his considerable experience in such matters. In the circumstances, I make no order as to costs of the Application.

**DATED and delivered at Nairobi this 9<sup>th</sup> day of May, 2013.**

**J. B. HAVELOCK  
JUDGE**