



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Winding Up Cause 3 of 2007**

**IN THE MATTER OF MACHROSE LIMITED**

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

**JUDGMENT**

Internet Agricultural Services (*petitioner*) petitioned this court to wind up Machrose Limited (*the Company*) on the grounds that the company had failed or neglected to settle a debt of KShs.210,110/80 despite of twenty one (21) day notice being given pursuant to **Section 220** of the **Companies Act**. The petitioner craved for orders of the court to wind up the company because, in its opinion, the company was insolvent and therefore unable to pay its debts. When the petition was advertised in the Kenya Gazette of 18<sup>th</sup> May 2007 and the Daily Nation Newspaper of 21<sup>st</sup> May 2007, Bank of Baroda (*the creditor*) entered the appearance in the proceedings. The creditor claimed that the company owed it the sum of KShs.85,403,508/60. Thereafter, before the petition was heard, the company settled the debt of the petitioner.

On 22<sup>nd</sup> February 2008, the creditor applied to the court to be substituted as the petitioner in the proceeding. The creditor's application was allowed. On 30<sup>th</sup> July 2009, the petition herein was listed for hearing. Mr. Murugara for the creditor submitted that the company should be wound up pursuant to the provisions of **Section 220** of **Companies Act** on the grounds that the company is unable to pay its debt. He submitted that since the petition was filed, the company has made no effort to settle the debt of over KShs.85 million due to the creditor. The company filed no papers in opposition to the petition. He urged the court to allow the petition. Miss Ithondeka for the company chose not to make any submission in response to the submission made on behalf of the creditor.

I have carefully considered the argument made on behalf of the creditor. Under **Section 219** of the **Companies Act**, a company may be ordered wound up by the court, for among other reasons, inability to pay its debts (See **Section 219(e)**). Under **Section 220** of the **Act**, a company shall be deemed to be unable to pay its debts if a creditor served the company through its registered office with a demand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected or failed to pay the sum. In the present petition, the creditor established that the company owes it the said sum of Kshs.85,403,508/60. When the present petition was filed, the company had the opportunity to put its side of the story for the court to appreciate its financial position. The company chose not to file any papers in response to the petition. It was therefore clear to the court that the sum claimed by the creditor, being undisputed, is indeed owed by the company to the creditor. The creditor established to the required standard of proof that the company is unable to pay its debts and is therefore insolvent. I therefore order the company to be wound up on account of its inability to pay the creditor.

Under **Section 231** of the **Companies Act**, I direct the creditor to appoint a liquidator for the purposes of winding up the company. The liquidator shall have all the powers specified under **Section 241** of the **Companies Act**. Pursuant to the relevant law, the said receiver shall render account to this court as regard the winding up of the company. The creditor shall have the costs of this petition which shall be recovered on priority from the assets of the company.

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2009.**

**L. KIMARU**

**JUDGE**