

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Winding Up Cause 39 of 1998

In The Matter of SAI Imports & Exporters Ltd and In The Matter of Companies Act

Ruling.

This is an application to strike out a winding up petition filed herein by Midico Textiles E.A. Limited. The company sought to be wound up in Sai Imports and Exports Limited.

The grounds on which the application is made are that the petition is incompetent, misconceived and an abuse of the process of the court. Two of the factors which are said to render the petition incompetent are:-

- (a) That it is not signed by the petitioner but by its advocates; and
- (b) That the petitioner has failed to file an affidavit verifying the petition as prescribed in rule 25 of the Companies (Winding Up) rules.

Regarding the issue of signature of the petitioner, it is common ground that the petition is signed not by or on behalf of the petitioner but by its advocates M/S Muriu, Mungai & Co Advocates. The particulars person in that firm of advocates who signed the document is not indicate. Miss Ouma for the applicant submitted that a petition has to be signed by the petitioner and that in as much as the instant petition was not so signed, it was in for that reason incompetent. Mr Mungai for the respondent opposed that view stating that there was no law requiring that a petition be signed only the petitioners. He argued that a petition signed by the petitioner's advocate was proper. For this he relied on Order 3 rule 1 of the Civil Procedure rules. And in that respect he observed that where the Legislature intended that a petition be signed only by the petitioner, it provided so in clear terms like in the election rules and in the Matrimonial Cause Act.

Although no direct authority was cited by either advocate on this point, but having regard to rule 25 of the Companies (Winding Up) Rules, I think the correct view to take of the matter is that a petition which is not signed by the petitioner is not properly before the court.

With regard to the second complaint by the applicant that the petitioner has failed to comply with the provisions of rules 25 of the Companies (Winding Up) Rules, there can be no doubt about what the correct position is. That rules provides:-

“Every petition shall be verified by an affidavit, which shall be sworn by the petitioner, or by one of the petitioners if more than one, or, where the petition is presented by a corporation, by a director, secretary or other principal officer thereof, and shall be sworn and filed within four days after the petition is presented, and such affidavit shall be prima facie evidence of the contents of the petition.”

On behalf of the Respondent Mr Mungai conceded that no verifying affidavit was filed. He however submitted that the omission to file the verifying affidavit was cured by the subsequent filing of a replying affidavit by Mr Shah. That contention is not however tenable as an affidavit in reply to an application cannot properly be deemed to be a verifying affidavit. I reject Mr Muigai's contention and find that the petition stands unverified. For that reason the petitioner does not comply with the requirements of rule 25 of the companies (Winding Up rules) and is for that reason incurably defective.

For the above reasons the application is allowed and the petition struck out with costs.

March 15,1999

Mbaluto, J