



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civil Appeal 191 of 1995

LILIAN NJERI MUNGAI
APPELLANT

AND

DR. NJOROGE MUNGAI
RESPONDENT

(Appeal from the order of the High Court of Kenya at Nairobi (Ole Keiwua J) dated

13th October, 1995

IN

H. C. WINDING UP CAUSE NO. 8 OF 1995)

JUDGMENT OF TUNOI, J. A.

It is not in dispute, and it is indeed common ground, that the appellant and the respondent, who are husband and wife respectively, do not meet on matters of the companies of Magana Holdings Limited and Muni Limited in which both parties have significant interests. This is due to their grave differences in marriage which have culminated in the institution of three matrimonial suits.

It is alleged in the petition for the winding up, inter-alia, that the company has not held a general meeting nor its meeting of the board of directors since incorporation on 29th May, 1980 and that the respondent has excluded the appellant from the management of the company or participation in the same. It is further averred that the respondent has embarked on systematic design of disposal of company assets in an attempt to deprive the appellant of her rightful share in the equity of the company.

The company is a private company, with a nominal capital of Shs.40,000/= divided into 400 shares of 100/= each, the appellant was allotted one (1) share, the respondent, the petitioner's husband, 399 shares. The two were the only directors. The intention of the directors was to run the company as a family enterprise providing financial support to their family. Although registered as a limited liability company, it appears that the same has for all practical purposes been run as a partnership. When the marriage between the directors went on the rocks it became impossible to jointly run the company.

Under these circumstances it was contended by the appellant that a complete deadlock had arisen and that it was meet and just that as the company ought to be wound up. The learned judge Ole Keiwua, J. held:-

" I have carefully examined each and every submission made for and against the petitions by the petitioner and the respondent. I accept the respondent submission that the petitions show no cause of action and are an abuse of the process of the court. In view of the existence of an application under section 17 of the Married Women Property Act to declare the petitioner's rights to property, these petitions may be viewed as brought to embarrass and pressurize the respondents. One of the companies to be wound up is joined in that application. Although I have not seen that application, may be one of the orders would include declarations as to the extent of the petitioner's rights in the companies in view of her statement in paragraph 6 of the petitioners that she assisted in the raising of the monies used to buy these companies. I therefore strike out both petitions."

From that ruling the appellant has preferred this appeal contending in the main that the learned judge erred in holding that the petition, as filed, showed no cause of action and was an abuse of the process of the court.

Though there is no reply by the respondent to the petition, it is plainly clear that the petition contained very grave allegations against him and in the circumstances the petition ought to have been heard so that the parties could have had an opportunity to have the disputed facts resolved. It could not be said on the facts stated in support of the petition that this was a plain and obvious case suitable for striking out the winding up petition especially when the respondent had not disclosed the nature of his defence to the court.

The application before the learned judge required lengthy argument by counsel on complex issues of interpretation of sections of the Companies Act and the matter was not therefore a suitable case for summary proceedings. Moreover, the ruling so given did not practically determine all the issues between the parties nor of the action in one way or the other.

A winding up petition and indeed all the other proceedings under the Companies Act are serious matters and must be carefully thought out before institutions by any party. The Court, likewise, must not act capriciously or in a wanton manner in dealing with such proceedings and ought not to strike them out summarily unless they appear so hopeless that they plainly and obviously disclose no reasonable cause of action.

For all the foregoing reasons, I would allow the appeal and would make orders as proposed by Shah, J.A.

Dated and delivered at Nairobi this 6th day of March, 1997.

P. K. TUNOI

JUDGE OF APPEAL