



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

**Winding Up Cause 11 of 1994**

**In The Matter of Corporate Insurance Company Ltd and In The Matter of The  
Companies Act (Chapter 486) Laws of Kenya**

**RULING.**

On 27<sup>th</sup> April, 1994 the petitioner (Captain Bulhan) filed a petition seeking Winding up of the company, Corporate Insurance Company Limited.

On 3<sup>rd</sup> May, 1994 (although Court stamp shows date on 3<sup>rd</sup> April, 1994) the company's advocate under a certificate of urgency sought orders to stop the petitioner from advertising the petition for obvious reasons. If such a petition were to be advertised the company, in this case, an authorized insurer within the meaning of Cap 405, Laws of Kenya will suffer irreparable harm.

There is no doubt that a company court has jurisdiction to stop such as advertisement in appropriate cases.

Normally a company court does not like to be used as a debt collection court. But should the debt be undisputed and the company is unable to pay, winding up does come in. But a company court is not the forum for deciding the validity or otherwise of a disputed claim. That is the province of civils courts.

The facts are that the petitioner's vehicle KAC 303F a Mercedes Benz 200 E valued at shs 2,000,000/= was insured by the company. This vehicle was allegedly "robbed on the 6<sup>th</sup> day of October, 1993". It is possible that the petitioner was at one stage told that the compensation sum could be shs 1.8 million.

Such claims are always investigated. More scrupulously so these days as there are too many vehicle thefts or robberies I take judicial notice of this notorious facts.

From the letters annexed to the affidavit of Wainaina Kigethi Mungai the Chief Executive of Corporate Insurance Company Ltd it transpires that the claim of the petitioner was under investigation at a stage. Liability was then repudiated. There appears to be a dispute.

Mr Kimathi for the petitioner argued that there was no room for dispute as his client forwarded documents to the company under his letter of 2<sup>nd</sup> February, 1994 giving to the company right to take over the title in the said Mercedes.

It is trite law that when a petition is presented for putting pressure on the company the court will grant the injunction such as sought here. See in Re: A company (1894) 2 ch 349.

It is also trite here (as I see it) that as the petitioner has not utilized this remedies under condition 10 of the Insurance policy (referred to as "all difference clause") (See Kenindia Assurance Company Limited vs Patrick Muturi C.A. No 87 of 1993, unreported). No cause of action has arisen, to be gone into by court. There is no doubt that the petition is an abuse of the process of court.

The petition is struck out with costs and hence it does not fall on me to decide on the injunction.

July 15, 1994

Shah, J