



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

Winding Up Cause 15 of 1994

**In The Matter of Cheetah Contractors Ltd and In The Matter of The Companies Act Chapter 486
Laws of Kenya**

RULING.

Mr Kimani Wa Muhuoro, for one of the director of the company, namely Henry Koigi Njau, as a respondent to the winding up petition herein has taken a preliminary objection to the validity of the petition itself on the ground that the petition is not signed by a director of the company on behalf of the director and that signature by an advocate for the petitioner is not good enough to validate the petition.

The petition is filed on behalf of Adama Diawara a director and shareholder of Cheetah Contractors Company Limited (the company is sought to be wound up).

Mr Wa Muhoro bases his objection on the language of s.221(1) of the Companies Act (the Act) which reads:

“An application to the court for the winding up of a company shall be by petition presented, subject to the provisions of this section either by the company or by any creditor or creditors, (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately.

Reference was made to relevant rule which in so far as material reads:

Rule 21

Every petition shall be in form No 3,4 or 5 with such variations as circumstances may require.”

In all forms (in this particular case) forms NO S 3 & 5 are of importance) there is no mention of who will sign the petition but the words “your petitioner” are all important. Your petitioner must of necessity mean the party and not the counsel.

It is settled law that an authorized agent can do what the principal can do save in respect of what a statute (or rules made under the statute provided the rules are not ultra vires the act) requires should be done by the principal himself.

Lord Greene M R in re A Debtor (NO 335 of 1947) (1948) 2 A E.R 533-536 E said

“if there is no rule of construction for statutes and other documents it is that you must not imply anything

in them which is inconsistent with the words expressly used True it is that English is a flexible language but that does not mean that one can disregard the natural and ordinary meaning of the words used unless it is apparent that so me of her meaning was intended. If language is clear and explicit the court must give effect to it.”

Here at home it was held in the case of Lall vs Jayee Investments Ltd (1972) E A 512 that:

Every statute must be interpreted on the basis of its language since words derive their colour and content from the context and object of the statute is a paramount consideration.”

Looking for instance at s 220 of the Act it is clear that notice to the debtor before commencement of winding up proceedings must be under the hand of the creditor and in another petition I have held that a winding up petition based on a 21 day notice to pay cannot be good if the notice is signed by an advocate.

But does this apply in case of Section 221 (1) application for winding up of a company?

If the draftsman of the Act would have wanted the petition to be signed by the petitioner he would have said so. It has not been so said. But as I said earlier the set-up of the relevant section and rule and forms is clear. It requires in my view, personal signature of the applicant.

As that is not the case, the petition is struck out with costs.

October 26, 1994

Shah, J