

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

WINDING UP CAUSE 29 OF 1988

IN THE MATTER OF EQUITY DISPLAY CENTRE LIMITED

AND

IN THE MATTER OF COMPANIES ACT

Ruling.

By a Petition dated 5th July, 1988 filed on 14th July, 1988 the Petitioner Middle East Bank of Kenya

hereinafter called the Petitioner) who is an unsecured creditor of Equity Display Centre Ltd. (hereinafter called the Company) applied for a winding up order against the company. The company is indebted to the petitioner in the sum of shs 306,401/15. The Petition was duly served and advertised. A senior Deputy Registrar of this Court on 15th December, 1988 certified that the provisions of the Companies (Winding Up) Rules had been complied with and that the petition could proceed to hearing.

On 27th January, 1989 when the petition was heard by me apart from Mr Le Pelley who is counsel for the petitioner, Mr Murimi appeared for a secured creditor to oppose the petition. He stated that there was debenture dated 17th July 1985 on/all undertaking good-will assets book debts and uncalled capital of the Company in favour of his clients' namely Dudo Africa Co Ltd.

He further stated that the Company owed far more to his clients than the value of its total assets and there was no likelihood of any surplus assets.

In fact he said that even his client is not likely to recover its debt in full. He said that the directors of the Company had already left the country.

Mr Murimi further stated from the bar that before the filing of this Petition a receiver had already been appointed under the said debenture. He was appointed in May, 1988 and his appointment was registered with the Registrar of Companies on 15/7/1988. The receiver had already taken charge of all the assets of the Company. It would be pointless, he argued, to appoint a liquidator in the circumstances. In deed, he said, there would be a clash between the receiver and the liquidator. He argued that the liquidator should not be appointed. There was no other opposing or supporting creditor.

Section 222(1) of the Companies Act (Cap 486) taking about the powers of the Court on the hearing of a Petition says "On hearing a winding up Petition the Court may dismiss it.....but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets".

Mr Le-Pelley cited from Page 81 of Farmers 'Company Precedents Part II Winding-up 17th Edition: The note reads: ".....and in particular where the Company's assets are entirely covered by debentures, the wishes of the unsecured creditors will be primarily considered".

According to Halsburys Law of England 4th Edition Volume 7 Para 1033 "A Creditor who cannot obtain payment is entitled as of right to a winding up order subject only to the Courts' power on the hearing of

the Petition to give effect to the wishes of a majority of the creditors on the question whether a winding up order shall be made and whether the petition shall or shall not standover”.

There is no other remedy open to the petitioning creditor and in the circumstances I hold that it is just and equitable that the company should be wound up.

Accordingly I make a winding up order against the company.

Costs of the Petition shall be borne by the Company. The Official Receiver is hereby appointed as the liquidator.

Dated and Delivered at Nairobi this 22nd day of February , 1989.

G.S PALL

JUDGE.