



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**WINDING UP CAUSE 38 OF 1986**

**IN THE MATTER OF S.A. PEGRUME & CO LTD**

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

**ORDER**

“By consent, hearing of application and petition ----- to 12<sup>th</sup> January, 1987 to enable the parties to agree on an independent firm of Accountants and Auditors to value the 20% shares of the Petitioner in Mikko Trading Company Ltd agreed to be sold to the two Chaudry brothers. Such valuation to take into account all assets and liabilities of Mikko Trading Company Limited including S.A. Pegrume and Company Limited.

Costs of the independent accountant to be ----- equally by the Petitioner and the two Chaudry brothers.

Present injunction order to stay in force and be further action to be taken on the petition until 12<sup>th</sup> January, 1987 or further -----.

Liberty to apply to either side.

On 30-6-87 the injunction referred to above was extended until the final determination of the matter with liberty to apply. Meanwhile, pursuant to the consent order aforesaid the parties appointed Cooper and Lybrad Certified Public Accountants of Kenya

Value the 20% shares of the petition in Mikko Trading Company Ltd agreed to be sold to the two Chaudry brothers. This valuation was carried out and after the petitioner and the Chaudry brothers each paid half the fees of Cooper & Lybrad i.e Shs 12,500/= by the petitioner and Shs 12,500/= by the Chaudry brothers, a valuation report of the 20% shares referred to above was forwarded to the counsel for the Chaudry brothers with copies to the counsel for the petitioner, the petition and S.A. Pegrume & Company Ltd by Cooper & Lybrad. This was as per the letter dated 18-5-87 which was addressed to the counsel for the Chaudry brothers and copied to the persons aforementioned. According to Cooper & Lybrad, the Petitioner's 20% shares in Mikko Trading Company Ltd on a going concern basis were as on 18-5-87 valued at Kshs 180,000/=. Subsequent to the valuation on 6-11-87 the Chaudry brothers issued a cheque for a sum of Kshs 180,000/= drawn in favour of the counsel for the petitioner. By a letter dated 2-2-88 addressed to the counsel for the Chaudry brothers by the new counsels for the petitioner, the petitioner indicated that his shares in Mikko Trading Company Limited had been substantially revalued and in the circumstances, he wished to know how much the Chaudry brothers were willing to offer to him. This letter was in total disregard of the consent order set out above which was then and is still subsisting. This then prompted the applicants to make the present application.

The present application is made under section 403 of the Companies Act, Chapter 486 of the Laws of Kenya and under Rule 203 of the Companies Winding-Up rules and sections 98 and 3A of the Civil Procedure Act. It is supported by the affidavit of one of the Chaudry brothers – Anjin Kamel Chaudry – together with the annexure thereto. At the hearing of the application on 4-5-88 the counsel for the

applicant relied on this affidavit. In response to this application, the counsel for the petitioner relied on the letter marked "AKC 24" which is the letter I have referred to above in which the petitioner had indicated that his shares in Mikke Trading Company Limited had been substantially revalued. The counsel for the petitioner left the rest to this court.

The letter marked "AKC 24" is, as I have said above, in total disregard of the consent order set out above which order has been implemented by the appointment of Cooper & Lybrad Certified Public Accountants, to value the 20% shares of the petitioner in Mikko Trading Company Ltd which task they have carried out and for which the parties herto jointly paid them their fees and which order should be complied with by the parties to it. It is now two late in the day for the petitioner to say that his shares in Mikko Trading Company Limited have been substantially revalued and to ask the applicants how much they were now willing to offer him in the circumstances, the applicants application dated 23-3-88 must succeed. The said application as fee the Chamber Summons of the date aforesaid is granted as prayed with costs to the applicants herein. order according.

**Dated and delivered at Nairobi this 17th day of May , 1988**

**BUTLER**

**JUDGE**