



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

**Winding Up Cause 25 of 1987**

**In The Matter of Hallians Club (1978) Ltd and In The Matter of Companies Act**

**Ruling.**

By a petition dated 22<sup>nd</sup> April, 1987 and filed in court on 24<sup>th</sup> April, 1987 Hebtulla Properties Limited (hereinafter called the Petitioner) seeks for an order that Hallians Club (1978) Limited (hereinafter called the Company) be wound up by the court under the provisions of the Companies Act.

It is alleged in the said Petition that the company owes the petitioner a sum of Kshs 335,500/= being arrears of rent for premises leased by the company from the Petitioner up to April, 1987. M/s Barclays Bank of Kenya

hereinafter called the supporting creditor ) have supported the petition claiming that the company owes the bank Kshs 1,217,015/7.

After complying with the relevant provisions under the Companies Act and the Rules thereunder the Petition was set down for hearing. The Company had by then, through one Dick Chakala, filed an affidavit in opposition to the said Petition.

Mr Le Pelley the learned counsel for the petitioner told the court that the petition is based on paragraph 5 thereof that is, arrears of rent. Whereas the affidavit in opposition states that there is no rent due, there is an affidavit in reply that confirms that there are arrears of rent due. Mr Le Pelley further submits that from the annexures to the affidavit in reply sworn by one Mohamed Fidaali Mulla Hebtulla there is no doubt that the company is in arrears and that it is unable to pay the said arrears. Further that the company has not even said how it is going to pay the supporting creditor.

Mr Hayanga the learned counsel for the company opposes the petition on the grounds that the petition does not specify which rent is due and what payments have been made by the company to the petitioner. Further that the petitioner ought to have filed a statement of accounts.

Mr Hayanga further drew the attention of the court to H.C.C.C. No 2470 of 1984 still pending in the High Court and involving the same parties. In the affidavit in opposition paragraph 6 thereof, the Petitioner has been attempting to evict the company which issue is yet to be resolved. Further that if the Petitioner has accepted the company as a tenant the terms must be stated. Before any order is made the Petitioner should withdraw H.C.C.C. No 2470 of 1984. In any case rent arrears are in dispute. Counsel further submitted that an order for winding up the company is very drastic and reasonable time should be given to the company to offset its liabilities with the coming of the all Africa Games in Nairobi the company was going to recover.

Section 219 (c) of the Companies Act provides that a company may be wound up by the court if it is unable to pay its debts. The debt due must be a sum exceeding one thousand shillings and the creditor

must serve a demand notice upon the company to pay the same.

By a letter dated 8<sup>th</sup> April, 1987, a copy of which is annexed to the affidavit in reply of Mohamed Fidaali Mulla Hebtulla sworn on 29<sup>th</sup> June, 1987, the advocates for the Petitioner wrote to the company starting as follows:

“We are instructed by Hebtulla Properties Limited to accept you as tenant of this premises.

In the circumstances there is now the sum of Shs 335,500/- due as rent and we would be grateful to receive this sum within 7 days”.

In reply to the foregoing the company through its advocates on 21<sup>st</sup> April, 1987 wrote as follows

‘(i) the sum of Kshs 335,500/= due as rent arrears is acknowledged: our client however are not in a position to discharge the said sum at once.

(ii) Our clients kindly wish to request you to extend the period of time in which to pay and they propose that this sum be discharged by instalments of Kshs 18,639/= in the current rent as from 30<sup>th</sup> May 1987. This will therefore rear payment by our client of Kshs 30,639/= per month for 18 months when the debt shall be fully discharged.”

The above acknowledgment by the company is in conflict with paragraph 4 of the affidavit in opposition sworn by Mr Dick Chakala on 26<sup>th</sup> June, 1987 wherein it is stated that the rent demanded by the petitioner is not June. There is a further contradiction in paragraph 5 of the said affidavit in that whereas the deponent says there is no rent due (paragraph 4) he goes on to state that the landlord has refused to take the rent. I have also looked at the copy of the plaint in H.C.C.C No 2470/84 which is one of the annexures to the affidavit, in reply of Mr Hebtulla and observe that the prayers therein are for vacant possession and mesne profits based on the fact that after the base between the plaintiff and the Defendant therein, expired the Defendant became a trespasser. The suit was therefore not for arrears of rent. In any case the plaintiff therein has now recognized the Defendant as the tenant vide the letter dated 8<sup>th</sup> April, 1987.

A Petition based on a debt that is disputed stand to be dismissed. See Re Holme Ginnors Ltd (Nos) (1964) EA 439 and Re Tanganyika Produce Agency Limited (1957) E.A. 241.

In the present case the petition for winding up is for a liquidated sum of Kshs 335,500/= , The said sum has been acknowledged by the company which offered to pay by instalments. No evidence has been shown to show that attempts were made to pay the arrears of rent before or after the filing of the petition. In my view the dept is not disputed. The company has been unable to pay the same.

The claim by the supporting creditor amounts to Kshs 1,217,015/75. No mention has been made on behalf of the company in the affidavit in opposition or in the hearing how this sum is going to be paid. Neither has the said sum been disputed.

On my part I find that the Petition for winding up the company herein is competent and that the Petitioner deserves the order prayed for. This Court therefore orders that the company herein be wound up under the provisions of the Companies Act and that the official Receiver be constituted Provisional Liquidator of the affairs of the company.

I further order that the costs herein which I award to the Petitioner be taxed and paid out of the assets of the company.

Orders accordingly.

**July 8, 1987**

