



IN THE COURT OF APPEAL

AT NAIROBI

(Coram:Madan, Miller & Potter JJA)

CIVIL APPEAL NO. 13 OF 1981

BETWEEN

MUSA.....APPELLANT

AND

LIFE AGENCIES INTERNATIONAL (KENYA) LTD.....RESPONDENT

JUDGMENT

Madan JA This is an appeal from a decision of Masime J who refused to make an order on the appellant's petition compulsorily to wind up the company.

Three affidavits were filed, one by the petitioner in support of the petition, a replying affidavit by the only other director in the company, and a further affidavit by the petitioner.

The company was incorporated by the petitioner and the other director who were the only two directors and shareholders of the company each holding one share. Serious disputes occurred leading to a deadlock between them which, according to the petitioner, made it impossible to carry on the business of the company jointly.

The other director deponed that a meeting was held on a certain date when the petitioner was present, two new directors were appointed by consent of the parties. The petitioner denied all this in his further affidavit, his version being that such a meeting was never held. There arose a serious conflict of facts requiring determination of which party's version was the correct one. The learned judge proceeded on the basis that such a meeting took place. He did not hear any evidence to resolve the conflict in the usual manner of first evidence-in-chief, then cross-examination, and if necessary re-examination. We find ourselves in this difficulty that we are unable to say with reasonable satisfaction of mind which set of facts is the correct one. Counsel agree that this difficulty exists in this case. Counsel also agreeing, we remit the petition for hearing de novo by another judge of the High Court, the costs of the fresh hearing to be in his discretion.

This agreed solution was reached at an early stage of hearing of the appeal before us. Mr Gautama had to come to this court. In the circumstances we give the appellant half costs of the appeal.

As **Miller** and **Potter JJA** agree, it is so ordered.

Dated and Delivered at Nairobi this 16th day of December 1981.

C.B.MADAN

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JUDGE OF APPEAL

C.H.E.MILLER

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JUDGE OF APPEAL

K.D.POTTER

.....

JUDGE OF APPEAL

I certify that this is a true copy of
the original.

DEPUTY REGISTRAR