



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 557 OF 2017**

**CLEOPHAS OMUGA.....CLAIMANT**

**VS**

**HABO GROUP OF COMPANIES.....RESPONDENT**

**HGC HABO GROUP LIMITED.....OBJECTOR**

**RULING**

1. On 4<sup>th</sup> February 2021, I delivered a ruling dismissing the Objector's application for stay of execution towards satisfaction of the decretal sum herein.
2. Immediately after reading of the aforesaid ruling, Mr. Wameyo appearing for the Objector, made an oral application for stay of execution, which the Court granted, subject to the Objector depositing not less than 50% of the decretal sum in court, within three days from the date of the ruling.
3. The Objector did not comply with the orders issued by the Court on 4<sup>th</sup> February 2021 and instead filed the present application dated 9<sup>th</sup> February 2021, seeking review and setting aside of the orders of 4<sup>th</sup> February 2021.
4. The application is supported by an affidavit sworn by Anderson Mugambi, who describes himself as the Claims Manager of the Objector, and is based on the following grounds:
  - a) That there is discovery of new and important matter or evidence, which after the exercise of due diligence, was not and could not have been within the knowledge of and could not have been produced by the Objector at the time the order was made;
  - b) That the discovery by the Objector is that by a Gazette Notice dated 29<sup>th</sup> February 2021, the Respondent was dissolved and the public thus notified pursuant to Section 897(4) of the Companies Act.
5. In response to the Objector's present application, the Claimant filed a replying affidavit sworn on 25<sup>th</sup> February 2021.
6. The Claimant states that the deponent of the supporting affidavit to the Objector's application has not exhibited any authorisation from the Objector.
7. The Claimant further states that the Objector, being closely affiliated to the Respondent, was aware of the Gazette Notice; it is thus not a discovery that was not within the Objector's knowledge.
8. The Claimant takes the view that the Respondent's dissolution was effected after judgment, with the sole purpose of escaping liability.
9. The Claimant takes issue with the Objector's failure to attach the requisite documents and/or application that supported the voluntary dissolution of the Respondent.
10. The Claimant states that any person making an application to the Registrar of Companies, for dissolution of a company must, within 7 days from the date on which the application is made, give notice to every person to be affected by the dissolution. The Claimant points out that at the time the Respondent made its application for dissolution, he had already obtained judgment against the Respondent.
11. The Claimant points out that even where a company has been dissolved, the liabilities of each director, member and managing officers continue and may be enforced as if the company continues and has not been dissolved.

12. The Claimant notes that the Objector lacks the *locus standi* to move the Court on behalf of the Respondent.

13. The Claimant depones that immediately after orders were made on 4<sup>th</sup> February 2021, the Objector made a written proposal to have this matter settled only to turn around and file the present application.

14. The power of this Court to review its own decisions is donated by Section 16 of the Employment and Labour Relations Court Act and Rule 33 of the Employment and Labour Relations Court (Procedure) Rules. Rule 33(1) of the Procedure Rules provides as follows:

***(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling-***

***(a) if there is discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or***

***(b) on account of some mistake or error apparent on the face of the record; or***

***(c) if the judgment or ruling requires clarification; or***

***(d) for any other sufficient reason.***

15. The Objector's application is based on Gazette Notice No. 666 dated 29<sup>th</sup> February 2021, showing that the Respondent has been dissolved.

16. From the Gazette Notice, it is evident that notice of the Respondent's dissolution was published after my ruling of 4<sup>th</sup> February 2021. It is therefore safe to conclude that the Objector did not have knowledge of the Respondent's dissolution at the time its objection application was considered by the Court.

17. According to the Gazette Notice, the Respondent was dissolved under Section 897(4) of the Companies Act, which provides for dissolution of companies pursuant to own application. Under Section 897(6) however, directors and other officers of a dissolved company may be pursued to settle liability as if the company had not been dissolved.

18. It follows therefore that dissolution of a company does not in any way, extinguish accrued liabilities, such as the decretal sum owed to the Claimant in this case. That being the case, the Objector cannot rely on the Respondent's dissolution to reverse my finding that it had failed to establish interest in the goods proclaimed by the Claimant towards satisfaction of his judgment against the Respondent.

19. The Objector's application for review dated 9<sup>th</sup> February 2021 is therefore declined with costs to the Claimant.

20. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 27<sup>TH</sup> DAY OF MAY 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Nyange for the Claimant

Mr. Wameyo for the Objector